

**BEFORE THE STATE ELECTION BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF THE CONTEST OF)	
THE CANDIDACY OF ROBERT D.)	
JOHNSON FOR THE OFFICE OF STATE)	CAUSE NO. 2020-15
SENATOR, DISTRICT 22)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

The above-styled cause was heard by the State Election Board for the State of Oklahoma on Wednesday, December 16, 2020, meeting pursuant to lawful notice and posting of an agenda consistent with the Open Meeting Act, 25 O.S. 2011, § 301 *et seq.* The following members of the State Election Board (“Board” or “SEB”) were present: Mr. Tom Montgomery, Chair, and Ms. Heather M. Cline, Member, which constitutes a quorum of the State Election Board. Also present were Assistant Secretary for the Oklahoma State Election Board, Pam Slater, and counsel for the State Election Board, Assistant Attorney General Thomas R. Schneider. Also present, but not participating was Jerry Buchanan, Alternate Member. Board Vice Chair Dr. Tim Mauldin was unable to attend the meeting, and Alternate Member Ms. Debi Thompson was unable to fill in for Dr. Mauldin. Petitioner, Darrick Matthews, appeared in person and with counsel, Anthony J. Ferate. Contestee Robert D. Johnson appeared in person and with counsel, Robert McCampbell.

Petitioner Darrick Matthews’ Petition for Contest of Candidacy was filed and Notice of Hearing was issued on Friday, December 11, 2020. The Board received constructive service on behalf of Contestee Johnson from the Petitioner at the time, date, and place of the hearing as permitted by 26 O.S. 2011, § 5-125. Contestee Johnson submitted a cashier's or certified check in the amount of \$250.00, as required by 26 O.S. 2011, § 5-129, as well as submitted an Answer¹.

During the hearing, the following exhibits were offered into the record and testimony was heard, after first being duly sworn, from the following persons:

Petitioner’s Exhibits	
Petitioner’s Exhibit A (Declaration of Candidacy of Robert D. Johnson)	ADMITTED
Petitioner’s Exhibit B (Google Maps Satellite Image of 21621 Villagio Dr., Edmond, OK)	ADMITTED
Petitioner’s Exhibit C (Oklahoma County Assessor Report for 401 NW 149th Ter., Edmond, OK 73012 accessed from online Public Access System on December 14, 2020)	ADMITTED
Petitioner’s Exhibit D (Application for Homestead Exemption for Tax Year 2020 filed by Robert D. & Colleen R. Johnson)	ADMITTED

¹ Contestee Johnson’s presence at the hearing and his submission of an Answer demonstrate that he had actual notice of the hearing. Notwithstanding, Contestee appeared and answered, demonstrating that he had actual notice of the proceeding. Further, under 26 O.S. 2011, § 5-125, candidates who are unable to be served are presumed to receive constructive service through service on the Secretary of the State Election Board. In this case, the return of service was delivered to the Secretary prior to or at the hearing.

Petitioner's Exhibits	
Petitioner's Exhibit E (Google Maps Image showing distance between 21621 Villagio Dr. and 401 NW 149th Ter accessed on December 14, 2020)	ADMITTED
Petitioner's Exhibit F (Oklahoma Ethics Commission Notice of Acceptance of Registration Letter to Robert D. Johnson dated February 4, 2020)	ADMITTED
Petitioner's Exhibit G (Lobbyist or Legislative Liaison Expenditure Report for Robert D. Johnson dated December 4, 2020 accessed on December 14, 2020)	ADMITTED
Petitioner's Exhibit H (Voter Credit and Registration History Report for Robert D. Johnson)	ADMITTED
Petitioner's Exhibit I (Oklahoma County Assessor Report for 16517 Fenwick Blvd., Edmond, OK 73012 accessed from online Public Access System on December 15, 2020)	ADMITTED
Petitioner's Exhibit J (Voter Credit and Registration History Report for Colleen R. Johnson)	ADMITTED
Petitioner's Exhibit K – (Excerpt from the 2020 Christ the King Catholic Church Guide Book & Directory)	ADMITTED
Petitioner's Exhibit L (Oklahoma Bar Association Membership Directory Search Result for Robert D. Johnson accessed on December 14, 2020)	ADMITTED
Petitioner's Exhibit M (Screenshot of LinkedIn Profile for Rob Johnson)	ADMITTED
Petitioner's Exhibit N (Oklahoma County Assessor Report for 21621 Villagio Dr., Edmond, OK 73012 accessed from online Public Access System on December 14, 2020)	ADMITTED

Witnesses for Petitioner
Mr. Kelly Barlean²

Contestee's Exhibits	
Contestee's Exhibit 6 (Notice of Hearing for Cause No. 2020-15)	ADMITTED

Witnesses for Contestee
Petitioner Darrick Matthews
Contestee Robert D. Johnson

The Board finds and concludes as follows:

1. Petitioner, Darrick Matthews, filed with the State Election Board a Declaration of Candidacy for the office of State Senator, District 22, during the Candidate Filing Period occurring on December 7 through December 9, 2020.
2. Contestee, Robert D. Johnson, filed with the State Election Board a Declaration of Candidacy for the office of State Senator, District 22, during the Candidate Filing Period occurring on

² Johnson's objection to Barlean was overruled insofar as the testimony was limited to detailing his findings. Johnson's objection to Barlean providing his legal conclusions drawn from his factual findings was sustained as Matthews failed to give notice to Johnson of his intent to call Barlean as a legal expert.

