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ATTORNEY/CLIENT MEMORANDUM



To: City Council
From: Mary A. Winters, City Attorney
Subject: Charter Qualification Requirements – Casey Roats
Date: November 26, 2014

This memorandum addresses questions relating to councilor qualification requirements, which have been raised related to Casey Roats, who is the elected candidate for Council Position 6. At the Council meeting on November 5, Council voted to exercise its authority under the charter to determine the qualifications for a councilor elected at the recent general election prior to certification of the election results.

The City of Bend Charter requires that councilors be qualified electors and have resided in the city during the 12 months immediately before being elected. It also says that the city council is the final judge of the election and qualifications of councilors. (Bend Charter, Section 12.)

This memorandum will first state the factual situation, followed by a review of the Charter requirements, in the context of the entire Charter. Next, it will provide interpretation principles, case law, municipal law and other resources. These are intended to provide a framework for council's discussion. Finally, I will share the limited legislative history and a few scenarios from other jurisdictions facing similar situations.

We will discuss this memo at the Special Meeting on December 1, at which time you can ask further questions or seek clarifying legal advice. Councilor-elect Casey Roats will also be available to answer factual questions. It is important the procedures used by the Council in furtherance of its determination under the Charter be consistent with democratic processes, and give due recognition to effective government and the rights of the majority to control and rule. There must be notice and an opportunity to be heard by the Councilor-elect. See generally, *McQuillin*, § 12:148.

A. Facts:

In October of 2013, Mr. Roats sold his home at 61047 Borden Drive in the City of Bend where he and his family lived for the previous 8 years. He says he immediately began the construction process for their current residence on 61200 Brookswood Blvd, in the City of Bend. He states that because of the rental market in Bend and

the impossibility of finding a short term lease, his parents offered for them to stay in his parents' home during construction and that it was only temporary. His parents live outside of Bend at 61788 Teal Road. He states he never changed his residence to any place outside of Bend, that his mail, driver's license and utility bills all reflected a Bend Address, and that he considered his residence to be within the City of Bend. This is stated in an October 22, 2014 letter to City Manager Eric King and City Recorder Robyn Christie. (Exhibit 1.)

City records show that the final building inspection was approved for the home at 61200 Brookswood Blvd on October 3, 2014, which would be the date for the residential certificate of occupancy. The building permit application was submitted on December 4, 2013. On December 5, 2013 the application was deemed complete and routed for review.

Mr. Roats submitted a candidate filing with the City Recorder on June 19, 2014, listing 61200 Brookswood Blvd at his residence and his P.O. Box as his mailing address. (Exhibit 2.) City Recorder Robyn Christie checked that his address was within the city and, per standard procedure, phoned and confirmed with the Deschutes County Clerk's Office that the candidate was registered to vote. He also submitted a nominating petition. According to the State Elections office, Mr. Roats changed his residence on his voter file to 61200 Brookswood Blvd on June 30, 2014.

In a letter dated October 22, 2014, Mr. Charlie Ringo filed a formal complaint concerning the candidacy of Casey Roats for Bend City Council. (Exhibit 3.) On October 24, 2014, Mr. Roats' attorney, Neil Bryant, wrote a letter in response. (Exhibit 4.) The Assistant County Counsel and I also wrote emails in response. (Exhibits 5 and 6.)

Mr. Ringo has also submitted an affidavit from Mr. Roats' neighbor, questioning Mr. Roats' veracity and intentions. (Exhibit 7.) The council proceeding is not a public hearing or trial, so outside evidence will not be taken. However, council has already been provided this information because it is in the court file (the declaratory judgment and other challenges filed by plaintiff Foster Fell). Council can question Mr. Roats on these issues as it desires. Also attached are affidavits for Council consideration submitted by Mr. Roats on the specific questions raised, since they go to the issues of intent, credibility and physical presence. (Exhibit 8.)

The questions regarding Mr. Roats' residency status were raised publicly and discussed in articles in The Source and The Bend Bulletin after he filed as a candidate but prior to the election. It was the subject of quite a few letters to the

editor and community discussion. Casey Roats nonetheless won the election.¹ (Exhibit 9.)

Mr. Roats' attorney submitted another letter to the City Council dated November 25, 2014, to provide "the legal, policy and common sense rationale for determining that Casey Roats is a resident," qualified to sit on City Council." (Exhibit 10.)

B. Interpretation of Bend Charter. A city's charter is, in effect, the city constitution. Rules on charter interpretation:

- A court will interpret a city charter provisions by the same means as other legislation, including attention to the meaning intended by those who adopted it if that can be ascertained. *Brown v. City of Eugene*, 250 Or.App. 132 (2012).
- When interpreting a city charter provision that was enacted by the voters, the court's task is to discern what the voters intended, which it derives first by looking to the text and context of the provision; *Id.*
- Courts interpretation legislation enacted by the voters, such as in a Charter, in the same way that they interpret legislation enacted by the legislature, by first examining the text in context, together with any relevant legislative history. *Miller v. City of Portland* (2014), WL 5474513.
- If the construction of a statute, a court shall pursue the intention of the legislature if possible. *ORS 174.020*.
- "Local charters and ordinances, as well as state statutes, are subject to the general rules of statutory construction; that is, rules for ascertaining the meaning of ambiguous legislation. In general, grants of power to local government are strictly construed, and doubt is usually resolved against the local government and in favor of the individual. To overcome this rule of strict construction, most city charters include a requirement that they be liberally

1

 Casey W Roats	12,045 (44.40%)
Richard W Robertson	1,409 (5.19%)
Ron (aka Rondo) Boozell	2,206 (8.13%)
Lisa Seales	11,362 (41.88%)
WRITE-IN	106 (0.39%)
Total:	27,128
Over Votes:	17
Under Votes:	7,822

construed.” League of Oregon Cities, *City Handbook*, (May 2013), 2-9 – 2-10.

- Where a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to prevail. *ORS 174.030*.
- In the absence of explicit definitions, courts presume that the legislature intended that words be given their plain, natural and ordinary meanings. *Oregonian Publishing Co. v. Portland School District*, 329 Or 393 (1999).

C. Relevant Charter Provisions

Section 12 of the City of Bend Charter of 1995 (Bend Charter) provides:

Section 12. Qualifications.

(1) A councilor shall be a qualified elector under the state constitution and shall have resided in the city during the 12 months immediately before being elected or appointed to the office. In this subsection, “city” means area inside the city limits at the time of the election or appointment.

(2) A councilor may be employed in a city position that is substantially volunteer in nature. Whether the position is so may be decided by the municipal court or in some other manner, whichever the council prescribes.

(3) Except as subsection (2) of this section provides to the contrary, the council is the final judge of the election and qualifications of councilors.

The section on Vacancies also addresses residency, and states:

Section 21. Vacancies. The office of a councilor becomes vacant:

...

(2) Upon declaration by the council of the vacancy in the case of the incumbent's:

(a) Failure, following election or appointment to the office, to qualify for the office within ten days after the time of his or her term of office is to begin,

(b) Absence from the city for 30 days without the council's consent or from all meetings of the council within a 60 day period,

(c) Ceasing to reside in the city,

- (d) Ceasing to be a qualified elector under state law,
- (e) Conviction of a crime of moral turpitude, or
- (f) Resignation from the office.

Other sections of the charter establish the City of Bend's home rule authority—that is, its power to act on all matters under the Oregon Constitution unless a state law prohibits it acting on that specific matter, or clearly displaces local civil or administrative regulations.

Chapter II. ...Section 4. Powers of the City. The City has all the powers that the constitutions, statutes and common law of the United States and of the State of Oregon now or hereafter expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.

Section 5. Construction of Powers. In this charter, no specification of a power is exclusive or restricts authority that the city would have if the power were not specified. The charter shall be liberally construed, so that the city may exercise fully all its powers possible under this charter and under United States and Oregon. All powers are continuing unless a specific grant of power clearly indicates the contrary.

Section 6. Distribution of Powers. Except as this charter prescribes otherwise, and as the Oregon Constitution reserves municipal legislative power to the voters of the city, all powers of the city are vested in the council...

D. Application of Construction Principles to Bend Charter

1. Qualified Elector.

The Charter requires that a councilor be a “qualified elector” at the time of the election.² This requirement is straightforward. Under the State Constitution, to be a “qualified elector” a person has to be 18, have resided in the state for 6 months prior to the election (with some exceptions), and be registered not less than 20 days immediately preceding the election in the manner provided by law. Oregon Constitution, Article II, Section 2(1).

No facts have been raised that dispute that Mr. Roats was a qualified elector. He is a citizen, over 18, lives in the State and was registered to vote not less than

² Bend Charter Section 29 provides: **State Law.** Except as this charter or a city ordinance prescribes to the contrary, a city election shall conform to state law applicable to the election.

20 calendar days before the election.³ Under the City Charter and state law, this indisputably makes him a qualified elector. Whether there is an issue with his registration, the accuracy of the information on his registration form, or his knowledge or fault, is for the State Elections office to determine. If there is an issue, they turn it over to the Department of Justice. In other words, the validity of the elector's residency would be up to the Secretary of State's office. The issues raised are not reflective of whether Casey Roats was a "qualified elector" entitled to vote in the election. I spoke with the State Elections office on this issue and was told that there is "no question or controversy" that Mr. Roats was registered to vote, making him a qualified elector. Their records show he has been registered to vote for 10 years in Deschutes County.

2. Resided in the City during the 12 months immediately before being elected.

Under the Charter provision and these particular facts (and others you may ask Mr. Roats), there are several questions to keep in mind as you review the interpretation of its meaning.

1. Can a person reside in the city without having a specific residential address in the city?
2. What does it mean to have a resident address?
3. What is the role of intent in the analysis?
4. What is the purpose of the charter provision and the result sought to be accomplished by the requirement?

The phrase "resided in the city" is not defined in the charter document. Courts often do turn to dictionary definitions in attempting to discern the ordinary meaning of words:

Dictionary:

Reside 1. *To make one's home :1: Dwell 2: to be present as a quality or vested as a right* *The New Merriam-Webster Dictionary (3rd International Edition, 1989)*

Reside:

1. *a: to be in residence as the incumbent of a benefice or office
b: to dwell permanently or continuously: occupy a place as one's legal domicile*
2. *a: to be present as an element or quality
b: to be vested as a right*

³ In Oregon, people with past felony convictions, on parole, probation and post-prison supervision can register and vote. Only people in the custody of the Oregon Department of Corrections cannot vote. People who are homeless can vote, and can use the address where they spend the greatest amount of their time as their Oregon residence address, or the County Clerk's office.

Examples of reside:

He resides in St. Louis.

He still resides at his parents' house.

Meaning resides within the text of the poem.

The importance of this decision resides in the fact that it relates to people across the country. Merriam—Webster, On-line version.

Reside:

intransitive verb

resided, residing

1. *to dwell for a long time; have one's residence; live (in or at)*
2. *to be present or inherent; exist (in): said of qualities, etc.*
3. *to be vested (in): said of rights, powers, etc.*

re-sid-ed, re-sid-ing, re-sides

1. *To live in a place permanently or for an extended period.*
2. *To be inherently present; exist: the potential energy that resides in flowing water.*
3. *To be vested, as a power or right: the authority that resides in the Supreme Court.*
4. *Computers To be located or stored: a file that resides on a shared drive.*

The American Heritage Dictionary (5th Edition, 2010, 2013, Houghton Mifflin Harcourt Publishing Company).

However, it is also often not the end of the analysis. In interpreting language, a court will look not just at the word itself, but at the words it modifies and the context as a whole. For example, in *Miller v. City of Portland, supra*, the Oregon Supreme Court faulted the City and Court of Appeals for reviewing the dictionary definition of the word “require,” out of context of the entire phrase and charter as a whole. See also, *Brown v. City of Eugene, supra* (the dictionary definition provides little help in this case, as it includes definitions that lend at least some support to both parties’ arguments).

Therefore, the definition of “resided” should not be looked at in isolation, but in the context of the entire section—i.e., “shall have resided in the city during the twelve months immediately before the election,” and the context of the charter as a whole.

In considering whether a councilor elect can be absent for any period of time, in section 21(2) of the Charter on City Council vacancies, there is a distinction between absence and residency that could be interpreted to fill out the understanding of what constitutes residency. That section says that the Council may declare a council vacancy in the event of the Councilor’s Absence from the city for 30 days without the Council’s consent...” or “Ceasing to reside in the city[.]”

(Emphasis added.) In this section, the Charter treats “absence” as a condition distinct from “residence.”

Thus the Charter vacancy section considers absences (meaning that a person may be gone for a while without losing residency), but the qualification section does not. Only residency is discussed. One possible (although not required)⁴ interpretation is that if actual physical presence in Bend was a requirement then the distinction made in the vacancy section would have been made in the qualifications section as well. In other words, two separate provisions—one may be absent from the city and still be a resident, or be present in the city but no longer a resident—create a vacancy. Section 12 can be considered in the context of the whole document by Council, and residing is treated as a separate concept from presence/absence as it is in Section 21.

Related Statute:

Courts will sometimes look at related statutes to determine the legislative intent of the provision at issue. State statutes govern the determination of residency for elector (voter) purposes:

ORS 247.035 Rules to consider in determining residence of person for voting purposes

(1) An elections official, in determining the residence and qualifications of a person offering to register or vote, shall consider the following rules, so far as they may be applicable:

(a) The persons residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

(b) If a persons property is split by a jurisdictional line, the person shall be registered where the residence is located. If the residence is split by a jurisdictional line, the person shall register where the greatest value of the residence is located according to county assessment and taxation records.

(c) A person shall not be considered to have gained a residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the persons home.

