

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

TAMARA SHAMBURGER, an individual,

Plaintiff,

Case No. 20-CA-009190

vs.

HENRY WASHINGTON, an individual, and  
HILLSBOROUGH COUNTY  
CANVASSING BOARD

Defendants.

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**DEFENDANT'S MOTION TO DISMISS**

Defendant, HENRY WASHINGTON, by undersigned counsel and pursuant to Fla. R. Civ. P. 1.140(b), submits this Motion to Dismiss *Plaintiff's Complaint to Contest Election*, and, in support, states:

**INTRODUCTION**

In the election that is the subject of this litigation, Plaintiff Tamara Shamburger lost by more than ten thousand votes, a margin of more than ten percentage points. Perhaps inspired by events on the national stage, she now asks the Court to set aside this decisive election result and subvert the clear will of the voters.

Her basis for this extraordinary request is not voter fraud or any other allegation of irregularity. Rather she offers only her bare assertion that Defendant Henry Washington's "True Residence" – a term that lacks any legal meaning or relevance to the issues herein – was a house in Seffner, Florida, outside the boundaries of School Board District 5, and therefore, she alleges, he was not an eligible candidate. In fact, as Plaintiff knows, Mr. Washington's home on Willow Avenue in District 5 is his legal residence and inarguably meets the criteria to be deemed so. As

the Complaint lacks any facts to support a determination that Mr. Washington's legal residence was not in District 5, it must be dismissed for failure to state a claim.

### **FACTUAL BACKGROUND**

When Mr. Washington decided to run for Hillsborough County School Board, he wanted to represent District 5, located in East Tampa where he was born, raised, and worked as an educator for much of his career. *Defendant Henry Washington's Affidavit* ¶3. He knew that to run to represent District 5, he would have to move into the district prior to qualifying as a candidate. *Id.*

More than a year prior to the June 12, 2020 qualifying deadline for candidates for the 2020 election, Mr. Washington signed a two-year lease for a bedroom and the use of all common areas in the home of his mother-in-law, Hattie Byrd White, located at 1204 North Willow Avenue in Tampa, within the boundaries of School Board District 5. *Id.* at ¶4. His connection to this home goes back many decades, however. His high school principal, the man who inspired him to become an educator, lived in the same house while principal of Middleton High School. And when Middleton High School was reopened in 2002, Mr. Washington was chosen to be the principal who reopened the school. *Id.* at ¶14. Living in this home while running for and serving on the school board felt meaningful and symbolic to Mr. Washington. *Id.*

The same day he signed the lease on the Willow house, he submitted the requisite form to the Hillsborough County Property Appraiser to remove the homestead exemption from the house in Seffner, Florida he owns with his wife Cheryl Byrd Washington. *Id.* at ¶8. The form stated, "I, Henry C. Washington Sr. no longer qualify for the homestead or other tax exemption on the property located at 11931 Pruett Rd. Seffner, FL 33584," and he selected "property is no longer my primary residence as of June 13, 2019" as the "reason for removal." *Id.* The City of Tampa

utility bill for the Willow Avenue home is in his name. *Id.* at ¶5. His driver license and voter registration have the Willow Avenue address, as do his bank accounts and campaign filings. *Id.* at ¶¶9-11. The property tax bill for the Seffner house is mailed to him at his Willow Avenue residence. *Id.* at ¶8.

He purchased a new mattress for his bedroom, and over the course of the last year, he has arranged and paid for repairs and updates to the Willow Avenue home. *Id.* at ¶¶6-7. His campaign materials, including signs and flyers, were stored there. *Id.* at ¶6. His clothes are in the closet, and his prescription medication is kept there. *Id.*

Mr. Washington's wife and their adult daughter still reside in the Seffner house. *Id.* at ¶14. He regularly goes there to visit his family or to assist in taking care of the property, and he sometimes stays overnight with his wife. *Id.* Likewise, Mrs. Washington sometimes stays overnight at the Willow Avenue home with Mr. Washington. *Id.*

Mr. Washington has stated unequivocally that he intends the Willow Avenue home to be his permanent legal residence. *Id.* at ¶13. He has declared and legally documented this intent on his driver license, voter registration, and campaign filings. He even made the financial sacrifice of removing the homestead exemption on his previous residence to ensure his intent was clear, even though he would have been legally permitted to keep the exemption because his dependents still reside in the house.