December 7 through December 9, 2020, claiming a residence of 21621 Villagio Dr., Ste. A, Edmond, OK 73012.

3. The SEB accepted constructive service as authorized under 26 O.S. 2011, § 5-125.³
4. Under 26 O.S. 2011, § 5-130, “[t]he burden of proof shall be upon the petitioner to sustain the allegations in his petition.” In order to sustain his or her burden of proof, the petitioner must prove the allegations set forth in the Petition by the greater weight of the evidence. Greater weight of the evidence is defined as:

[C]onsidering all of the evidence in the case, [the Board must be persuaded] that the proposition on which such a party has the burden of proof is more probably true than not true. This is does not mean the greater number of witnesses testifying to a fact, but means what seems to [be] more convincing and probably true. OUJI CIV. INSTR. NO. 3.1.

5. Matthews alleged in his Petition to Contest Candidacy that since Contestee Johnson has not continuously resided in Senate District 22 for the six (6) months immediately preceding the filing period, he does not qualify to be a candidate under 14 O.S. 2011, § 80.8. Instead, Petitioner argued that Contestee is more probably than not a resident of Senate District 47.
6. Pursuant to 14 O.S. 2011, § 80.8, a candidate for State Senator “must have been a registered voter in the district and a resident residing within such district for the six-month period immediately preceding the first day of the filing period.”
7. The filing period began on Wednesday, December 7, 2020. Consequently, Johnson was required to have been a continuous registered voter and resident of Senate District 22 on or before June 6, 2020.
8. Johnson shares a home with his wife, Colleen R. Johnson, located at 401 NW 149th Ter., Edmond, OK 73012 together with her three children and his two children. *See* **Matthews Exs. C, D, & K and Testimony of Robert D. Johnson.**
9. Johnson and his wife applied for a Homestead Exemption from the Oklahoma County Assessor’s Office in February 2020. On the application, both Johnson and his wife answered “Yes” to the following question, “Will you to the best of your knowledge, own and occupy this property as your place of residency January 1, 2021?” *See* **Matthews Ex. D.**
10. Johnson lists his address of record for the Oklahoma Bar Association (“OBA”) as 401 NW 149th Ter., Edmond, OK 73012. *See* **Matthews Ex. L.**
11. Johnson’s listed address in his church directory is 401 NW 149th Ter., Edmond, OK 73012. *See* **Matthews Ex. K.**
12. Johnson’s current voter registration address is 16517 Fenwick Blvd., Edmond, OK 73012, which is located within Senate District 22. *See* **Matthews Ex. H.**

³ Contestee also demonstrated actual notice by appearing and filing an answer.

13. On September 6, 2018, Johnson and his wife sold their residence at 16517 Fenwick Blvd., Edmond, OK 73102. *See* **Matthews Ex. I.**
14. On May 19, 2018, Johnson and his wife purchased a residence located at 401 NW 149th Ter., Edmond, OK 73013. *See* **Matthews Ex. C.**
15. Johnson's wife, Colleen, is currently registered to vote at the 149th Ter. address, which falls in Senate District 47, not District 22. *See* **Matthews Ex. J.**
16. Testimony from Johnson at the hearing indicated that Johnson started his lease at 21621 Villagio Dr., Ste. A, Edmond, OK on December 1, 2020. This is almost six (6) months to the date after June 6, 2020, which is last date he could have established residency. *See* **Testimony of Robert D. Johnson.**
17. Testimony from Johnson about the existence of a Suite A contradicts the Oklahoma County record for 21621 Villagio Dr., Edmond, OK 73012. Nothing in the report from the Oklahoma County Assessor's Office public access system shows that another unit or suite exists. In fact, Johnson testified that his landlord gave him the address, but he [Johnson] did not verify the owner's communication or independently confirm whether or not it was a valid address. *See* **Matthews Ex. N & Testimony of Robert D. Johnson.**
18. Johnson possesses significant ties to District 22. His father used to represent the District in the Oklahoma State Senate, and Johnson also represented District 22 from 2010 to 2014. Furthermore, he continues to patron a barber in the District as well as take his pet dog to a groomer located in the District. His children also see a pediatric dentist in District 22. Johnson also goes to grocery stores located in the District, and the dry cleaners he uses is inside District 22. He also banks inside the district. His children, who he has joint custody of, also reside at his former wife's house in the District. *See* **Testimony of Robert D. Johnson.**
19. Johnson's testimony also established that his children do not stay inside the District when they are in his custody. Furthermore, Johnson also testified that his children do not go to school in District 22.⁴ Additionally, neither Johnson nor his family attend mass in District 22. *See* **Testimony of Robert D. Johnson.**
20. The Board is unpersuaded by Johnson's argument that *Moore v. Hayes* should be applied in this case. 1987 OK 82, 744 P.2d 934. The Court's holding in *Moore* determined that the ballot of a voter should not have been excluded. Here, the Board evaluated the exclusion of a candidate based on his alleged failure to timely establish his or her residency within in District 22.
21. The Oklahoma Supreme Court ruled on the question of residency as it was set forth in 14 O.S. § 108, in *Box v. State Election Bd. of Okla.*, 1974 OK 104, 526 P.2d 936. In determining the question of residency, the Court noted that it was one of fact, not law. *Id.* at ¶ 21, 526 P.2d at 940. Moreover, the Court also stated, "[t]he controlling fact to be considered is *the fact of intent*