(d) If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

⁴ When the legislature uses different language in similar statutory provision, it is presumed to have intended different meanings. *Lindsey v. Farmers Ins. Co of Oregon*, 170 Or.App. 458 (2000); *Dale v. Electrical Board*, 109 Or.App. 613 (1991).

(e) If a person goes from this state into any other state or territory and votes there, the person shall be considered to have lost residence in this state.

(f) A person who has left the place of the persons residence for a temporary purpose only shall not be considered to have lost residence.

(2) Notwithstanding subsection (1) of this section, a person who has left the place of the persons residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the persons residence was located before the person left.

(3) An elections official may consider, but is not limited to considering, the following factors in determining residency of a person for voter registration purposes:

(a) Where the person receives personal mail;

(b) Where the person is licensed to drive;

(c) Where the person registers motor vehicles for personal use;

(d) Where any immediate family members of the person reside;

(e) The address from which the person pays for utility services; and

(f) The address from which the person files any federal or state income tax returns. [Formerly 250.410; 1995 c.214 §1]

While not controlling, to the extent this statute uses the term “residence” (although not “residing”) and is related to voting and elections, it could be used as guidance for intent.

E. Authority from Courts and Other Sources on Interpretation.

Turning to case and other authority, there is no case directly on point regarding a similar charter provision, but the meaning of the term ‘residence’ has also been considered by the Oregon courts. The word ‘resident’ or ‘residence’ are words having various meanings dependent on the context of the statute in which they occur. They must be construed in light of the purpose of the statute in which they appear and the result sought to be accomplished by their use. See *Owens v. Huntling*, 115 F2d 160; *Elwert v. Elwert*, 196 Or 256, 248 P2d 847; *Zimmerman v.*

Zimmerman, 174 Or 585, 155 P2d 293; *Popejoy v. Boynton*, 112 Or 646, 230 P 1016.' *School District 16-R v. McCormach*, 238 Or 51, 57, 392 P2d 1019 (1964).

Popejoy involved a will contest, involving issues of the decedent's legal residence, domicile or inhabitancy. The Oregon Supreme Court stated: "Both residency and inhabitancy are relative terms, depending upon the particular circumstances, and not infrequently upon intention." In *Pickering v. Winch (Reed's Will)*, 48 Or 500 (1906), the will contestants contended that Mrs. Reed was not a resident of the state of Oregon because she owned a home in California where she spent a greater portion of her time. The Oregon Supreme Court held that the legal residence of both Mr. and Mrs. Reed at the time of their respective deaths was Oregon—i.e., that they continued at all times to be residents of the State of Oregon, although actually residing elsewhere. The court found that casual statements as to intent accompanying one's change of residence are of less value as evidence than deliberate business declarations or statements to intimate friends and relatives. The case largely rested on a person's legal residence or domicile, which the court held consistent of both residence and intent. A person can have only one domicile, but can have more than one residence. In some situations, the distinction between domicile and residence has mattered to the court, where it is found that domicile must be a fixed place of abode where a person intends to return to habitually when absent and to remain permanently or indefinitely. Residence may be at the same place or different places. See 21 Or. Op. Atty Gen. 214, 1943 WL 32718.

The closest Oregon authority we have found is an older attorney general opinion, where the question was asked whether the office of a member of a local school committee who is absent several months at a time from the district for the purpose of obtaining employment becomes vacant. A vacancy occurred upon the member "ceasing to be an inhabitant of the district, county, city, town or village for which he shall have been elected or employed..." The AG stated, "It is my opinion that under the circumstances above mentioned the office of the members of the local committee who is absent from the district for the purpose of obtaining employment does not become vacant on that account. Residence is largely a matter of intention and if he maintains a permanent residence within the district and expects to return there when he is away engaged in temporary employment, he does not on that account cease to be an inhabitant of the district." 19 Or. Op. Atty Gen. 771, (Or.A.G.) 1940 WL 39520.

Out of state, a plaintiff is a case from Louisiana sought to disqualify a candidate for election because he and his family moved into rented premises in a rural area in another Parish after their home burned, stating that there was no home available in the rural area where they lived. There was a residency requirement for qualifying as a candidate for public office. The court found that the requirement was related to legal domicile, there is a presumption against a change of domicile, and the issue is essentially factual. It found that since his family owned the homesite property where in the Parish was located, he was registered to vote, had a church membership and social association, but was prevented from re building due to an

IRS lien on the homesite property, the trial court was not wrong in finding the explanation credible. “Either temporary absence or residing elsewhere because of some explainable necessity, which is found reasonable, does not effect a change in one’s domicile or bona fide residency.” *Chandler v. Brock*, 510 So. 2d 778 (1987). This case is not precedent in Oregon; however, it does indicate the type of analysis one court chose to engage in.

Finally, there is a line of state and federal case law that considers the constitutionality of residency requirements. In general, the issue in durational residency requirements is the constitutional right to travel, right to associate, and right to vote for one’s candidate of choice. For example, a three-year residency for mayor candidates was found to be unconstitutional and in violation of the equal protection clause absent a compelling state interest. Likewise, a two-year residency requirement for city councilors in a city charter was declared unconstitutional by a federal court in Louisiana, citing cases from other federal jurisdictions, and applying strict scrutiny. *Lentini v. City of Kenner*, 470 F. Supp 966 (E.D. La. 1979). However, a one-year residency requirement has been upheld in other states. See *McQuillin*, §12:100. No Oregon case has addressed this issue, but a one-year requirement has valid justification. When upheld, the legitimate municipal purpose of ensuring knowledgeable candidates and acquaintance with municipal issues is often cited. These cases show the importance of determining the legislative intent for the residency requirement and articulating the legitimate state interest being protected.

F. Legislative History/Other Cities in Oregon.

We have found no informative legislative history in the minutes of the Charter adoption or amendments to the Charter or any other documents in regards to legislative intent. We do know that this language was likely based on the model charter language from the Bureau of Government Services and Research, and is similar to that found in other cities in Oregon. It has been similar since 1928. It did change slightly in 1995, but the intent appears the same and there is no discussion in the minutes. The 1960 Charter said:

“A person to be eligible for the office of a City Commissioner must be a resident and legal voter of the City of Bend and must have resided within the City of Bend for one year next preceding his or her election.” The attached minutes contain the only discussion we could find. (Exhibit 11.) The attached letter from Ron Marceau represents the view of person who was City Attorney at the time, as shown in the minutes. (Exhibit 12.)

In asking this question on the city recorder list serve, we discovered that this issue came up in Keizer in 2002, when a candidate was a college student at Willamette University in Salem, while running for a council position in Keizer. The city attorney drafted an analysis of their charter and residency issues; however, the candidate didn’t win. The Keizer charter varied from the model charter. Its legislative history showed that the council specifically added language regarding vacancy upon

"removal of his or her principal residency." In concluding that the candidate could not claim Keizer as a principal resident (while conceding that a different attorney could have a different opinion), their city attorney opined that this indication of an increased residency is telling and indicates the importance of which the drafters attached to the requirement. In Lincoln City, the City Recorder reported that they have a newly elected Councilor who primary residence is about 9 miles from his ward. Their County Clerk told him to "pick an address" for his voter registration, so he chose his business in town which is a motel that he says he has a room and stays there as well. Their charter says that council is the final judge of the qualifications and election of its own members. However, as far as we know, it has not yet become an issue for their City.

G. Conclusion.

For purposes of the City's Charter provision, under these facts, reasonable minds can differ and come to different conclusions on the meaning intended and whether these facts fit that meaning. In the City Attorney Office's legal opinion, using the principles cited above, Council must look at the Charter as a whole and the legislative intent.

The Charter specifically provides that the Council is the final judge of election and qualifications of councilors. This gives deference to Council to interpret the meaning of "shall have resided in the city during the twelve months immediately before being elected," within reason, and room for a strict interpretation of the plain language and/or one that considers the intent of the person and the surrounding circumstances. Most importantly, Council's interpretation may set precedent for the future, and should be fair, impartial and unbiased.

October 22, 2014

Eric King
Robyn Christie
City of Bend
710 NW Wall Street
Bend, OR 97701

Re: Residency

Dear Mr. King and Ms. Christie:

I am writing to discuss any inquiries that you have had related to my residency in the City of Bend as it pertains to my candidacy for Bend City Council. I have consulted legal counsel, the County Clerk, Ron Marceau, former City of Bend Attorney, and others concerning the question of my residency.

ORS 247.035 provides:

“A person shall not be considered to have gained a residence in location in this state into which the person comes for temporary purposes only, without the intention of making it the person’s home.”

And:

“A person who has left the place of the person’s residence for temporary purpose only shall not be considered to have lost residence.”

In October of 2013, we sold our home in the City of Bend where my family and I lived for the previous 8 years. We immediately began the construction process for our current residence on Brookswood Blvd., in the City of Bend. We have moved into our new home.

Because of the rental market in Bend and the impossibility of finding a short-term lease, my parents offered for us to stay in their home during construction. This was only temporary. Although my parents live outside of Bend, I never changed my residence to any place outside of Bend. My mail, driver’s license and utility bills all reflected a Bend address. Consequently, I have always considered my residence within the City of Bend.

I will continue to ask the citizens of Bend to support my election.

I am happy to discuss the matter further at your convenience.

Sincerely,



Casey Roats

Candidate Filing

SEL 101

Major Political Party or Nonpartisan

rev 01/14
ORS 249.031

Filing Dates	Candidate Filing	State Voter Pamphlet	Candidate Withdrawal
Primary Election May 20, 2014		Filed electronically using ORESTAR	
First Day to File	September 12, 2013	January 20, 2014	
Last Day to File	March 11, 2014	March 13, 2014	March 14, 2014
General Election November 4, 2014			
First Day to File	June 4, 2014	July 7, 2014	
Last Day to File	August 26, 2014	August 26, 2014	August 29, 2014

1 All information must be completed or the form will be rejected.

This filing is an

 Original Amendment**Filing Officer** Secretary of State County Elections Official City Recorder (Auditor)**Candidate Information****Name of Candidate**

First

William

MI

Last

C Roats

Suffix

Title

How you would like your name to appear on the ballot

First

Casey

MI

Last

W Roats

Suffix

Candidate Residence/Route Address

Street Address

61200 Brookswood Blvd Bend

City

State

Zip

County

97702 Deschutes

Candidate Mailing Address

Street Address or PO Box

P.O. Box 9579

City

State

Zip

Bend

OR

97708

Contact Information: Only one phone number is required.

Work Phone

541-382-3029

Home Phone

Cell Phone

Fax

541-382-2292

Email Address

casey@roatswater.com

Web Site, if applicable

www.roatsforbend.com

Paying by Declaration or Petition Declaration, with the required fee

Office	Filing Fee	Office	Filing Fee
United States President	n/a	District Attorney	\$50
United States Vice President	n/a	County Judge	\$50
United States Senator	\$150	MSD Executive Officer, MAD Director	\$100
United States Representative	\$100	MSD Councilor	\$25
Statewide Offices	\$100	County Office	\$50
State senator or Representative	\$25	City Office	Set by charter or ordinance
Circuit Court Judge	\$50	Justice of the Peace	n/a

 Prospective Petition

Petition circulators will be paid

 Yes No

Office Information

Filing for Office of: Bend City Council

District, Position or County: Position 6

Party Affiliation: Democratic Party Republican Party Nonpartisan

Incumbent Judge:

 Yes No Nondisclosure on file**Occupation (present employment) If no relevant experience, None or NA must be entered.**

Owner/Operator of Wadsworth Roots Water System

Occupational Background (previous employment) If no relevant experience, None or NA must be entered.

Owner/Operator of water utility company in Bend.

Educational Background (schools attended) If no relevant experience, None or NA must be entered.

Complete name of School (no acronyms)	Last Grade completed	Diploma/Degree/Certificate	Course of Study
Mountain View High School	12	Diploma	
Blue Mountain Community College			General Studies
Central Oregon Community College			Business Admin

Educational Background (other) Attach a separate sheet if necessary.

Prior Governmental Experience (elected or appointed) If no relevant experience, None or NA must be entered.

Infrastructure Advisory Committee - 2010 - 2014
 Sewer Infrastructure Advisory Group - 2012 - 2014
 Water Treatment Advisory Committee - 2013

Campaign Finance Information (not applicable to candidates for federal office)**Candidate Committee**

Yes, I have a candidate committee.

No, I do not expect to spend more than \$750 or receive more than \$750 during each calendar year. I understand I must still keep records of all campaign transactions and if total contributions or total expenditures exceed \$750 during a calendar year, I must follow the requirements detailed in the Campaign Finance Manual.

No, but will be filing a Statement of Organization for Candidate Committee (SEL 220).

By signing this document, I hereby state that:

- I will accept the nomination for the office indicated above
- I will qualify for said office if elected
- all information provided by me on this form is true to the best of my knowledge **and**
- no circulators will be compensated based on the number of signatures obtained by the circulator on a prospective petition

For Major Political Party Candidates

- if not nominated, I will not accept the nomination or endorsement of any political party other than the one named
- I have been a member of said political party, subject to the exceptions stated in ORS 249.046, for at least 180 days before the deadline for filing a nominating petition or declaration of candidacy (ORS 249.031)

Warning

Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. (ORS 260.715). A person may only file for one lucrative office or not more than one precinct committee person at the same election. Unless the person has withdrawn from the first filing, all filings are invalid. (ORS 249.013 and ORS 249.170)

William J. H.

