

October 2, 2017

Statement of Gary Watts Concerning His Eligibility to Hold Elective Office in the City of Everett

TO INTERESTED MEMBERS OF THE MEDIA AND THE PUBLIC IN GENERAL:

Questions have been raised concerning whether I am eligible to hold elective office in the City of Everett. I was concerned enough about this to have some research done by my team on this question.

Section 2.2 of Everett's Charter states in relevant part: "No person shall be eligible to hold elective office unless he or she shall have been a registered voter and resident of the City for a period of at least one (1) year next preceding his or her election."

The Snohomish County Auditor's office tells me my residency was established at 3532 Smith Avenue, Everett, in 2011 when I updated my voter registration. So I've met the one-year residency requirement of Section 2.2.

Thus the issue seems to be the requirement of being a registered voter in Everett for at least one (1) year. In that regard, I wish to point out the following:

1. **My 2011 voter registration change was supposed to be for voting, not just an address change.** In 2011 when I changed my voter registration I thought I was changing my address for all purposes. It never occurred to me that all I was doing was changing the address for receiving my ballots. I intended to be an Everett voter. But apparently the mailing address was changed but the residence address was not. I honestly do not know if there was an error on my part or if there was a mix-up at the elections office. Further investigation may clear this up. I do not intend to blame anybody. What I do know is the County Auditor's online records show I've voted in every primary and general election since 2009.

2. **The Everett Charter Conflicts with the RCW.** Section 2.2 of the Everett Charter conflicts with the city charter provisions in Title 35A of the Revised Code of Washington, which used to be the same as Everett's. But in 1979 the state legislature amended them to eliminate the one-year voter registration: "No person shall be eligible to hold elective office under the mayor-council plan unless the person is a registered voter of the city at the time of filing his or her declaration of candidacy and has been a resident of the city for a period of at least one year next preceding his or her election." RCW § 35A.12.030 (emphasis supplied).

My team's preliminary research suggests the legislature made this change due to concerns about constitutionality under the equal protection clause of the Federal and state constitutions. (An interesting and detailed analysis of the issues and case law in Federal and State courts can be found in Schiavone v. DeStefano, 48 Conn. Supp. 521, 852 A.2d 862 (2001)).

3. **The Washington Supreme Court has not been heard on the voter registration requirement.** In Lawrence v. City of Issaquah, 84 Wn.2d 146, 524 P.2d 1347 (1974), the Washington Supreme Court upheld the constitutionality of a one-year residency requirement but expressly declined to rule on the constitutionality of a one-year voter registration requirement. "We need not consider the constitutionality of the 1-year voter registration requirement since the plaintiff is ineligible to hold the city council position in the City of Issaquah by reason of his failure to fulfill the durational residency requirement of RCW 35A.12.030."

Nevertheless, something motivated the state legislature to change RCW 35A.12.020 a few years later to eliminate the one-year voter registration requirement.

4. **The Supreme Court states that freedom to stand for office is a clear public policy.** In the years since the City of Issaquah decision, it appears no Washington Supreme Court decision addresses a requirement like Everett's voter registration requirement. However, in considering a contested election based on durational residency requirements, the Supreme Court has said:

"[S]tatutes establishing qualifications for office are to be construed to 'unfetter the process of election' rather than 'curtail the freedom to stand for office' ... [a] strong public policy exists in favor of eligibility for public office, and the constitution, where the language and context allows, should be construed so as to preserve this eligibility." Dumas v. Gagner, 137 Wn.2d 268, 284, 971 P.2d 17, 26(1999) (reversing court order annulling on residency grounds the election of successful candidate to Port of Kennewick Commission) (citations omitted).

To sum up, it may be that I've been a registered voter in Everett since 2011, as was my intention, or there may have been a mistake in the paperwork back then. However, should I win election and then be deemed to fail the voter registration requirement of Section 2.2 of Everett's Charter, there appear to be ample legal grounds for challenging that requirement.