⁴ Johnson's children currently attend a Catholic school outside District 22. During his testimony, Johnson underscored that it is important to him and his former wife that their children receive a Catholic education.

and to determine this fact . . . may take into consideration all the movements, transactions, and attending circumstances of the party or parties involved in the question.’ *Id.* (emphasis added).

22. The *Box* Court also remarked, “this court has said the work [sic] ‘reside’ as used in specifying the qualifications of an elector in 26 O.S. [] § 61 meant ‘to be in residence, one’s place of abode, as distinguished from a place where one is employed or an office or place devoted strictly to commercial enterprise.’” (citing *Johnson v. State Election Board*, 1962 OK 92, ¶¶ 0 & 7, 370 P.2d 551).
23. Taking into consideration all the movements, transactions and attending circumstances presented, the Board concludes that the totality of the evidence indicates that Johnson’s intent is to reside at 401 NW 149th Ter., which is outside District 22. While this may differ from Johnson’s subjective intent as expressed in his testimony before the Board, Johnson’s application for a homestead exemption, purchase of home outside of District 22 in 2018, church directory listing, address for record for the OBA, address of record for the Oklahoma Ethics Commission (*See Matthews Exs. F & G*), and his wife’s voter registration information objectively demonstrate Johnson resides at 401 NW 149th Ter., Edmond, OK 73013.
24. Okla. Stat. tit. 14, § 80.8 (2011) imposes two (2) requirements, or qualifications, on candidates—(1) registration in the senate district, and (2) residency in the senate district—“for the six-month period immediately preceding the first day of the filing period.” Johnson’s registration for the statutorily prescribed six-month period is undisputed. However, the same cannot be said for his residency. Matthews’ evidence shows that Johnson sold his home that was within District 22 in 2018 and purchased one outside of the District in 2018. Because the totality of the evidences demonstrates that Johnson does not live in District 22, or has failed to re-establish residency, Johnson fails to meet the second requirement of § 80.8. This failure causes him to be ineligible as a matter of law.
25. Petitioner Matthews has met his burden of proof by the greater weight of the evidence in showing that it is more likely true than it is not that Contestee Johnson does not meet the six-month residency requirement set forth in 14 O.S. 2011, § 80.8.
26. Matthews’ Petition is therefore **SUSTAINED**, pursuant to 26 O.S. 2011, § 5-130, and Johnson’s name is **STRICKEN** and shall not appear on the ballot as a candidate for the office of State Senator, District 22.
27. The Board also denies Johnson’s Motions to Dismiss for lack of service and lack of standing. As to the lack of service, first, Contestee appeared in person and with counsel, demonstrating that he had actual notice of the proceeding against him. Secondly, as it relates to Johnson’s argument that Matthews lacked standing after his candidacy was stricken, the Board observes that Petitioner Matthews was a candidate and did possess standing when he filed his Petition. Also, 26 O.S. 2011, § 5-118 *et seq.* should not be construed so as to create a “race” to the secretary of the election board. Finally, the Board will not dismiss petitions based on the order in which they were heard. If the cases were heard in the reverse order and Johnson was stricken first, the Board would have still heard his petition against Matthews.
28. Costs are assessed against Contestee Robert D. Johnson pursuant to 26 O.S. 2011, § 5-131.

On the 16th day of December, 2020, a number of members of the State Election, constituting a quorum, voted to **SUSTAIN** Petitioner Darrick Matthews' Petition for Contest of Candidacy and **STRIKE** the candidacy of Contestee Robert D. Johnson on the ballot for the Office of State Senator, District 22.

OKLAHOMA STATE ELECTION BOARD



TOM MONTGOMERY, *Chairman*

12/23/2020

Date