Candidate's Signature

JUN 19 2014

6-19-14

Date Signed

For Office Use Only Initials _____

Batch Sheet/CG Approval Code/Receipt Number _____

Received Administration

2014-05



City of Bend

OCT 22 2014

Received Legal

October 22, 2014

BY HAND-DELIVERY

Mary Winters
City Attorneys Office
710 NW Wall St.
Bend, OR 97701

Laurie E. Craghead
Deschutes County Legal Counsel
1300 NW Wall St., Ste 205
Bend, OR 97701

Re: Candidacy of Casey Roats

Dear Mary and Laurie:

This letter is a formal complaint concerning the candidacy of Casey Roats for Bend City Council.

Mr. Roats has recently admitted that for approximately the last 11 months he lived outside of the Bend city limits. Therefore, Mr. Roats is not qualified to run for City Council. Even if he were to receive the most votes, Mr. Roats could not take office.

I am aware that Chapter IV, Section 12(3) of the Bend City Charter states that "the council is the final judge of the election and qualifications of councilors." However, since Mr. Roats has admitted that he has not lived within the city limits, there is little room for debate. The city council cannot simply waive the residency requirement should it find the requirement inconvenient. Such a move by the city council would be an improper abuse of discretion and would and subject it to legal challenge.

I request that you immediately direct the Deschutes County Clerk, Nancy Blankenship, to refrain from counting any votes cast for Mr. Roats. The elections office should count the votes only of the 3 remaining candidates on the ballot for this position.

I am concerned that if the elections office does count the votes for Mr. Roats, and if Mr. Roats were to receive the most votes, then the solution becomes much more cumbersome. Should this occur, then I would file a declaratory action to prevent the certification of the election results. If the court disqualifies Mr. Roats, the elections office could not simply declare that the winner is the person who received the next highest number of votes. Rather, I believe that Deschutes County would have to hold a special election to fill this position on the City Council. It is in everyone's interest to avoid that outcome.

There is a precedent for not counting the votes of an unqualified candidate. Approximately 20 years ago Bill McCoy was running for State Senate in a district in Portland. Mr. McCoy died approximately 2 weeks before the primary election. Obviously, at that point he became unqualified to take office. The Multnomah County Clerk decided to not count any votes that were cast for Mr. McCoy. The result was that the candidate that received the most counted votes was declared the winner. I believe that the Deschutes County elections office should follow that approach here.

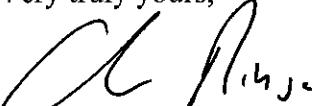
I understand that you will need some time to gather the facts and consider the law concerning this unusual situation. However, ballots are being returned daily and time is short. I believe vote counting will commence soon. Therefore, I would appreciate it if you could make a decision on how you intend to proceed and let me know no later than noon on Friday, October 24.

I would like to make one other point. Given that Mr. Roats is not qualified and cannot take office, it would be of great service to the voting public to confirm this outcome as soon as possible. The voters should be able to choose among the 3 remaining candidates who are qualified, rather than wasting their votes on someone who cannot take office.

I appreciate your attention to this urgent matter. Please contact me if you would like further information concerning Mr. Roats' residency or if you have any questions.

Thanks for your courtesies in this regard.

Very truly yours,


Charlie Ringo

B R Y A N T
L O V L I E N
& J A R V I S

EST. 1916
ATTORNEYS AT LAW

October 24, 2014

ATTORNEYS

Nell R. Bryant

John A. Berge

Sharon R. Smith

John O. Sorlie

Mark G. Reinecke

Melissa P. Lande

Paul J. Taylor

Jeremy M. Green

Melinda Thomas

Heather J. (Hepburn) Hansen

Garrett Chrostek

Danielle Lordi

Via: e-mail and first class mail

Charlie Ringo, Attorney At Law
947 NW Riverside Blvd.
Bend, Oregon 97701

Re: *Casey Roats's Qualifications for Bend City Council*

Dear Charlie:

I represent Casey Roats.

Casey Roats **will not** be withdrawing his candidacy for Bend City Council and there is **no** legal or rational basis to challenge his eligibility.

Temporarily living with his parents outside of the City during a transition between residences within the City of Bend, does not violate Chapter IV, Section 12(1) of the Bend City Charter or any other eligibility requirement. While residency is not defined in the Bend City Charter, Oregon law makes clear that residency refers to where you intend to live and makes exceptions for temporary hiatuses.

Specifically, ORS 247.035(1)(a), in regards to voter registration, states that a person's residence shall be the "place in which habitation is fixed and to which, when the person is absent, the person intends to return." ORS 247.035(1)(c) states that a voter does not gain a new residence by re-locating for a temporary purpose and ORS 247.035(1)(f) states that leaving a residence for a temporary purpose shall not cause a person to lose residency.

It is indisputable that Casey lived within the City of Bend at 61047 Borden Drive prior to October 1, 2013. Additionally, he and his wife promptly began construction of their new home at 61200 Brookswood Blvd. in Bend and now reside there. It is apparent that Casey not only intended to physically return to the City of Bend, he never intended to establish a residence outside of Bend. The physical move was only temporary and a hiatus that ORS 247.035 recognizes. Casey's changing his voter registration to his business address does not disrupt the chain of residency within the City of Bend.

To be consistent, and if you truly are interested in whether or not a candidate is qualified for the ballot, I suggest you carefully review the residency issues

A legacy of service to our community.

591 SW Mill View Way, Bend, OR 97702 | P 541.382.4331 | F 541.389.3386 | bljlawyers.com

{17119002-00491083;4}

Exhibit 4

surrounding the candidate you support, Lisa Seales. Ms. Seales' LinkedIn page states that she was employed as an integrative Graduate Education and Research Traineeship Associate in Gainesville, Florida through April 2014. Her page further states that she received her PhD from the University of Florida in 2014. Presumably, there were days in which Ms. Seales did not return to Bend after working or studying in Florida.

Ms. Seales' connections with Florida over the past year are substantial. She registered to vote in Bend for the first time on April 22, 2014, only six months ago. At that time, she registered with a mailing address of 2256 NW 19th Lane, Gainesville, Florida. The Deschutes County Clerk's office sent her a ballot for the May 2014 primary to the Florida address, but she did not vote. In fact, Ms. Seales has never voted in an election in Bend, Oregon.

On October 2, 2014, just a month before the upcoming election and a month after she filed as a candidate for the Bend City Council, she changed her mailing address for voting purposes from the above-referenced Florida address to a Bend address. Ms. Seales is a taxpayer for the Gainesville, Florida property. She does not have a current Oregon driver's license.

Your letter of October 21, 2014 to Casey Roats argues he should withdraw "in fairness to the voters." If that is your true concern, you should send a letter to Lisa Seales requesting her to withdraw.

I also wanted to address several erroneous assertions in your submission to Bend City Attorney Mary Winters.

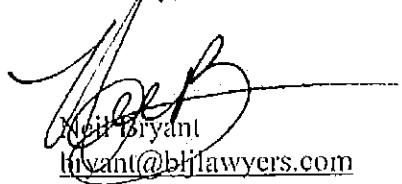
1. Your submission suggested that ORS 247.035(1)(c) is only applicable to non-Oregon residents. You did not address ORS 247.035(1)(f) at all because that provision supports Casey's residency in the City of Bend. Not only does the plain language of the statute not make distinction based on statehood residency, such an interpretation would be illogical as it would place every Oregonian in danger of losing their local residency when re-locating within the state for a temporary purpose.
2. It is perfectly acceptable for a homeless person to claim their residence as a business address. A business address is as much an identifiable location as a park, motor home, marina or any of the other locations enumerated in ORS 247.038(2)(a). Your conclusion that a residence is where you "return[] after a day of work to spend time and to sleep" makes no sense in the context of a homeless person. Homeless people generally do not return to the same location each day for the very fact that they are homeless. Clearly the reference to "any place within the county describing the physical location of the person" seeks to allow homeless persons the ability to vote by claiming a residence at any place that person could be reasonably found. A business address is as good as any other for achieving that purpose.
3. You have not provided any legitimate rationale or authority to demonstrate that Casey's hiatus was anything other than temporary. The evidence clearly demonstrates that Casey started the process to build a new home promptly after selling his prior home. Why would he go through that effort if he intended to make his parents' home his residence?

Furthermore, college student, members of the military, people who work overseas, and people who care for friends and family often temporarily leave their residence for longer periods than Casey did. Recognizing these realities, Oregon has wisely established intent to establish a residence as the standard instead of an arbitrary unit of time as you suggest.

4. Your letter impliedly threatens criminal prosecution. As you know, crime also requires intent. Based upon the facts stated above, no prosecuting attorney would be interested in pursuing a felony.

Mary Winters has explained the City's process for resolving this matter. Let the City Council make this decision after the election.

Sincerely,



Neil Bryant
hwant@bjlawyers.com

cc: Mary Winters
Laurie Craghead

Mary Winters

From: Laurie Craghead <Laurie.Craghead@deschutes.org>
Sent: Friday, October 24, 2014 11:44 AM
To: 'Charlie Ringo'
Cc: Mary Winters; Treana Henley
Subject: RE: Casey Roats' Candidacy
Attachments: Ltr frm Ringo re Roats.pdf

Charlie:

I reviewed your e-mail below as well as the letter you handed me Wednesday morning. In the letter you handed me, you requested that the Deschutes County Clerk refrain from counting any votes cast for Mr. Roats.

At this time, I find no authority for the Clerk to not count votes cast for a candidate on a ballot. Therefore, the Clerk will proceed with the election in the normal course.

*Laurie E. Craghead
Assistant Legal Counsel
Deschutes County
(541) 388-6593*

THIS ELECTRONIC TRANSMISSION IS CONFIDENTIAL. IN PARTICULAR, IT MAY BE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE, THE WORK PRODUCT PRIVILEGE, AND OTHER PRIVILEGES AND CONFIDENTIALITY PROVISIONS PROVIDED BY LAW. THE INFORMATION IS INTENDED ONLY FOR USE OF THE INDIVIDUAL OR ENTITY NAMED. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT THE SENDER HAS NOT WAIVED ANY PRIVILEGE AND THAT YOU MAY NOT READ, DISCLOSE, COPY, DISTRIBUTE, USE OR TAKE ACTION BASED UPON THIS TRANSMISSION OR ANY ACCOMPANYING DOCUMENTS. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE IMMEDIATELY NOTIFY THIS OFFICE AND DELETE THE E-MAIL.

From: Charlie Ringo [mailto:charlie@ringolaw.com]
Sent: Wednesday, October 22, 2014 10:46 AM
To: mwinters@bendoregon.gov; Laurie Craghead
Subject: Casey Roats' Candidacy

Hi Mary and Laurie,

I'm following up on the letters I delivered to your offices this morning. I am enclosing for your review an analysis of Roats' residence. You will note that during the last year he filed 3 separate voter/elections documents that were false.

I look forward to hearing how you wish to proceed. Please let me know if you need further information.

Charlie Ringo
(541) 390-3006

Mary Winters

From: Charlie Ringo <charlie@ringolaw.com>
Sent: Saturday, October 25, 2014 3:33 PM
To: Mary Winters
Cc: 'Laurie Craghead'; Eric King
Subject: RE: Casey Roats' Candidacy

Hi Mary and Laurie,

Thanks to both of you for your thoughtful responses. I agree that there are thorny questions to sort out, and that due to many practical considerations, that best be done after the election. After all, the voters may make this issue moot.

You have received Neil Bryant's letter of October 24 by email. I think Neil misses a couple of steps in his analysis, but again, these arguments can wait until after the election.

Thanks again.

Charlie

From: Mary Winters [mailto:mwinters@bendoregon.gov]
Sent: Thursday, October 23, 2014 2:55 PM
To: charlie@ringolaw.com
Cc: Laurie Craghead (Laurie.Craghead@deschutes.org); Eric King
Subject: FW: Casey Roats' Candidacy

Hi Charlie: This is to reply to your "complaint". First, below is the response our city recorder, Robyn Christie, sent to a potential candidate back in August in response to another inquiry regarding residency, so you know we are being consistent in our approach to this question. As you can see from the statute, the issue may not be as clear as you portray and council could choose to consider the more nuanced rules used for voting purposes. Intent to maintain a residence has been held to be an important factor, and I am unaware of all the facts. Candidate durational residency requirements have also been held subject to the equal protection clause of the Fourteenth Amendment to the Constitution, so must serve a compelling state interest of the municipality—while I believe the City's charter provision is constitutional, if necessary, I would do more research on the types of interests that municipalities seek to serve by such restrictions. Most importantly, it is ultimately a council decision, if necessary, based on the facts before it.

Second, I understand that the County will respond to your request regarding the counting of votes, and their authority (or lack thereof) to do as you ask.

Third, to the extent you seem to be suggesting that the outcome be confirmed "as soon as possible," I also spoke with the Secretary of State Elections Division. She confirmed my view that council should not seek to hold a special meeting before the election to determine qualifications—currently, the issue is not ripe and Mr. Roats is simply on the ballot. There are hard and fast deadlines that must be followed. Possibly if the issue had been raised before the withdrawal period we might have considered it (although there is still a question since the City's charter could be interpreted as giving the Council authority regarding who won an election and whether a "councilor" is qualified, but not as giving the Council authority as to who can be a candidate). In any event, she agreed that the

democratic process is up to the voters and it would be poor advice to recommend interference with that process. Threats of litigation are unfortunate and concerning, but do not change our view.

Finally, please see Section 21 of the Charter, which explains the process in the event of a vacancy if a councilor fails to qualify for office. Section 22 explains how vacancies are filled (upon appointment by council and then at the next general election).

Regards, Mary

Mary Alice Winters

City Attorney, City of Bend

541-693-2100

Here are two guidelines I can use to determine residency. If I cannot determine residency from the filing forms, I may request an affidavit from the potential candidate that certifies residency.

CHAPTER IV, COUNCIL

Section 12 Qualifications.