### **LEGAL ARGUMENT**

#### **1. Plaintiff failed to meet the high burden imposed in a post-election challenge.**

Despite her allegation that Mr. Washington's "'True Residence' is not a secret," Plaintiff waited to raise the issue until after the voters had resoundingly rejected her candidacy.

*Complaint* at ¶25. Overturning the results of an election is an extraordinary remedy, and it is well

settled in Florida law, as stated by the Supreme Court and cited by numerous appellate courts in analogous cases, that “the primary consideration in an election contest is whether the will of the people has been effected.” *Boardman v. Esteve*, 323 So.2d 259, 269 (Fla. 1975). See e.g. *Perez v. Marti*, 770 So. 2d 176, 178 (Fla. 3d DCA 2000) (challenge to residency of school board candidate); *Walker v. Harris*, 398 So. 2d 955, 959 (Fla. 4th DCA 1981) (challenge to residency of city commission candidate).

Thus, “[e]xtreme care must be given to post-election challenges to avoid disenfranchising Florida’s voters.” *Fladell v. Palm Beach County Canvassing Bd.*, 772 So.2d 1240, 1242 (Fla. 2000). To that end, “the law requires judges to resolve doubts about qualification of a political candidate in favor of the candidate.” *Smith v. Crawford*, 645 So. 2d 513, 520 (Fla. 1st DCA 1994) (citing *Irvin v. Collins*, 85 So.2d 852 (Fla.1956)).

In support of her extreme and anti-democratic request, Plaintiff has pled no allegations that disprove Mr. Washington’s residency in District 5 beyond an assertion as to his “True Residence” with no factual support for that claim. In light of the caution imposed by the weight of precedent on a post-election challenge and the requirement to resolve doubts about a candidate’s qualifications in his favor, the allegations in the Complaint are far from sufficient to support a finding that Mr. Washington was ineligible to run, especially when such a finding would disenfranchise the voters of District 5.

**2. Plaintiff failed to sufficiently allege that Mr. Washington’s legal residence is not within School Board District 5.**

Unlike legislators and most other elected offices in Florida, school board candidates are required to, “at the time she or he qualifies, be a resident of the district school board member residence area from which the candidate seeks election.” §1001.36, Fla. Stat. While the statute does not provide a definition of “residence,” it is “well settled that the terms ‘residence,’

‘residing,’ or equivalent terms, when used in statutes or actions or suits relating to taxation, right of suffrage, divorce, limitations of actions and the like, are used in the sense of ‘legal residence.’” *Walker*, 398 So. 2d at 955 (addressing the residency requirement in a contested election). Likewise, the Florida Elections Commission, in its dismissal of a complaint filed against Mr. Washington on the same grounds as the instant suit, cited *Walker* in stating that the statute refers to “legal residence,” which is “the place where a person has a fixed abode with the present intention of making it their permanent home.” Florida Elections Commission, dismissal of Case No: FEC 20-127 against Respondent Henry C. Washington, Sr. (July 20, 2020), attached hereto as Exhibit A.

“Florida courts have consistently recognized that an individual's intent is a subjective factor and ‘the best proof of one's domicile is where [the person] says it is.’” *Perez*, 770 So. 2d at 178 (quoting *Ogden v. Ogden*, 33 So.2d 870, 873 (Fla. 1947)). In rejecting an election challenge based on a candidate’s residency, the Fourth District stated “[i]n analyzing proof of intent, a person's declaration is especially significant and entitled to great weight.” *Walker*, 398 So.2d at 958.

