

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

BEFORE THE JOHNSTON COUNTY
BOARD OF ELECTIONS

IN RE CANDIDATE CHALLENGE)
TO THE QUALIFICATIONS OF)
DAVID MARSHBURN, BOARD OF)
EDUCATION DISTRICT 7)
_____ /

DECISION



THIS MATTER came on for hearing before the Johnston County Board of Elections (“the Board”) at a special meeting held on January 3, 2024 and January 10, 2024, upon the candidate challenge to the qualifications of David Marshburn (“Candidate”) for the Johnston County Board of Education, District 7, filed by Ronald Johnson (“Challenger”). The Candidate was represented by John P. O’Hale and the Challenger was represented by Allen Tew. After receiving and considering the evidence, including the verified candidate challenge form, and all relevant documents and records, the Board hereby makes the following:

FINDINGS OF FACT

1. On December 19, 2023, Challenger filed a candidate challenge to the qualifications of Candidate for Johnston County Board of Education, District 7, with the Board.
2. On December 21, 2023, the Board properly noticed a special meeting to consider the candidate challenge, set the hearing for January 3, 2024, and gave notice in accordance with and pursuant to North Carolina General Statute § 163-127.4(b).

3. On December 22, 2023, Challenger filed an amended candidate challenge to correct a scrivener's error.
4. The Challenger alleged the Candidate does not meet the constitutional or statutory qualifications for the office based on the belief that Candidate does not meet the residency requirement to seek the position of Johnston County Board of Education, District 7 pursuant to North Carolina General Statute § 163-57, and North Carolina General Statute § 163-127.5
5. The Board met on January 3, 2024 and continued the challenge hearing for good cause shown upon oral motion by counsel for the Candidate.
6. The Board announced that it would reconvene the Challenge hearing on January 10, 2024 and recessed the meeting in accordance with and pursuant to North Carolina General Statute § 132-318.12(b)(1) and gave additional notice in accordance with and pursuant to North Carolina General Statute § 163-127.4(b).
7. At the hearing on January 10, 2024, the Board received testimony from Leigh Anne Price, Director of Johnston County Board of Elections, the Candidate, and the Challenger.
8. In October 2023, the North Carolina General Assembly passed a bill granting Johnston County citizens the opportunity to have its Board of Education composed of seven (7) members elected from seven single-member residency districts. On November 15, 2023, the Johnston County Board of Education approved the final residency map with the result that beginning with the

2024 elections, Board of Education members are elected from seven (7) residency districts. Residency districts require that each Board member reside in his or her district, but all voters in the county are able to vote for all seven (7) seats on the Board of Education. The former election process was a nonpartisan at-large process with all members at-large and was a method that did not consider geographical representation.

9. Challenger is a registered voter in Johnston County, North Carolina who is eligible to vote for the office for which the Candidate has filed or petitioned.
10. From 2018 until the beginning of December 2023, Candidate resided in an apartment attached to his office at 207 North Third Street, Smithfield, North Carolina ("Third Street"). His North Carolina driver's license listed his address as Third Street, he was registered to vote at this address, and he conducted business and personal affairs at this address.
11. Candidate was interested in running for Johnston County School Board and wanted to run in the newly created District 7 because he grew up in the Clayton area, attended Clayton schools, and wanted to serve the Clayton area.
12. On December 7, 2023, Candidate inquired about and decided to rent a home located at 708 S. Robertson Street, Clayton North Carolina ("Robertson Street"). Candidate entered into a written lease agreement dated December 13, 2023 to rent Robertson Street with a month-to-month term. Candidate received a below-market lease rate of \$800 per month because he is

responsible for repairs under the terms lease. A written lease was required in order to have the utilities turned on to the house. Robertson Street is located in Johnston County Board of Education District 7.