- (1) A councilor shall be a qualified elector under the state constitution and shall have resided in the city during the 12 months immediately before being elected or appointed to the office. In this subsection, "city" means area inside the city limits at the time of the election or appointment.
- (2) A councilor may be employed in a city position that is substantially volunteer in nature. Whether the position is so, may be decided by the municipal court or in some other manner, whichever the council prescribes.
- (3) Except as subsection (2) of this section provides to the contrary, the council is the final judge of the election and qualifications of councilors.

ORS 247.035¹

Rules to consider in determining residence of person for voting purposes

- (1) An elections official, in determining the residence and qualifications of a person offering to register or vote, shall consider the following rules, so far as they may be applicable:
 - (a) The persons residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

(b) If a persons property is split by a jurisdictional line, the person shall be registered where the residence is located. If the residence is split by a jurisdictional line, the person shall register where the greatest value of the residence is located according to county assessment and taxation records.

(c) A person shall not be considered to have gained a residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the persons home.

(d) If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

(e) If a person goes from this state into any other state or territory and votes there, the person shall be considered to have lost residence in this state.

(f) A person who has left the place of the persons residence for a temporary purpose only shall not be considered to have lost residence.

(2) Notwithstanding subsection (1) of this section, a person who has left the place of the persons residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the persons residence was located before the person left.

(3) An elections official may consider, but is not limited to considering, the following factors in determining residency of a person for voter registration purposes:

(a) Where the person receives personal mail;

(b) Where the person is licensed to drive;

(c) Where the person registers motor vehicles for personal use;

(d) Where any immediate family members of the person reside;

(e) The address from which the person pays for utility services; and

(f) The address from which the person files any federal or state income tax returns. [Formerly 250.410; 1995 c.214 §1]



November 18, 2014

BY EMAIL AND HAND-DELIVERY

Mary Winters
City Attorneys Office
710 NW Wall St.
Bend, OR 97701

Re: Councilor Qualifications

Dear Mary:

Today I am filing a motion for restraining order and preliminary injunction to prevent the current council from deciding Casey Roats' qualifications.

As part of this filing I enclosed the Affidavit of Laura Fife, who lives next to Mr. Roats' property on Brookswood. This affidavit contains four important points:

- Despite Roats' public statements, there is considerable doubt that he really intended to move into the home under construction on Brookswood.
- Roats' statements to the media that he moved into the Brookswood home at the first of October were untrue.
- Roats apparently made an active effort to make it appear that he was living in the Brookswood home, when in fact he was not.
- It appears that Roats still is not occupying the Brookswood house on a full-time basis.

Will you please forward this to all city council members? I hope you agree that this affidavit raises serious questions about Roats' residency.

Very truly yours,

Charlie Ringo

Enclosure

Cc: Mark Reinecke (by email)

974 NW Riverside Blvd., Bend, Oregon 97701
541.390.3006 Fax 541.382.3328 charlie@ringolaw.com

AFFIDAVIT OF LAURA FIFE

STATE OF OREGON)
County of Deschutes) ss.

I, Laura Fife, first being duly sworn, depose and say the following:

1. I live at 61195 Trailblazer Road, in Bend, Oregon. I have lived there approximately 15 years. Directly behind my house is a 6 acre parcel of property that has been owned by the Roats family for many years.
2. Sometime during the last year a large portion of the trees and brush on the property were cleared to make room for new construction. During this process and during the subsequent construction I have come to know Casey Roats ("Mr. Roats").
3. Over the course of the last year I have had numerous conversations with Mr. Roats concerning his plans for developing the property. Mr. Roats stated a variety of intentions on different occasions. At one time Mr. Roats said he was exploring a 50-unit subdivision. At other times he mentioned that he might develop a subdivision with fewer homes.
4. In June or July of 2013 Mr. Roats stated that he was in negotiations with different developers to sell them the entire 6-acre parcel, who would then develop the property. At one point he said that he had received 3 offers, and that if he was offered \$2.6 million he would sell the property. I asked Mr. Roats if he sold the property whether he would move into the house that was under construction. Mr. Roats said "I don't know." I understood this to mean "no." At one point Mr. Roats said "We're pretty much ready to

pull the trigger." I understood this to mean that he was close to completing the transaction.

5. During last spring and summer Mr. Roats' efforts have been focused on constructing just one home ("the Brookswood house") on the property. I asked Mr. Roats on several occasions if he intended to move into the home. On each occasion he said he did not know.

6. Several weeks ago I became aware of the controversy surrounding Mr. Roats' residence. It was clear to me that Mr. Roats was claiming that he lived in the house, when in fact he was not.

7. I am employed as a freight broker. This allows me to work out of my home, usually handling telephone calls. My work day starts at 5:00 a.m., as I must be available at the beginning of the work day for those on the east coast. This work schedules means that I get up very early and am home all day, during which it is easy for me to observe the activities at the Brookswood house.

8. From my house I have a clear view of the Brookswood house that Mr. Roats has claimed to occupy. As part of the development of his property a large, a solid wall has been constructed along almost the entire property boundary. However, directly behind my house there was a 4-foot gap in the wall, which allowed me to easily see from my house and back deck directly into the Roats property at the ground level. I could easily observe vehicles and people, such as construction workers, coming and going from the property. This gap in the wall was finally filled on or about October 29, 2014.

9. From my house I also have had a clear view of the second story of the Brookswood house, since it rises well above the wall. I know that all of the bedrooms of the Brookswood house are on the second floor.

10. Based on my observations I am confident that no one lived in the Brookswood house until on or about October 29. Even now it appears that the house is not occupied full-time.

11. In the several days prior to October 29, I noticed that in the evening Mr. Roats' vehicle would be parked at the house. The lights would come on all over the house, including the second floor bedrooms. This was odd because the blinds were not put down for privacy. I could see a television that was on for hours, but it was on an inactive mode, indicating that no one was watching. Despite all of these lights, it still appeared that no one was living there overnight.

12. During these days prior to October 29 I would get up at 4:30 a.m. for work. The Brookswood house would be dark, and during the next few hours I would not see lights come on or other signs of life at the house, and no one would leave the house in the morning. This is another reason why it was clear to me that no one was living at the Brookswood house.

13. I believe that the activity at the house during the days prior to October 29 was meant to make it appear that people were living at the Brookswood house, when they were not.

14. In the evening of October 29 I noticed that there was activity at the Brookswood consistent with people actually living there. People have been living at the Brookswood regularly since October 29, but not before that date.

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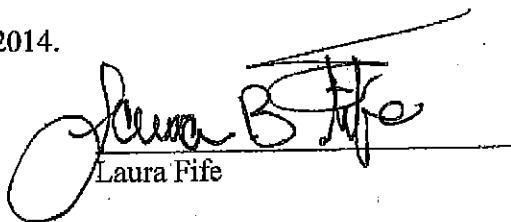
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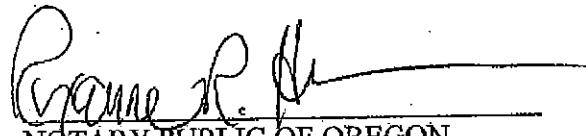
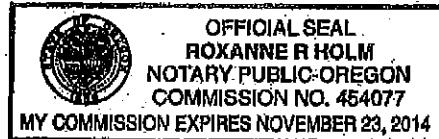
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15. The house currently does not have any paved driveway or parking area. Also, it does not have any landscaping. From the outside, the house still appears to be a construction site.

DATED this 13th day of November, 2014.


Laura Fife

SUBSCRIBED AND SWORN to before me this 13 day of November, 2014.


Roxanne R. Holm

NOTARY PUBLIC OF OREGON
My Commission Expires: 11/23/14

B R Y A N T
L O V L I E N
& J A R V I S

— E S T . 1 9 1 5 —
A T T O R N E Y S A T L A W

November 26, 2014

ATTORNEYS

Neil R. Bryant

John A. Berge

Sharon R. Smith

John D. Sorlie

Mark G. Reinecke

Melissa P. Lande

Paul J. Taylor

Jeremy M. Green

Melinda Thomas

Heather J. (Hepburn) Hansen

Garrett Chrostek

Danielle Lordi

Via: e-mail and first class mail

Mayor Jim Clinton
Bend City Council
710 NW Wall St.
Bend, OR 97701

Re: *Casey Roats's Qualifications for Bend City Council*

Mayor and City Councilors,

To supplement my letter from yesterday, please accept the attached letters for inclusion in the "record." As you'll note, these letters support the conclusion that Casey had intended to return to the City of Bend, intended to live in the Brookswood house, and has been living at the Brookswood house since October 11, 2014.

Sincerely,


Neil Bryant
bryant@bljlawyers.com

Enclosures

cc: Mary Winters (via hand delivery)

A legacy of service to our community.

1719002-0050370;1
591 SW Mill View Way, Bend, OR 97702 | p 541.382.4331 | F 541.389.3386 | bljlawyers.com

Exhibit 8



Deborah Falconer
Graceful Paths Designs
20659 Songbird Ln.
Bend, OR 97702
(541) 848-7523

Date: November 25, 2014

To: The Bend City Council
710 NW Wall Street
Bend, OR 97701

Dear Council Members:

I understand that you will shortly be discussing the residency issue that has been raised in regard to Casey Roats' eligibility for council membership. As the architectural designer who worked on Stacie and Casey Roats' home at 61200 Brookwood, Bend, OR, I want to assure you that their intention from the time we first started working together was to build a home that their family could live in for many years to come.

We designed the home for their needs and desires including, during our first meeting, the use of a particular stone that has been on previous family homes and was brought from the family ranch. We located the home on the parcel of land with consideration of views and play areas for their children. Interior design considerations included an office downstairs and their preferences for the downstairs layout as well as the upstairs children's bedrooms and bath.

I began work on designing their home in September of 2013 and incorporated specific design elements into the plans. Plans were submitted in December and construction began in early 2014. As construction continued, it was discovered that we had not allowed enough room in the garage for Casey's oversize truck and needed to revise the drawings to make the garage deeper. The entire home incorporated ideas for their comfort and specific family desires. I have no doubt in my mind that Casey and Stacie intended to build and then live in this home once it was finished.

I hope that this will shed light on your discussion. Please feel free to contact me if you have further questions.

Sincerely,

A handwritten signature in cursive script that appears to read 'Deborah Falconer'.

Deby Falconer
Graceful Paths Designs

11-22-2014

I had never met Casey Roots until this last spring and summer. We talked approximately ten times during the period when he was building his new home. My wife and I live in the Pinebrook Subdivision and are located just southwest of Casey's new home.

Several times Casey mentioned to me how excited and anxious he was to live in his new place. He stated that he was a little disappointed that it was taking so long and had hoped that he could have moved in around June or July 1st.

At one point, when the home was almost completed, he gave me a tour and pointed out several things that his wife had asked for such as the type of kitchen cabinets.

Sometime in September my wife also had a tour from Mrs. Roots and her daughters. The kids were so excited about a special play room under the stairs that my wife came home and told me all about it. Mrs Roots had pointed out all the kitchen extras that she had installed.

Casey had mentioned to me that the Roots' family have had several offers this past year to sell the adjoining land and make it into a subdivision. He stated that it could happen next month, next year or ten years from now. He wasn't certain when that could happen, but he and his family were still

going to move into their new home as soon as possible. They did move in sometime in October, but I'm not sure of the date.

Based on these conversations, it is my belief that Casey and his family fully intended to move into their new home. He never stated anything to me that would make me think differently.

Sincerely
Chuck Brown
Marlene Brown

Titan Construction
Joseph Hanna
61262 Huckleberry Pl
Bend, Oregon 97702
(541) 948-4475 cell

October 22, 2014

To Whom it May Concern:

Titan Construction built the Roats's residence at 61200 Brookswood Blvd. As the owner of Titan Construction, I have firsthand knowledge of Casey and Stacie Roats's intentions to build a custom home for themselves. The process from the very beginning was a custom home specially designed for the Roats family. Some examples of how we designed and built the home specifically for the Roats are as follows:

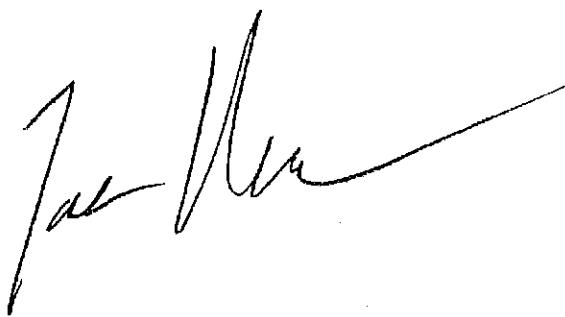
1. We designed the upstairs to have McKai and Ellie's bedrooms on the same level as mom and dad.
2. We designed a huge bonus room so the girls would have a place to play that would keep the downstairs living room cleaner and free of all the their toys.
3. Casey did the wiring on the surround sound himself with the help of a relative in the bonus room. They specifically did not want the TV in the downstairs living room. But Stacie did want one TV outlet in the kitchen to watch television in the morning.
4. We specially designed the vault in the master to accommodate what Casey and Stacie's wanted.
5. We lengthened the garage specifically to accommodate Casey's work truck, and the ability to be able to walk around the front of his truck to access the man door.
6. Casey picked some stone for his front porch columns that is from a ranch that his grandparent's owned. Even though the stone isn't in style, it was important to him to use it on his home because it was the way past generations of his family made a living.
7. Stacie wanted to save money on the doors for the home by using hollow core paint grade, but she wanted and got 1 stain grade door for the pantry.
8. They liked the concrete color and stamp pattern they had at their last home. Even though it was bit more money, they spent the extra money so they could still have what they so enjoyed at their last home.