The Florida Supreme Court stated the requirements for establishing residency for purposes of candidacy for office in *Bloomfield v. City of St. Petersburg Beach*:

[W]e have consistently held that where a good faith intention is coupled with an actual removal evidenced by positive overt acts, then the change of residence is accomplished and becomes effective. This is so because legal residence consists of the concurrence of both fact and intention. The bona fides of the intention is a highly significant factor.

*Bloomfield*, 82 So. 2d 364, 368 (Fla. 1955); see also *Walker*, 398 So. 2d at 958 (citing *Bloomfield* in reversing trial court’s decision to overturn election and holding candidate’s intent and overt acts were sufficient to establish residency). In the extremely rare case an election challenge is

upheld on the grounds the candidate failed to establish legal residence in the district, it is because the candidate “did not one thing to show the public that this was his permanent home.” *Perez v. Marti II*, 770 So. 2d 284, 290 (Fla. 3d DCA 2000) (holding in a pre-election challenge that a school board candidate failed to establish the required legal residency because the alleged residence had no bathroom or kitchen facilities, the candidate had not signed a lease or paid rent, and he never disclosed the address on his campaign filings, voter registration, driver license or bank statements) (emphasis added).

In the Complaint, Plaintiff stated that Mr. Washington removed the homestead exemption from his Seffner residence (Complaint ¶21) and “is claiming to reside at 1204 N. Willow Avenue” (Complaint ¶22). Thus, the only actual facts offered in the Complaint demonstrate at least one overt act coupled with a publicly stated intention to establish a change of residence, both of which support the conclusion that Mr. Washington changed his legal residence to a home within District 5. Plaintiff offers no other facts, indeed nothing beyond innuendo and rumor, to establish otherwise.

When Mr. Washington decided to run for school board, he carefully considered the residency requirement, decided to move to the Willow Avenue home, and took numerous overt steps more than a year prior to qualifying to ensure he was a legal resident of District 5. He has repeatedly and unequivocally declared his intent to reside at the Willow Avenue home by changing numerous documents to reflect his residency there, by stating the Willow Avenue address in his campaign filing, in an affidavit responding to the complaint filed with and dismissed by the Florida Elections Commission on this same issue, and in his affidavit attached hereto.

Additionally, “[a] person may have several temporary local residences, but can have only one legal residence.” *Walker*, 398 So 2d at 958. Mr. Washington can spend time and even sleep regularly at his wife’s residence, which he co-owns, while still maintaining his permanent, legal residence at the Willow Avenue house. The Complaint’s vague reference to “evidence, including witness, videos, and photos” showing his “True Residence” fails to offer sufficient specificity to support Plaintiff’s claim, but even if we assume Plaintiff is referring to evidence that Mr. Washington is sometimes or even often at the Seffner house, it can be of little to no probative value as to the location of his *legal residence*, especially given the “great weight” that must be accorded to his own declaration that his legal residence is in fact the Willow Avenue house. *Walker*, 398 So.2d at 958.

Plaintiff has failed to sufficiently allege that Mr. Washington’s legal residence was not in District 5 at the time he qualified to run for school board, and her complaint therefore must be dismissed.

### **CONCLUSION**

Defendant Henry Washington respectfully requests that the Court grant this Motion to Dismiss, enter an order dismissing Plaintiff’s Complaint with prejudice, award a judgement of attorney fees and costs, and award any further relief that this court deems just and proper.

Dated: December 10, 2020

Respectfully submitted,

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Attorneys for Defendant  
HENRY WASHINGTON

**CERTIFICATE OF SERVICE**

I hereby certify that this motion was served via the Florida Court E-Filing Portal on December 10, 2020 upon: CHRISTIAN W. WAUGH and MORGAN FAYOCAVITZ, counsel for TAMARA SHAMBURGER, at WAUGH LAW, P.A., 321 N. Crystal Lake Dr., Ste. 207, Orlando, FL 32803, cwaugh@waughpa.com, mfayocavitz@waughpa.com and upon STEPHEN MARK TODD and MARY HELEN FARRIS, counsel for HILLSBOROUGH COUNTY CANVASSING BOARD, at HILLSBOROUGH COUNTY ATTORNEY'S OFFICE, 601 E Kennedy Blvd Fl 27, Tampa, Florida 33602-4932, todds@hillsboroughcounty.org, farrism@hillsboroughcounty.org.