13. Candidate vacated the apartment at Third Street and leased his Third Street apartment to a third-party under a one-year lease, moved from Third Street, had no intention of returning to Third Street to live and abandoned Third Street as his domicile. Candidate acquired and moved to Robertson Street. On December 14, 2023, a pipe burst causing water damage to the Robertson Street home. Candidate hired two contractors to assist with repairs to the Robertson Street house, made many repairs to the house himself, and spent approximately \$4,100.00 out-of-pocket repairing damages to the house. The house is habitable and the Candidate lives there. Candidate paid in full the first month's rent. Candidate applied for a new driver's license and received a temporary driving certificate listing Robertson Street as his residence address. Candidate predominantly returns to Robertson Street at the end of his day's work, he sleeps at Robertson Street, is registered to vote at Robertson Street, and intends to make Robertson Street his permanent domicile.
14. Candidate's wife and son live at 2095 Twin Acres Road, Clayton, North Carolina ("Twin Acres") and Candidate receives his mail at Twin Acres. Candidate grew up in the Clayton area of Johnston County. Candidate's grandparents gave him the Twin Acres property in 2001 and Candidate built

a home on the property. Candidate was married in 2008 and never added his wife to the deed. Candidate owns the Twin Acres property and there is no deed of trust encumbering the Twin Acres property. Candidate and his wife are married, but do not and have not lived together for some time due to personal and medical reasons. Candidate maintains a shop and studio at Twin Acres.

15. Candidate filed a notice of candidacy for the Johnston County Board of Education, District 7 on December 13, 2023. At the time Candidate filed for the Johnston County Board of Education, District 7, he acquired and lived at Robertson Street.
16. While Challenger testified it was his “belief” that Candidate was not domiciled in District 7 and therefore unqualified as a candidate for the Johnston County Board of Education District 7 seat, he provided little in the way of competent, material, substantial evidence to support his belief other than that Candidate owned and visited property in other areas of Johnston County and various podcast clips from Candidate about Candidate’s intention to run and change in residency and domicile.

Based upon the foregoing findings of fact, the Board hereby makes the following:

CONCLUSIONS OF LAW

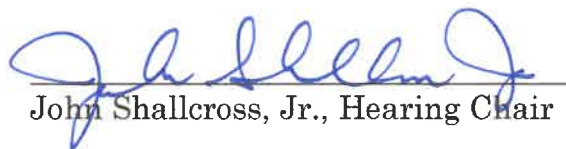
1. This matter is properly before the Johnston County Board of Elections pursuant to Article 11B of Chapter 163 of the North Carolina General Statutes.
2. The Challenge complies with North Carolina General Statute § 163-127.2.
3. The burden of proof is upon the Candidate, to show by a preponderance of the evidence of the record as a whole that he is qualified to be a candidate for the office of Johnston County School Board, District 7. N.C.G.S. § 163-127.5. “Substantial evidence” is defined as “relevant evidence a reasonable mind might accept as adequate to support a conclusion.” *Meza v. Division of Social Services*, 364 N.C. 61, 69-70 (2010).
4. A challenge based on residency requires a showing of three things: “(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile. (2) The acquisition of a new domicile by actual residence at another place. (3) The intent of making the newer domicile a permanent domicile”. N.C.G.S. § 163-127.5
5. Candidate effectively abandoned his first domicile at North Third Street and established his new domicile at 708 South Robertson Street, Clayton, North Carolina. Candidate’s intent to remain at Robertson Street, as evidenced through his statements and conduct, was sufficient to fulfill the statutory requirement that he intended to remain permanently.
6. Candidate established a new domicile located in District 7. Candidate abandoned his residence in Smithfield when he moved out and leased the

property to a third-party. He acquired a new domicile at Robertson Street when he rented the Robertson Street house, moved in, made improvements, paid his rent, changed his voter registration, changed his driver's license, predominantly returns to Robertson Street at the end of his day's work, and sleeps at Robertson Street. In light of these facts, and with little to no evidence to support a conclusion otherwise, the board finds by a preponderance of the evidence that Candidate met his burden of proof.

7. Candidate established his domicile in District 7 by the legal deadline and has maintained residency within the district since that time such that Candidate is qualified as a candidate for the Johnston County Board of Education, District 7.

NOW, THEREFORE, IT IS ORDERED that the candidate challenge to the qualifications of David Marshburn, Board of Education District 7 filed with the Johnston County Board of Elections by Challenger be and is hereby DENIED and that the Candidate is qualified as a candidate for Johnston County Board of Education, District 7.

This the 11TH day of January, 2024.


John Shallcross, Jr., Hearing Chair

Certificate of Service

I hereby certify that I have delivered on this date a copy of the foregoing document to the parties as follows:

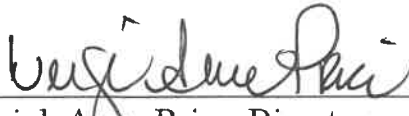
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P.O. Box 145
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This the 11th day of January, 2024.



Leigh Anne Price, Director
Johnston County Board of Elections