9. Casey asked me to frame in a small door in the office that would access the back of the under stair closet, so McKai and Ellie could use the area behind the coats as a secret fort.
10. Stacie took McKai and Ellie to pick out their own wall colors for their bedrooms. Stacie painted the walls herself.

These are just a handful of examples that should prove without a doubt to anyone that Casey and Stacie built there home for themselves and nobody else. From the very beginning of this project there was never any question about who this house was for. I was building a custom home for the Roats to live in indefinitely. If you have any questions please feel free to contact me directly.

Kindest Regards,

Joe Hanna

A handwritten signature in black ink, appearing to read "Joe Hanna". The signature is fluid and cursive, with a distinct upward flourish at the end.

Date: November 25, 2014

To: Whom It May Concern

From: Cody W. Martin

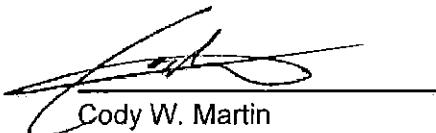
RE: Casey Roats – Residency

This memorandum is to summarize my involvement with assisting Casey Roats and his family in moving their household belongings into storage in 2013 and then into their recently constructed residence in 2014. I am a partner at the accounting firm, Patrick Casey and Company and live in southwest Bend.

In early October 2013, I assisted Casey Roats with moving his family's personal belongings into storage. The Roats' utilized multiple storage facilities to hold their belongings until they could complete construction on their new residence. I assisted the Roats family in moving their belongings from storage to their new residence on October 9, 2014.

At that time, the large majority of their personal belongings that I originally helped move to storage remained packed up and in storage. It was clear that Casey and Stacie Roats' intended to maintain temporary housing until the construction of their new residence was complete. Casey and his family began occupancy of their residence on October 11, 2014.

During the time that Casey and Stacie were building their home, I met with them frequently. During that year, I never visited them at their temporary housing location. I met with the Roats at their new home building site, at their business office off of Parrell Road, at my house or at local restaurants, but never outside Bend city limits. Casey did not purchase or rent a residence outside of the city; he temporarily lived with family members while his new residence was under construction. This illustrates not only significant fiscal responsibility but clear intent to remain a resident of Bend.



Cody W. Martin

NUMBERED KEY CANVASS

RUN DATE: 11/21/14 03:32 PM

Deschutes County, Oregon
General Election
November 4, 2014

Final Official Results

REPORT-EL52

PAGE 0014

WITH 20 OF 20 PRECINCTS REPORTING

VOTES PERCENT

VOTES PERCENT

City Council, Position 6 CITY OF BEND

Vote For 1

01 = Casey W Roats
 02 = Richard W Robertson
 03 = Ron (aka Rondo) Boozell
 04 = Lisa Seales

12,045 34.45
 1,409 4.03 05 = WRITE-IN
 2,206 6.31 06 = OVER VOTES
 11,362 32.49 07 = UNDER VOTES

106 .30
 17 .05
 7,822 22.37

	01	02	03	04	05	06	07
--	----	----	----	----	----	----	----

0001 01	464	60	128	861	10	1	427
0002 02	982	59	60	365	5	1	294
0003 03	581	73	115	976	4	3	477
0004 04	555	82	170	766	8	3	472
0005 05	1043	101	182	824	11	1	586
0006 06	461	76	143	553	5	1	388
0007 07	301	25	85	503	6	1	275
0009 09	353	53	89	328	3	0	227
0011 11	211	25	51	215	2	1	151
0020 20	840	143	140	727	2	0	606
0025 25	806	88	123	436	8	1	377
0026 26	468	66	72	391	5	0	304
0027 27	319	45	111	573	5	2	363
0032 32	489	102	157	604	3	1	419
0033 33	898	64	88	468	3	0	414
0034 34	632	93	110	522	4	0	458
0035 35	806	53	65	734	2	0	419
0044 44	710	78	120	508	11	0	393
0046 46	384	54	93	403	6	1	297
0047 47	742	69	104	605	3	0	475

CLEARED FOR RELEASE
 I, Nancy Blankenship, Deschutes County Clerk, do hereby
 certify that the votes recorded on this report correctly
 summarize the tally of votes cast at the November 4, 2014
 General Election.

Dated this 24th day of November, 2104.

Nancy Blankenship
 Nancy Blankenship
 Deschutes County Clerk

Exhibit 9

NUMBERED KEY CANVASS

RUN DATE: 11/21/14 03:32 PM

Deschutes County, Oregon
General Election
November 4, 2014

Final Official Results

REPORT-EL52 PAGE 0015

WITH 20 OF 20 PRECINCTS REPORTING

VOTES PERCENT

VOTES PERCENT

City Council, Position 7 CITY OF BEND

Vote For 1

01 = Barb Campbell
02 = Scott Ramsay
03 = WRITE-IN

13,488 38.57
12,563 35.93
103 .29

04 = OVER VOTES
05 = UNDER VOTES

7 .02
8,806 25.18

01 02 03 04 05

0001 01	892	586	8	0	465
0002 02	611	744	8	2	401
0003 03	936	749	2	0	542
0004 04	908	611	7	3	527
0005 05	948	1111	12	0	677
0006 06	664	531	8	0	424
0007 07	538	360	5	1	292
0009 09	404	394	1	0	254
0011 11	247	236	4	0	169
0020 20	929	860	6	0	663
0025 25	651	717	6	1	464
0026 26	471	500	6	0	329
0027 27	664	392	3	0	359
0032 32	768	518	1	0	488
0033 33	667	775	4	0	489
0034 34	666	630	3	0	520
0035 35	725	909	0	0	445
0044 44	646	714	10	0	450
0046 46	472	415	6	0	345
0047 47	681	811	3	0	503

Nancy Blankenship, Deschutes County Clerk, do hereby certify that the votes recorded on this report correctly summarize the tally of votes cast at the November 4, 2014 General Election.

Dated this 24th day of November, 2104.


Nancy Blankenship
Deschutes County Clerk

NUMBERED KEY CANVASS

RUN DATE: 11/21/14 03:32 PM

Deschutes County, Oregon
General Election
November 4, 2014

Final Official Results

REPORT-EL52 PAGE 0013

WITH 20 OF 20 PRECINCTS REPORTING

VOTES PERCENT

VOTES PERCENT

City Council, Position 5 CITY OF BEND

Vote For 1

01 = Mark S Capell
02 = Nathan K Boddie
03 = WRITE-IN

12,275 35.10
14,946 42.74
168 .48

04 = OVER VOTES
05 = UNDER VOTES

10 .03
7,568 21.64

01 02 03 04 05

0001 01	628	937	12	0	374
0002 02	730	668	8	1	359
0003 03	711	1086	7	1	424
0004 04	620	988	15	2	431
0005 05	1018	1087	20	1	622
0006 06	518	720	14	0	375
0007 07	417	548	8	0	223
0009 09	375	447	5	1	225
0011 11	229	277	6	1	143
0020 20	737	1122	6	0	593
0025 25	673	727	11	0	428
0026 26	457	558	11	0	280
0027 27	422	671	6	2	317
0032 32	545	794	7	0	429
0033 33	747	774	5	1	408
0034 34	641	726	4	0	448
0035 35	897	825	1	0	356
0044 44	674	712	15	0	419
0046 46	418	506	4	0	310
0047 47	818	773	3	0	404

I, Nancy Blankenship, Deschutes County Clerk, do hereby certify that the votes recorded on this report correctly summarize the tally of votes cast at the November 4, 2014 General Election.

Dated this 24th day of November, 2014.


Nancy Blankenship
Deschutes County Clerk

B R Y A N T
L O V L I E N
& J A R V I S

EST. 1916
ATTORNEYS AT LAW

November 25, 2014

ATTORNEYS

Neil R. Bryant

John A. Berge

Sharon R. Smith

John D. Sorlie

Mark G. Reinoche

Melissa P. Lande

Paul J. Taylor

Jeremy M. Green

Melinda Thomas

Heather J. (Hepburn) Hansen

Garrett Chrostek

Danielle Lordi

Via: e-mail and first class mail

Mayor Jim Clinton
Bend City Council
710 NW Wall St.
Bend, OR 97701

Re: *Casey Roats's Qualifications for Bend City Council*

Mayor and City Councilors,

I applaud the decision to resolve Casey's qualifications and not defer this internal self-governance matter to a court. This letter provides the legal, policy, and common sense rationale for determining that Casey is a resident, qualified to sit on City Council.

There are two substantive qualifications for a City Council set out in Article IV, Section 12(1) of the City Charter. First, the councilor must be a qualified elector under the state constitution. Second, the councilor must have resided in the City for the 12 months immediately preceding the election or appointment to office.

Article II, Section 2 of the Oregon Constitution establishes three requirements for qualified electors:

- (a) Is 18 years of age or older;
- (b) Has resided in this state during the six months immediately preceding the election, except that provision may be made by law to permit a person who has resided in this state less than 30 days immediately preceding the election, but who is otherwise qualified under this subsection, to vote in the election for candidates for nomination or election for President or Vice President of the United States or elector of President and Vice President of the United States; and
- (c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law.

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591 SW Mill View Way, Bend, OR 97702 | p 541.382.4331 | F 541.389.3386 | bjlawyers.com

(17119002-00502530;3)

Exhibit 10

Casey clearly meets the criteria in subsections (a) and (b). His opponents have argued that he does not meet subsection (c) because Casey has never validly registered to vote in the manner provided by law. Specifically, the opponents allege that it was inaccurate for Casey to register at the Brookswood address on June 30, 2014 while that house was under construction. The opponents have not cited any authority to support their theory and no local or state elections officials have disqualified Casey. Rather, the elections division of the Secretary of State's office has informally advised that registering at a future address is acceptable provided it is the person's *intent* to reside at that location at the time of the election. As is discussed in greater detail below, Casey clearly intended to reside at the Brookswood address. Furthermore, Casey has physically occupied the Brookswood house since October 11, 2014. Even under the heightened standard advocated by the opponents, Casey's voter registration was "accurate" as of October 11, 2014, which is more than 20 days before the election.

Without a definition of "residency" in the City Charter, the Council should look to state law in interpreting this term. State law makes clear that residency is determined by the intent of the individual and that physically re-locating for a temporary purpose, as in Casey's case, does not strip a person of their residency. This is consistent with how former City Attorney Ron Marceau has interpreted and applied the Charter when residency questions previously arose during his 38 years advising the City.

ORS 247.035(1) implicitly defines residency as "the place in which habitation is fixed and to which, when the person is absent, the person intends to return." Additionally, state law also recognizes that people are frequently in transition. Accordingly, the legislature adopted ORS 247.035(1)(c) and (1)(f), which provides that a voter does not gain or lose their residency as a result of re-locating for a temporary purpose. ORS 247.038(2)(a) goes even further and allows for persons without a home to register at "any place within the county describing the physical location of the person."

Casey "fixed his habitation" within the City of Bend when he lived at 61047 Borden Drive for several years prior to October 1, 2013. When he sold that house, he and his wife promptly began planning and constructing their new home at 61200 Brookswood Blvd., within the Bend city limits. Now, they physically live at that address. In the interim, Casey and his family stayed at his parents' primary residence outside of the City. While Casey's parents' house is outside the City of Bend, Casey did not "fix his habitation" at his parents' address. His intent was to return to the City of Bend. This intent is physically manifested in Casey expending considerable time and expense in the construction of a new home within the City. Moreover, his parents certainly did not intend to cohabit with Casey and his family on a permanent basis. The stay at his parents' house was only temporary and a hiatus that ORS 247.035 recognizes.

The fact that Casey permanently departed from the Borden Dr. address during the interim, and that he changed his voter registration to his business address, does not change his intent. Nor does it disrupt the chain of his Bend residency. These arguments are simply red herrings.

Whether or not registering at a business address is permitted under state law is unrelated to the question of residency. As is discussed above, Casey need only have been registered 20 days before the election to be a qualified elector under the state constitution. This certainly occurred. Even if his business address voter card were invalid, which it was not, the effect of such invalidity would not be to deprive Casey of his Bend residency. It would only require re-registration. In any event, Casey has since registered at the Brookswood address.

From a policy perspective, it would be imprudent for the Council to establish a more narrow definition of residency than that set by state law. A more restrictive residency requirement would inhibit the participation of many people that the City should want to include. For example, a COCC professor who spent a year on sabbatical, a person who spent several months taking care of a family member in Portland, a member of the armed services on active duty, or a business person assigned to complete a multi-month project in Boise. If these hiatuses occurred within the 12 months preceding election or appointment, all of these persons would be ineligible if the Council determines that temporary re-locations break the chain on Bend residency for purposes of the Charter.

Finally, the Charter is an instrument of the citizens of Bend, not the City Council. Casey's opponents made their case that Casey was not qualified well ahead of the election. The voters rejected their arguments at the polls in electing Casey. In doing so, the voters implicitly interpreted the Charter. To find that Casey is not a resident would frustrate the will of the people.

Casey is fully qualified under the City Charter and should be seated on the next Council. For convenience, I have attached Ron Marceau's analysis as well as an article quoting Norman Williams, director of the Center for Constitutional Government at Willamette University.

Sincerely,



Neil Bryant
bryant@bjlawyers.com

Enclosures

cc: Mary Winters (via email only)

Letters to the editor

Published Oct 30, 2014 at 12:02AM / Updated Oct 30, 2014 at 09:21AM

Roats' residency: Much ado about nothing

During the many years I was Bend City Attorney, from time to time a question about someone's "residency" came up along the same lines as the Casey Roats situation. These were easy questions to answer if you know what legal "residency" means. The test is whether a person who has moved from one jurisdiction to another intends to make the new jurisdiction his home for either a permanent or indefinite period of time. If that is the case then the new jurisdiction is the person's new "residency." If it is not the case then the jurisdiction from which the person moved continues to be that person's "residency." The short and simple answer here is that Casey Roats never did lose his legal Bend residency. Here is why.