/s/ Cheryl E. Forchilli  
CHERYL E. FORCHILLI

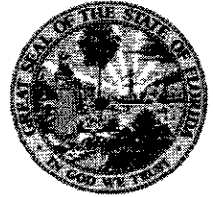


# **EXHIBIT A**



# Florida Elections Commission

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July 20, 2020

Ebony Wilson  
415 E. Floribraska Ave  
Tampa, FL 33603

**RE: Case No.: FEC 20-127; Respondent: Henry C. Washington, Sr.**

Dear Ms. Wilson:

The Florida Elections Commission has received your complaint alleging violation of Florida's election laws.

The complaint alleges that Respondent, a candidate for the Hillsborough County School Board, District 5, does not reside within District 5 (Tampa). More specifically, Complainant alleges that Respondent lives in Seffner, Florida, which is not within District 5; and therefore, Respondent is not eligible to run for the Hillsborough County School Board, District 5.

As evidence, Complainant attached a copy of printouts from the Hillsborough County Property Appraisers Office ("HCPAO") with information regarding two properties in Tampa and Seffner. Complainant concluded that Respondent's residence is in Seffner, because the Seffner property has a homestead exemption on it. Complainant also provided Respondent's Appointment of Campaign Treasurer and Designation of Campaign Depository for Candidates form which lists the Tampa property as Respondent's campaign address.

In response to the complaint, Respondent's counsel indicated Respondent met the qualifications for an elector and candidate for the Hillsborough County School Board on the date Respondent filed his candidate's application with the Hillsborough County Supervisor of Elections, which included presenting documentation substantiating Respondent's residence.

As evidence, Respondent's counsel attached an affidavit from Respondent that was notarized on June 30, 2020; Respondent's lease for the Tampa house, dated June 3, 2019; a document appearing to be a City of Tampa utility bill with the Tampa house's mailing address; and Respondent's voter registration card issued on November 6, 2019, listing the Tampa house as Respondent's address.

The Florida Election Code does not define "legal residence." However, the Division of Elections ("Division") has issued opinions providing guidance. The Division's opinions state, "[T]he determination of legal residence is fact-intensive and turns on the particular circumstances of each

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individual case.” *Op. Div. of Elections*, DE 16-01, at page 2 (January 4, 2016); *Op. Div. of Elections* DE 18-09, at page 2 (June 19, 2018). A declaration of a homestead alone is not dispositive to establish residency. *Op. Div. of Elections*, DE 16-01, at page 2 (January 4, 2016). Additionally, in *Perez v. Marti*, 770 So.2d 284, 289 (Fla. 3d DCA 2000) citing *Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981), the district court held, “A legal residence is the place where a person has a fixed abode with the present intention of making it their permanent home.”

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The Florida Elections Commission has jurisdiction over residency issues only to the extent they involve a false oath under Section 104.011, F.S. However, even if Complainant provided the Candidate Oath indicating Respondent swore or affirmed he resided in the Tampa house, Complainant fails to provide any evidence that Respondent does not, in fact, live there.

For these reasons, I find the complaint to be Legally Insufficient.

If you have additional information to correct the stated ground(s) of insufficiency, please submit it within 14 days of the date of this letter. If no additional information is received correcting the stated grounds of insufficiency, this case will be closed. Enclosed is the form for submitting additional information. Should you submit an additional statement containing facts, your statement must contain your notarized signature. Any additional facts submitted to the Commission must be based on either personal information or information other than hearsay.

If you have any questions concerning the complaint, please contact us at [fec@myfloridalegal.com](mailto:fec@myfloridalegal.com).

Sincerely,



Tim Vaccaro  
Executive Director

TV/med

Enclosure: Additional Complaint Information Form 2  
cc: Roderick O. Ford, Attorney for Respondent w/out Enclosure