Casey Roats had been a resident of Bend for many years before he moved to his parents' home in the county while he was building a new home in Bend, which he intended to occupy when built. He did not intend to permanently live in the county, nor did he intend to live there for an "indefinite" period (because "indefinite" here means a period where the person's intention on leaving may not have been to leave permanently, but rather to leave without any intention of returning). Casey Roats definitely intended to return as soon as his house was built.

A question has also been raised about the fact that the city charter does not have a definition of "residency." It is a standard clause used in city charters. The reason there is no definition is because none is needed. The legal definition of "residency" in this situation is well-established.

Ron Marceau

Bend

Support Measure 91

I am a 31-year-old, lifelong Oregon resident currently living in Tumalo.

Since my early days as a teenager I remember drug dealers illegally marketing their marijuana outside the doors of our schools.

I would rather put marijuana products behind the secure doors of state-licensed, audited and regulated stores. This is exactly how we regulate alcohol, and I can tell you from my personal experience that as a minor, it's much easier to get marijuana than it is to get booze.

I plan on raising my children in this wonderful state. I personally do not want them to grow up in a world where marijuana is readily available like it was for me. I would like to see this infrastructure in place in our state before my kids get curious about marijuana. No matter how much we educate our children, there will always be dangerous temptations and risks right outside our doors.



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November 05, 2014

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A Question of Semantics

City Council undecided on approach to residency questions

BY ERIN ROOK  @ERINROOK

re-side · (rezid) 

a: to be in residence as the incumbent of a benefice or office

b: to dwell permanently or continuously: occupy a place as one's legal domicile

Rules to consider in determining residence of person for voting purposes

(1) An election official, in determining the REGISTRAR and qualifications of a person offering TO REGISTER or vote, shall consider the following rules, so far as they may be applicable:

(a) The person's residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

What does it mean to be a resident, and why does it matter? These questions weighed heavily on the campaign for Bend City Council Position 6, with two of the four candidates facing accusations that they were not qualified to run due to inconsistencies in their residency information.

What started as a claim that candidate Casey Roats did not qualify on account of living outside the Bend city limits for most of the year prior to the election, quickly escalated into an interrogation of the residency of opponent Lisa Seales, who previously lived in Florida and co-owns property there.

Though the election has now been decided, it remains to be seen if City Council will be asked to weigh lingering concerns about the winner's qualifications before certifying the local election results at its Dec. 3 meeting. The two local attorneys volleying accusations—Charlie Ringo and Neil Bryant—both told *the Source* they would wait until after the election to decide what action they may or may not take.

In an effort to sort through fact, fiction and speculation, we spoke with an outside election law expert—Norman Williams, director of the Center for Constitutional Government at Willamette University. Prior to our conversation, Williams had no familiarity with either Roats or Seales.

After reading the Bend City Charter and the media coverage of race, Williams expressed a view that was rarely heard in the lead up to the election—after, of course, disclaiming that he would need more information to reach a truly definitive conclusion.

click to enlarge



"I think both of them qualify as residents of Bend," Williams said, adding that if he were advising City Council, he would tell them, "Whoever wins is qualified under that provision."

He explained that he interprets the City Charter as requiring a candidate's "domicile"—the place he or she intends to permanently reside—to be in Bend.

"With each of these candidates, a compelling case can be made that they are domiciled in Bend," Williams said. Still, he pointed out, it's not a clear-cut case.

While arguments have been made about the value of a candidate's intentions—and Oregon state law lays out a variety of means by which to measure something as subjective as intent—some say that it's the letter of the law that matters most. And even Williams noted that despite his broader interpretation of the City Charter, the City is not bound by the State's definitions in this case.

"Bend is entitled to define residency differently than the state or other municipalities may define it," Williams said. And while he feels that the recent debate over qualifications has a "whiff of hyper-technical legality" about it, he added, "There's no controlling case on that point here in Oregon or the U.S. Supreme Court."

But not everyone on City Council agrees about how Bend should define residency. Councilor Jodie Barram, for example, said she would need to do her homework before coming to a precise definition, but believes that state law is a good place to start.

Bend Mayor Jim Clinton, on the other hand, said the State's guidance is largely irrelevant and favors a more local approach.

"What one does in such cases is you look to see what the language is," Clinton explained. "Since the charter is passed by a vote of the people, you'd look to see what most people think those words mean."

To find that common understanding of what it means to "have resided," Clinton said he would turn to the dictionary. Merriam-Webster's dictionary defines "reside" as: "to dwell permanently or continuously: occupy a place as one's legal domicile," and offers as synonyms "abide," "dwell," and "live."

"In this case it's not so much a matter of what the State defines as resident or not resident," he said. "The charter could have said, 'needs to be resident as defined by the state of Oregon,' but that's not what it says."

Clinton added that he finds the common definition to be "quite straightforward" but favors amending the City Charter to make the qualifications unmistakably clear.

"I think the charter should be written clearly enough that you don't have the council deciding who's qualified and who isn't," Clinton said.

Councilor Sally Russell agrees that the charter could be clearer, but declined to make any definitive statements about how she would interpret it.

"It's probably something we should look at more closely," Russell said. "In a way, it's too bad because I think it's a distraction from our community being able to weigh the qualifications of the candidates."

Also in support of revising the charter is Councilor Victor Chudowsky, who said that the document could benefit from more specific language about the residency requirements and perhaps include examples of documents to verify residency, such as tax and voting records.

"I'm still not clear on the issue of residency versus where you live.... I think we could, to prevent this type of thing happening in the future, puts some agreed upon language on residency in the charter," Chudowsky said. "We're in the ridiculous position of having to determine a candidate's qualifications after the election."

But amending the City Charter is no simple task. Any changes to the document's language must be approved in a citywide vote. City Councilor Doug Knight doesn't think it's necessary.

"I think it's fairly clear right now," Knight explained. "'Reside' means unloading the groceries in the front driveway...a place where you can be found."

He added that he considers a residency to be where a person cooks, eats and sleeps—but not where he or she works, unless it is specifically permitted as a live/work unit.

Councilor Scott Ramsay agreed that the current charter language is specific enough, but added that if the council were to open it up for something more significant, he wouldn't be opposed to adding clarity.

"If we open the charter for more problematic issues we can fine tune the language in this issue to further clarify," Ramsay said. "Otherwise, the council has the authority to interpret in cases of question and this is sufficient to resolve any conflict raised."

The seventh councilor, Mark Capell, did not return a request for comment by press time.

If a formal challenge is raised, these are the factors City Council will be weighing.

When questioned, Casey Roats readily admitted that he lived outside the Bend city limits from October 2013 to October 2014, residing in his parents' house between selling his home in Bend and completing construction of a new home in the city limits. During that time, he registered to vote at two locations in the city—his office at Roats Water System and at the under-construction home. He also filed his candidacy paperwork at the latter address, where he now lives.

Council will have to decide if—by maintaining voter registration in Bend (an act that is currently under investigation by the Secretary of State as potentially fraudulent) and beginning construction of a new home in January—Roats fulfills the residency requirement through intent. If Council finds that he did not meet the obligation to reside in the city limits for the 12 months prior to the election, it would have 30 days to appoint someone to replace him.

At press time, Roats had earned 7,585 votes for the position, with Seales trailing closest of the four candidates at 6,926. While not declared yet, Roats held 45% of the vote and will most likely be chosen for Position 6 for City Council, raising the question whether City Council will weigh in on his eligibility.

Minutes

Charter Review Committee

Meeting of November 9, 1994

Present: **Glenn Reed, Perry Graves, Jim Kerfoot, Tina McGahey, Liz Fancher, Wayne Purcell, Tom DeWolf, Larry Patterson, Ron Marceau, and Patty Stell.**

Absent: Dennis Karnopp and Deb Jones

The meeting of the Charter Review Committee was called to order by Chairman Glenn Reed at 6:30 p.m., Wednesday, November 9, 1994 in the City Commission Board Room at City Hall.

Glenn Reed proposed the Committee complete the draft of the Charter update through this meeting and next. He recommended that no meetings be called for December giving the committee membership the month of December to review the document. The Committee would resume its meeting schedule in January, 1995. This proposal met with agreement by the Committee.

City Manager Larry Patterson advised that City permits for water wells issued by the Oregon Department of Water Resources specify compliance with rules related to water conservation, as discussed at the last meeting.

Chapter V; Section 22 - Municipal Court:

The Committee discussed the pros and cons of the judicial position for Municipal Court as elected or appointed.

The advantages of an elected position includes that the Judge is independent from the Council and is less likely to be perceived as a position that is created to generate revenue. Concern was expressed that by virtue of the position being elected, it gave the appearance of being too political. City Attorney Ron Marceau advised the Committee of the Missouri Plan in which a judge does not run against another judge, but rather on his merits for the position. He also pointed out that the Model Charter is oriented toward a Justice of the Peace model.

Advantages of the position being appointed by the Council included that the selection could be made based upon the most qualified candidate rather than who ran the best campaign and the fact that the majority of municipal judges in Oregon are appointed by the Council.

When asked why an individual would be interested in running for Municipal Judge, Ron Marceau responded that it is usually 1) from the desire to provide a public service; and 2) provides the individual with an opportunity to obtain experience in judicial work.

The consensus of the Committee was to make the position appointed and indicate that the Judge must be a member of the Oregon State Bar.

Chapter VI - Personnel

Section 23 - Qualifications:

Subsection (1): The Committee determined that a requirement of 12 months residency prior to election should be required. (Endnote 57).

Subsection (3): The Committee discussed the meaning of "volunteer" employment with the City. This section would prohibit City employees running for elective office for the City. The Committee determined that their recommendation would remain the same as provided in the Model Charter.

Section 24 - Compensation:

(Already determined during previous meeting)

Section 25 - Merit System:

Section 26 - Political Rights:

The Committee determined to remove Sections 25 & 26.

Section 27 - Oath:

City Attorney Ron Marceau responded to the question as to what is the definition of an "officer" by advising that an officer is "one who exercises sovereign responsibilities".

Chapter VII - Elections:

The consensus of the Committee was to recommend this chapter as written in the Model Charter.

Discussion of possible revisions to Draft Charter:

Liz Fancher suggested that under Section 18 (2)(e) indicate "conviction of a felony or a crime ...". Liz will return to the next meeting with further information.

The next meeting of the Charter Review Committee will be held Tuesday, November 29, 1994 at 6:30 p.m. The Committee will work on Chapter VIII - Ordinances; Chapter IX - Public Improvements; and Chapter X - Miscellaneous Provisions at the next meeting.

Mary Winters

From: Lorelei Williams
Sent: Thursday, October 30, 2014 8:40 AM
To: Anne Aurand; Betsy Tucker; Brian Beekman; Brian Rankin; Brooks Slyter; Carolyn Eagan; Colleen Miller; Dana Wilson; David Mays; Denise Wallace; Eric King; Gary Firestone; Gary Judd; Gillian Ockner; Gina Kadow; Grant Burke; Gwen Chapman; Heidi Lansdowne; Jim Long; John Powell; Justin Finestone; Karin Morris; Kevin Riper; Kim Kampmann; Laura Jacobs; Linda Nordin; Mary Winters; Michael Buettner; Nicholas Parker; Nick Arnis; Nita Williams; Patrick Griffiths; Paul Rheault; Rob DuValle; Robyn Christie; Rosemary Schaefer; Sandra Roberts; Shannon Ostendorff; Shannon Williams; Sharon Wojda; Tara Lewellen; Teresa Ristoff; Terri Shepherd
Subject: The Bulletin: Letters to the Editor

Roats' residency: Much ado about nothing

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Casey Roats had been a resident of Bend for many years before he moved to his parents' home in the county while he was building a new home in Bend, which he intended to occupy when built. He did not intend to permanently live in the county, nor did he intend to live there for an "indefinite" period (because "indefinite" here means a period where the person's intention on leaving may not have been to leave permanently, but rather to leave without any intention of returning). Casey Roats definitely intended to return as soon as his house was built.

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Ron Marceau

Bend



Lorelei Williams | Administrative Specialist
City of Bend
O: 541-388-5505
www.bendoregon.gov



Provisions of the Bend City Charter

Section 12. Qualifications.

(1) A councilor shall be a qualified elector under the state constitution and shall have resided in the city during the 12 months immediately before being elected or appointed to the office. In this subsection, "city" means area inside the city limits at the time of the election or appointment.

Section 21. Vacancies. The office of a councilor becomes vacant:

- (2) Upon declaration by the council of the vacancy in case of the incumbent's:
 - (a) Failure, following election or appointment to the office, to qualify for the office within ten days after the time his or her term of office is to begin,
 - (b) Absence from the city for 30 days without the council's consent or from all meetings of the council within a 60-day period,
 - (c) Ceasing to reside in the
 - (c) Ceasing to reside in the city,
 - (d) Ceasing to be a qualified elector under state law,

Provisions of the Bend Code

Bend Planning Commission

1. The Bend Planning Commission consists of seven members who are not officials or employees of the City. All voting members shall be residents of the City.

1.20.090 Landmarks Commission.

A. Membership.

2. Members shall reside within the Urban Growth Boundary.

1.20.025 Civil Service Commission – Civil Service System for Fire Personnel.

C. Membership.

1. The City of Bend Civil Service Commission consists of three members who are not officials or employees of the City.

2. All members shall be residents of the City and registered voters of Deschutes County.

CITY OF BEND ADVISORY COMMITTEE APPLICATION

4. Do you reside within the city limits of Bend? Yes No

ORS 247 Qualification and Registration of Electors

247.035 Rules to consider in determining residence of person for voting purposes. (1) An elections official, in determining the residence and qualifications of a person offering to register or vote, shall consider the following rules, so far as they may be applicable:

(a) The person's residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

(b) If a person's property is split by a jurisdictional line, the person shall be registered where the residence is located. If the residence is split by a jurisdictional line, the person shall register where the greatest value of the residence is located according to county assessment and taxation records.

(c) A person shall not be considered to have gained a residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the person's home.

(d) If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

(e) If a person goes from this state into any other state or territory and votes there, the person shall be considered to have lost residence in this state.

(f) A person who has left the place of the person's residence for a temporary purpose only shall not be considered to have lost residence.

(2) Notwithstanding subsection (1) of this section, a person who has left the place of the person's residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the person's residence was located before the person left.

(3) An elections official may consider, but is not limited to considering, the following factors in determining residency of a person for voter registration purposes:

(a) Where the person receives personal mail;

(b) Where the person is licensed to drive;

(c) Where the person registers motor vehicles for personal use;

(d) Where any immediate family members of the person reside;

(e) The address from which the person pays for utility services; and

(f) The address from which the person files any federal or state income tax returns. [Formerly 250.410; 1995 c.214 §1]

247.038 Registration of person who is homeless or resides in identifiable location. (1) A qualified person who is homeless or resides in a shelter, park, motor home, marina or other identifiable location may not be denied the opportunity to register to vote.

(2) For purposes of this chapter:

(a) The residence address of a person who is homeless or resides in a shelter, park, motor home, marina or other identifiable location may be any place within the county describing the physical location of the person; and

(b) The mailing address of a person who is homeless or resides in a shelter, park, motor home, marina or other identifiable location may be the office of the county clerk. [1993 c.493 §104; 2007 c.553 §1]

**qualifications**Are you a citizen of the United States of America? yes noAre you at least 17 years of age? yes no*If you mark no in response to either of these questions, do not complete this form.***personal information *required information**

last name* first* middle

Oregon residence address (include apt. or space number)* city* zip code*

date of birth (month/day/year)* county of residence

phone email

mailing address (required if different than residence)

Oregon Driver's License/ID numberProvide a valid **Oregon Driver's License, Permit or ID**: I do not have a valid **Oregon Driver's License/Permit/ID**.
The last 4 digits of my Social Security Number (SSN) are:X X X - X X - I do not have a valid Oregon Driver's License/Permit/ID or a SSN. I have attached a copy of **acceptable identification**.**political party**

- Not a member of a party
- Americans Elect
- Constitution
- Democratic
- Independent
- Libertarian
- Pacific Green
- Progressive
- Republican
- Working Families
- Other _____

signature I swear or affirm that I am qualified to be an elector and I have told the truth on this registration.

sign here _____ date today _____

! If you sign this card and know it to be false, you can be fined up to \$125,000 and/or jailed for up to 5 years.**registration updates** Complete this section if you are updating your information.

previous registration name previous county and state

home address on previous registration date of birth (month/day/year)

idate
ceived
ed

WARNING: Signing another person's name
to this envelope is a class C felony.

SIGN HERE

05
A

Voter's Statement

By signing I certify that:

- I am the person to whom this ballot was issued;
- I am legally qualified to vote in the county that issued this ballot;
- I voted my ballot and did not unnecessarily show it to anyone;
- This is the only ballot I have voted this election; and,
- I still live at the address printed below.

Signature of Voter

TO: Oregon Secretary of State, Elections Division
255 Capitol Street NE, suite 501
Salem, OR, 97310

August 13.2014

FROM: Scottie Ingeman

Attention: Alana J. Cox; Compliance Specialist

Dear Madam;

I recently purchased some grass sod from a company called "Emerald Lawns" in Lookingglass, OR. The company is owned by a Mr. Dallas Heard.

When the sod died within 30 days I called and ask what they would do about their defective product. They offered a bag of grass seed. If I wanted to seed my yard, I would have done that first.

I was upset with the company's response, so I began to investigate them in preparation to filing a claim in court.

Here's what I found:

- 1) Mr Dallas Heard is running for State Representative from House District #2, yet he lives with his wife and child at 2330 Dairy Loop Rd, well outside the district boundary. His other address is a rental in Myrtle Creek, owned by his Father, and currently rented to a third party occupant.
- 2) Mr Dallas Heard is operating without a landscaping or contractor's license; instead he is using the license number of a friend, Greg Leone, also in the landscaping industry. This is a clear violation of State law.

I will report the license violation to the proper State Division, but I thought you would like to know that he does not live in the District he wants to represent. I am hereby filing a formal complaint about this matter.

Thank You,
Scottie Ingeman

1548 SE Pine Street,
Roseburg, OR, 97470
541-761-2890

RECEIVED
2014 AUG 19 AM 9 24
KATE BROWN
SECRETARY OF THE STATE

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

August 21, 2014

Dallas Heard
578 Rogers
Roseburg, OR 97471

VIA Electronic Mail: emeraldlawns85@hotmail.com

Dear Mr. Heard:

On August 19, 2014, this office notified you of a written complaint alleging possible election law violations. The complaint alleges that the residence address provided on your voter registration and candidacy filing is not your true residence.

To make a determination regarding the allegations, you are requested to provide any information you consider relevant to this complaint and respond in writing to the following questions. You may also wish to forward a copy of this inquiry letter to any other appropriate person(s) for response.

1. ORS 247.035 provides that a residence address, for voting purposes, "shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return." It also provides that "a person shall not be considered to have gained residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the person's home." What is your residence address? When did you gain residence at that location (i.e. when did you move to that dwelling)? If you have any documentation of your move into that dwelling (movers bill, change of address with post office or other agencies, etc.), please provide a copy of that documentation.
2. ORS 247.035(3) provides a list of items an elections official may consider for determining a person's residence. For each of the subparts listed below, please indicate what address is associated with that item for you:
 - a. Where the person receives personal mail;
 - b. Where the person is licensed to drive;
 - c. Where the person registers motor vehicles for personal use;
 - d. Where any immediate family members of the person reside;
 - e. The address from which the person pays for utility services; and
 - f. The address from which the person files any federal or state income tax returns.
3. The complainant alleges that the address currently reflected on your voter registration and candidacy filing, 1127 Richardson Road, is occupied by rental tenants. Is this allegation true? Who owns the home at 1127 Richardson Road? If it is a rental, please provide a copy of the lease or rental agreement. If you own the home, please provide documentation showing you own the home.

4. You were previously registered at 2330 Dairy Loop Road in Roseburg, and assessment records indicate you still own that home. Is the home at that address occupied? If it is occupied by rental tenants, please provide a copy of the lease or rental agreement.
5. Voter registration records indicate that Christopher and Dolly Boice, the registered owners of the home at 1127 Richardson Road, are registered to vote there as well. They do not indicate a separate mailing address. Do you receive mail at 1127 Richardson Road? Why do you have your elections mail sent to 587 Rogers Rd? Please explain.

Please include any additional written comments you may have. Your response may be emailed (alana.j.cox@state.or.us) mailed or faxed to (503) 373-7414. **Please submit this information to us as soon as possible, and no later than August 28, 2014.**

Our inquiry into this matter does not mean we have determined any provisions of Oregon election law have been violated. We will inform you of the outcome of our review and any other actions on this matter.

Sincerely,



Alana Cox
Investigations and Legal Specialist

September 3, 2014

Alana Cox
Office of the Secretary of State, Elections Division
255 Capitol Street NE, Suite 501
Salem, Oregon 97310

Dear Ms. Cox,

Thank you for speaking with me earlier regarding this matter.

The address of 1127 Richardson Road has been my place of residence since the fall of 2013. October 1, 2013 was the date we signed our lease and our move-in date was October 15, 2013. We began moving into our newly constructed home at 2611 Brockway Road in Winston, Oregon on August 15, 2014, and are still in the process of changing all of the utilities from the general contractor's name to ours.

1127 Richardson Road is owned by Christopher Boice and the property is a large home with a daylight basement apartment downstairs, which is the location we lived in. The lease between Mr. Boice and I states that he included all utilities because his property is on a well, septic tank as well as a single meter for electricity so there is no way for his renters to pay those utilities.

In regards to 2330 Dairy Loop Road, I do not own that property and never have. My father, Richard Heard, owns it and we both have equipment and shops located there. My brother and sister in-law, Kalvin and Lindsey Heard, both live on the ranch, which might be contributing to the confusion.

The address of 578 Rogers Road is my main company office and primary place of business and my primary mailing address. If you need any further proof of residence please let me know. I have provided to your office via email copies of my Oregon issued driver's license, all rent checks, Statement of Economic Interest, and lease agreement. Please let me know if you need anything further.

Please feel free to contact me directly at 541-679-6900 if you have any additional questions.

Sincerely,

Dallas Heard

KATE BROWN
SECRETARY OF STATE



JIM WILLIAMS
DIRECTOR

255 CAPITOL STREET NE, SUITE 501
SALEM, OREGON 97310-0722
(503) 986-1518

September 16, 2014

Dallas Heard
2611 NW Brockway Rd.
Winston, OR 97496
Via Electronic Mail: emeraldlawns85@hotmail.com

Elections Division Case Number 14-059

Dear Mr. Heard:

The Elections Division received two complaints alleging you may have violated election law by providing a false address in order to qualify as a candidate for State Representative in District 2.

Statutory Background

ORS 260.715(1) provides: A person may not knowingly make a false statement, oath or affidavit when a statement, oath or affidavit is required under the election laws.

Discussion and Analysis

In response to our inquiry letter, you explained that you moved to the Richardson Road address in October, 2013 and rented an apartment in that home until you completed construction of your home at 2611 NW Brockway Rd in Winston. You moved to the Brockway Road address in August, 2014.

You provided a lease agreement for the Richardson Road address, rent checks, a copy of your drivers' license, the Statement of Economic Interest form you submitted to the Oregon Government Ethics Commission, closing documents for the Brockway home, and letters from both the landlord at the Richardson Road address and a neighbor for the Brockway Road address.

You also explained your business connections to the Dairy Loop address, and the fact that your brother lives there now, which may be a source of some of the confusion.

After a review of the information submitted the Elections Division has found insufficient evidence to indicate you violated election law in this instance.

Not finding a violation of election law, the Elections Division determines this investigation is closed and does not intend to pursue this matter further.

Finally, please note that should you be elected, Article IV, Section 11 of the Oregon Constitution makes the Oregon House of Representatives the judge of the qualifications of its members to hold office.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Cox".

Alana Cox

Investigations and Legal Specialist

Casey Roats Residence during the period Nov 5, 2013 to Nov 4 2014

Oct 2013 Sold his home on Borden Dr in Bend, permanently moved out, and began living at parent's home on Teal Rd, outside of Bend

Nov 19, 2013 Registered to vote with residence address of 61147 Hamilton Ln.
(this address is a business, not a residence)

Dec 4, 2013 Applied for building permit to build a house on Roats Family Trust property at 61200 Brookswood Blvd

May 20, 2014 Voted in Primary Election, signed ballot envelope certifying "I still live at the address printed below", 61147 Hamilton Ln.

Jun 19, 2014 Submits Candidate Filing for City Council, stating a residence address of 61200 Brookswood Blvd

Jun 30, 2014 Registered to vote with residence address of 61200 Brookswood Blvd

Oct 3, 2014 Obtained final inspection and occupancy permit for the house at 61200 Brookswood Blvd

Oct ?, 2014 Moved into Brookswood house and began living there

Madison Debates

August 8

[Madison Debates Contents](#)

Tuesday August 8, 1787 [FN1]

IN CONVENTION

Art: IV. Sect. I. [FN1], [FN2] -Mr. MERCER expressed his dislike of the whole plan, and his opinion that it never could succeed.

Mr. GHORUM. he had never seen any inconveniency [FN3] from allowing such as were not freeholders to vote, though it had long been tried. The elections in Phila. N. York & Boston where the Merchants, & Mechanics vote are at least as good as those made by freeholders only. The case in England was not accurately stated yesterday [by Mr. Madison] The Cities & large towns are not the seat of Crown influence & corruption. These prevail in the Boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote. The people have been long accustomed to this right in various parts of America, and will never allow it to be abridged. We must consult their rooted prejudices if we expect their concurrence in our propositions.

Mr. MERCER did not object so much to an election by the people at large including such as were not freeholders, as to their being left to make their choice without any guidance. He hinted that Candidates ought to be nominated by the State Legislatures.

On [FN4] question for agreeing to Art: IV- Sect. 1 it passd. nem. con.

Art IV. Sect. 2 [FN1], [FN5] taken up.

Col. MASON was for opening a wide door for emigrants; but did not chuse to let foreigners and adventurers make laws for us & govern us. Citizenship for three years was not enough for ensuring that local knowledge which ought to be possessed by the Representative. This was the principal ground of his objection to so short a term. It might also happen that a rich foreign Nation, for example Great Britain, might send over her tools who might bribe their way into the Legislature for insidious purposes. He moved that "seven" years instead of "three," be inserted.

Mr. Govr. MORRIS 2ded. the Motion, & on the question, all the States agreed to it except Connecticut.

Mr. SHERMAN moved to strike out the word "resident" and insert "inhabitant," as less liable to misconstruction.

Mr. MADISON 2ded. the motion, both were vague, but the latter least so in common acceptation, and would not exclude persons absent occasionally for a considerable time on public or private business. Great disputes had been raised in Virga. concerning the meaning of residence as a qualification of Representatives which were determined more according to the affection or dislike to the man in question, than to any fixt interpretation of the word.

Mr. WILSON preferred "inhabitant."

Mr. Govr. MORRIS, was opposed to both and for requiring nothing more than a freehold. He quoted great disputes in N. York occasioned by these terms, which were decided by the arbitrary will of the majority. Such a regulation is not necessary. People rarely chuse a nonresident-It is improper as in the 1st. branch, the people at large, not the States, are represented.

Mr. RUTLIDGE urged & moved that a residence of 7 years shd. be required in the State Wherein the Member shd. be elected. An emigrant from N. England to S. C. or Georgia would know little of its affairs and could not be supposed to acquire a thorough knowledge in less time.

Mr. READ reminded him that we were now forming a Natil. Govt. and such a regulation would correspond little with the idea that we were one people.

Mr. WILSON. enforced the same consideration.

Mr. MADISON suggested the case of new States in the West, which could have perhaps no representation on that plan.

Mr. MERCER. Such a regulation would present a greater alienship among the States [FN6] than existed under the old federal system. It would interweave local prejudices & State distinctions in the very Constitution which is meant to cure them. He mentioned instances of violent disputes raised in Maryland concerning the term "residence"

Mr. ELSEWORTH thought seven years of residence was by far too long a term: but that some fixt term of previous residence would be proper. He thought one year would be sufficient, but seemed to have no objection to three years.

Mr. DICKENSON proposed that it should read "inhabitant actually resident for ---- year. [FN7] This would render the meaning less indeterminate.

Mr. WILSON. If a short term should be inserted in the blank, so strict an expression might be construed to exclude the members of the Legislature, who could not be said to be actual residents in their States whilst at the Seat of the Genl. Government.

Mr. MERCER. It would certainly exclude men, who had once been inhabitants, and returning from residence elsewhere to resettle in their original State; although a want of the necessary knowledge could not in such case [FN8] be presumed.

Mr. MASON thought 7 years too long, but would never agree to part with the principle. It is a valuable principle. He thought it a defect in the plan that the Representatives would be too few to bring with them all the local knowledge necessary. If residence be not required, Rich men of neighbouring States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State. [\[FN9\]](#) This is the practice in the boroughs of England.

On the question for postponing in order to consider Mr. Dickenson's motion.

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. ay. Va. no. N. C. no. S. C. ay. Geo. ay. [\[FN10\]](#)

On the question for inserting "inhabitant" in place of "resident" -agd. to nem. con.

Mr. ELSEWORTH & Col. MASON move to insert "one year" for previous inhabitancy

Mr. WILLIAMSON liked the Report as it stood. He thought "resident" a good eno' term. He was agst. requiring any period of previous residence. New residents if elected will be most zealous to Conform to the will of their constituents, as their conduct will be watched with a more jealous eye.

Mr. BUTLER & Mr. RUTLIDGE moved "three years" instead of "one year" for previous inhabitancy

On the question for 3 years-

N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. ay. Geo. ay. [\[FN11\]](#)

On the question for "1 year"

N. H. no -Mas. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. divd. Va. no. N. C. ay. S. C. ay. Geo. ay. [\[FN12\]](#)

Art. IV. Sect. 2. As amended in manner preceding, was agreed to nem. con.

Art: IV. Sect. 3." [\[FN13\]](#), [\[FN14\]](#) taken up.

Genl. PINKNEY & Mr. PINKNEY moved that the number of representatives allotted to S. Carola. be "six" on the question, N. H. no. Mas. no. Ct. no. N. J. no. Pa. no. Delaware ay Md. no. Va. no. N. C. ay. S. C. ay. Geo. ay. [\[FN15\]](#)

The 3. Sect. of Art: IV was then agreed to.

Art: IV. Sect. 4 [\[FN13\]](#), [\[FN14\]](#) taken up.

Mr. WILLIAMSON moved to strike out "according to the provisions hereinafter after made" and to insert the words "according "to the rule hereafter to be provided for direct taxation" -See Art. VII. sect. 3. [\[FN16\]](#)

On the question for agreeing to Mr. Williamson's amendment

N. H. ay. Mas. ay. Ct. ay. N. J. no. Pa. ay. Del. no. Md. ay. Va. ay. N. C. ay. S. C. ay. Geo. ay. [\[FN17\]](#)

Mr. KING wished to know what influence the vote just passed was meant [\[FN18\]](#) have on the succeeding part of the Report, concerning the admission of slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Genl. Govt. and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all those hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited-exports could not be taxed. Is this reasonable? What are the great objects of the Genl. System? 1. [\[FN19\]](#) defence agst. foreign invasion. 2. [\[FN19\]](#) agst. internal sedition. Shall all the States then be bound to defend each; & shall each be at liberty to introduce a weakness which will render defence more difficult? Shall one part of the U. S. be bound to defend another part, and that other part be at liberty not only to increase its own danger, but to withhold the compensation for the burden? If slaves are to be imported shall not the exports produced by their labor, supply a revenue the better to enable the Genl. Govt. to defend their masters? -There was so much inequality & unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them. He had hoped that some accomodation wd. have taken place on this subject; that at least a time wd. have been limited for the importation of slaves. He never could agree to let them be imported without limitation & then be represented in the Natl. Legislature. Indeed he could so little persuade himself of the rectitude of such a practice, that he was not sure he could assent to it under any circumstances. At all events, either slaves should not be represented, or exports should be taxable.

Mr. SHERMAN regarded the slave trade as iniquitous; but the point of representation having been settled after much difficulty & deliberation, he did not think himself bound to make opposition; especially as the present article as amended did not preclude any arrangement whatever on that point in another place of the Report.

Mr. MADISON objected to 1 for every 40,000, inhabitants as a perpetual rule. The future increase of population if the Union shd. be permanent, will render the number of Representatives excessive.

Mr. GHORUM. It is not to be supposed that the Govt. will last so long as to produce this effect. Can it be supposed that this vast Country including the Western territory will 150 years hence remain one nation?

Mr. ELSEWORTH. If the Govt. should continue so long, alterations may be made in the Constitution in the manner proposed in a subsequent article.

Mr. SHERMAN & Mr. MADISON moved to insert the words "not exceeding" before the words "1 for every 40,000, which was agreed to nem. con.

Mr. Govr. MORRIS moved to insert "free" before the word inhabitants. Much he said would depend on this point. He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the States where it prevailed. Compare the free regions of the Middle States, where a rich & noble cultivation marks the prosperity & happiness of the people, with the misery & poverty which overspread the barren wastes of Va. Maryd. & the other States having slaves. Travel thro' ye. whole Continent & you behold the prospect continually varying with the appearance & disappearance of slavery. The moment you leave ye. E. Sts. & enter N. York, the effects of the institution become visible, passing thro' the Jerseys & entering Pa. every criterion of superior improvement witnesses the change. Proceed south wdly & every step you take thro' ye. great region of slaves presents a desert increasing, with ye. increasing proportion of these wretched beings. Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens and let them vote. Are they property? Why then is no other property included? The Houses in this city [Philada.] are worth more than all the wretched slaves which cover the rice swamps of South Carolina. The admission of slaves into the Representation when fairly explained comes to this: that the inhabitant of Georgia and S. C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, [\[FN20\]](#) shall have more votes in a Govt. instituted for protection of the rights of mankind, than the Citizen of Pa. or N. Jersey who views with a laudable horror, so nefarious a practice. He would add that Domestic slavery is the most prominent feature in the aristocratical countenance of the proposed Constitution. The vassalage of the poor has ever been the favorite offspring of Aristocracy. And What is the proposed compensation to the Northern States for a sacrifice of every principle of right, of every impulse of humanity. They are to bind themselves to march their militia for the defence of the S. States; for their defence agst. those very slaves of whom they complain. They must supply vessels & seamen in case of foreign Attack. The Legislature will have indefinite power to tax them by excises, and duties on imports: both of which will fall heavier on them than on the Southern inhabitants; for the bohea tea used by a Northern freeman, will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness. On the other side the Southern States are not to be restrained from importing fresh supplies of wretched Africans, at once to increase the danger of attack, and the difficulty of defence; nay they are to be encouraged to it by an assurance of having their votes in the Natl. Govt. increased in proportion, and are at the same time to have their exports & their slaves exempt from all contributions for the public service. Let it not be said that direct taxation is to be proportioned to representation. It is idle to suppose that the Genl. Govt. can stretch its hand directly into the pockets of the people scattered over so vast a Country. They can only do it through the medium of exports imports & excises. For what then are all these sacrifices to be made? He would sooner submit himself to a tax for paying for all the negroes in the U. States, than saddle posterity with such a Constitution.

Mr. DAYTON 2ded. the motion. He did it he said that his sentiments on the subject might appear whatever might be the fate of the amendment.

Mr. SHERMAN. did not regard the admission of the Negroes into the ratio of representation, as liable to such insuperable objections. It was the freemen of the Southn. States who were in fact to be represented according to the taxes paid by them, and the Negroes are only included in the Estimate of the taxes. This was his idea of the matter.

Mr. PINKNEY, considered the fisheries & the Western frontier as more burdensome to the U. S. than the slaves. He thought this could be demonstrated if the occasion were a proper one.

Mr. WILSON. thought the motion premature. An agreement to the clause would be no bar to the object of it.

[\[FN21\]](#) Question On [\[FN22\]](#) motion to insert "free" before "inhabitants."

N. H. no. Mas. no. Ct. no. N. J. ay. Pa. no. Del. no. Md. no. Va. no. N. C. no. S. C. no. Geo. no. [\[FN23\]](#)

On the suggestion of Mr. DICKENSON the words, "provided that each State shall have one representative at least." -were added nem. con.

Art. IV. Sect. 4. as amended was agreed to nem. con.

Art. IV. Sect. 5. [\[FN24\]](#), [\[FN25\]](#) taken up

Mr. PINKNEY moved to strike out Sect. 5. As giving no peculiar advantage to the House of Representatives, and as clogging the Govt. If the Senate can be trusted with the many great powers proposed, it surely may be trusted with that of originating money bills.

Mr. GHORUM. was agst. allowing the Senate to originate; but [\[FN26\]](#) only to amend.

Mr. Govr. MORRIS. It is particularly proper that the Senate shd. have the right of originating money bills. They will sit constantly, will consist of a smaller number, and will be able to prepare such bills with due correctness; and so as to prevent delay of business in the other House.

Col. MASON was unwilling to travel over this ground again. To strike out the section, was

to unhinge the compromise of which it made a part. The duration of the Senate made it improper. He does not object to that duration. On the Contrary he approved of it. But joined with the smallness of the number, it was an argument against adding this to the other great powers vested in that body. His idea of an Aristocracy was that it was the governt. of the few over the many. An aristocratic body, like the screw in mechanics, workig. its way by slow degrees, and holding fast whatever it gains, should ever be suspected of an encroaching tendency. The purse strings should never be put into its hands.

Mr. MERCER. considered the exclusive power of originating Money bills as so great an advantage, that it rendered the equality of votes in the Senate ideal & of no consequence.

Mr. BUTLER was for adhering to the principle which had been settled.

Mr. WILSON was opposed to it on its merits without regard to the compromise

Mr. ELSEWORTH did not think the clause of any consequence, but as it was thought of consequence by some members from the larger States, he was willing it should stand.

Mr. MADISON was for striking it out: considering it as of no advantage to the large States as fettering the Govt. and as a source of injurious altercations between the two Houses.

On the question for striking out "Sect. 5. Art. IV" N. H. no. Mas. no. Ct. no. N. J. ay. Pa. ay. Del. ay. Md. ay. Va. ay. N. C. no. S. C. ay. Geo. ay. [\[FN27\]](#)

FN1 See ante.

FN2 The words "being under consideration" are here inserted in the transcript.

FN3 The word "inconveniency" is changed to "inconvenience" in the transcript.

FN4 The word "the" is here inserted in the transcript.

FN5 The words "was then" are here inserted in the transcript.

FN6 The phrase "among the States" is omitted in the transcript.

FN7 The transcript uses the word "year" in the plural.

FN8 The transcript uses the word "case" in the plural.

FN9 The transcript uses the word "State" in the plural.

FN10 In the transcript the vote reads: "Maryland, South Carolina, Georgia, aye-3; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, no-8."

FN11 In the transcript the vote reads: "South Carolina, Georgia, aye-2; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, no-9."

FN12 In the transcript the vote reads: New Jersey, North Carolina, South Carolina, Georgia, aye-4; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Virginia, no-6; Maryland, divided."

FN13 See ante.

FN14 The words "was then" are here inserted in the transcript.

FN15 In the transcript the vote reads: Delaware, North Carolina, South Carolina, Georgia, aye-4; New Hampshire, Massachusetts, Connecticut, New Jersey, Pennsylvania, Maryland, Virginia, no-7."

FN16 See ante.

FN17 In the transcript the vote reads: "New Hampshire, Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia, aye-9; New Jersey, Delaware, no-2."

FN18 The word "to" is here inserted in the transcript.

FN19 The figures "1" and "2" are changed to "First" and "Secondly" in the transcript.

FN20 The transcript uses the word "bondages" in the singular.

FN21 The words "On the" are here inserted in the transcript.

FN22 The word "the" is here inserted in the transcript.

FN23 In the transcript the vote reads: New Jersey, aye-1; New Hampshire, Massachusetts, Connecticut, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, no-10."

FN24 See ante.

FN25 The words "was then" are here inserted in the transcript.

FN26 The words "was for allowing it" are here inserted in the transcript.

FN27 In the transcript the vote reads: New Jersey, Pennsylvania, Delaware, Maryland, Virginia, South Carolina, Georgia, aye-7; New Hampshire, Massachusetts, Connecticut, North Carolina, no-4."

http://avalon.law.yale.edu/18th_century/debates_808.asp