

OFFICE OF THE SECRETARY OF STATE

STATE OF COLORADO

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IN THE MATTER OF BRIAN DAVID HOLT, KEVIN BROPHY, DOUGLAS BOWER, AND  
MARIE ROSSMILLER'S PETITION FOR DECLARATORY ORDER

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**FINAL AGENCY DECISION**

I, Suzanne Staiert, Deputy Secretary of State, reviewed the Petition for Declaratory Order filed by Brian David Holt, Kevin Brophy, Douglas Bower, and Marie Rossmiller regarding their Colorado voter registration records, and find that Petitioners are properly registered to vote in the town of Pitkin, Colorado, and may vote using their current address of record in the statewide voter registration database.

**Procedural Facts**

The town of Pitkin is a statutory town located in Gunnison County, Colorado. During municipal elections in 2016 and in municipal elections thereafter, several electors claiming residence for the purpose of voter registration in Pitkin have had their residency challenged, and some of those challenges were later referred to the Seventh Judicial District Attorney for prosecution.

The challengers claim that these certain electors are not residents of Pitkin as defined by section 1-2-102, C.R.S., and are therefore not properly registered or allowed to vote in Pitkin municipal elections. As a result, electors have avoided voting, fearing that their registrations may be challenged, and they may later be prosecuted.

Petitioners Brian David Holt, Kevin Brophy, Douglas Bower, and Marie Rossmiller petitioned the Secretary of State to clarify whether they are properly registered to vote at their residence addresses in Pitkin, Colorado.<sup>1</sup>

Petitioner Brian David Holt lives at 618 Main Street, Pitkin, Colorado, and has provided the following evidence in favor of his residence in Pitkin:

- (1) He considers his habitation fixed in Pitkin and, whenever absent, he has the present intention of returning.
- (2) His motor vehicles are all registered in Pitkin, Colorado.
- (3) His driver's license lists Pitkin, Colorado as his home address.
- (4) His 2017 federal and state tax returns were filed using his Pitkin, Colorado, address.

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<sup>1</sup> Petitioners only seek clarification regarding registration at their Pitkin, Colorado, residence addresses. All other eligibility criteria for voter registration have been met and are not in question here.

- (5) He owns other property just outside Pitkin, Colorado.
- (6) He spends over half of his days at his residence in Pitkin, Colorado, while much of his time outside of the residence is spent on the road for work.

Petitioner Kevin Brophy lives at 618 Main Street, Pitkin, Colorado, and has provided the following evidence in favor of his residence in Pitkin:

- (1) He considers his habitation fixed in Pitkin and, whenever absent, he has the present intention of returning.
- (2) His motor vehicles are all registered in Pitkin, Colorado.
- (3) His driver's license lists Pitkin, Colorado, as his home address.
- (4) In March of 2018 he submitted a change of address to Pitkin, Colorado, for future filings of his federal tax returns.
- (5) He works for, and is the registered agent of, Integra Enterprises LLC whose principal office address is located at 618 Main Street, Pitkin, Colorado.

Petitioner David Bower lives at 406 State Street, Pitkin, Colorado, and has provided the following evidence in favor of his residence in Pitkin:

- (1) He considers his habitation fixed in Pitkin and, whenever absent, he has the present intention of returning.
- (2) His motor vehicles are all registered in Pitkin, Colorado.
- (3) His driver's license lists Pitkin, Colorado, as his home address.
- (4) He owns a separate property at 402 State Street in Pitkin, Colorado.
- (5) He is semi-retired, but the few home inspections that he still conducts for supplemental income are all conducted in Pitkin, Colorado.

Petitioner Marie Rossmiller lives at 608 Main Street, Pitkin, Colorado, and has provided the following evidence in favor of her residence in Pitkin:

- (1) She considers her habitation fixed in Pitkin and, whenever absent, she has the present intention of returning.
- (2) Her motor vehicles are all registered in Pitkin, Colorado.
- (3) Her driver's license lists Pitkin, Colorado, as her home address.
- (4) She is 74 years old, was born in Pitkin, Colorado, went to school in Pitkin, Colorado, and has returned to live in the town that she considers her home.

### **Analysis**

#### **1. The Secretary of State will issue a declaratory order.**

The Colorado Administrative Procedure Act mandates that every agency "provide by rule for the entertaining, in its sound discretion, and prompt disposition of petitions for declaratory orders."<sup>2</sup>

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<sup>2</sup> Section 24-4-105(11), C.R.S.

Accordingly, Secretary of State Rule 1.1 states that “[a]ny person may petition the Secretary of State for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or any rule or order of the Secretary of State as required by CRS 24-4-105(11).”<sup>3</sup>

In determining whether to rule on a petition, the Secretary may consider a number of factors, including:

- (1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the petitioner of any statutory provision, rule or order of the Secretary.
- (2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Secretary or a court involving one or more of the petitioners.
- (3) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Secretary or a court but not involving any petitioner.
- (4) Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.<sup>4</sup>

The Petitioner has the burden of proving all facts stated in the Petition, all facts necessary to show the nature of the controversy or uncertainty, the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner, and any other facts the Petitioner desires the Secretary to consider.<sup>5</sup>

Here, Petitioners have provided evidence that they permanently reside at their address in Pitkin, Colorado, as outlined below. Further, Petitioners have stated facts to show the nature of the controversy or uncertainty facing them – that is, the fear of challenge and/or prosecution for registering to vote and voting using their Pitkin address.

And the Petitioners’ request is far from moot or hypothetical. Pitkin will conduct a municipal election on November 6, 2018, coordinated with the Gunnison County Clerk and Recorder.

In order to address Petitioners’ uncertainty as to their eligibility to vote, the Secretary of State will issue a declaratory order on the Petition.

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<sup>3</sup> 8 Colo. Code Regs. §1505-3, Rule 1.1.

<sup>4</sup> 8 Colo. Code Regs. §1505-3, Rule 1.2(B).

<sup>5</sup> 8 Colo. Code Regs. §1505-3, Rule 1.4(B).

## **2. The Petitioners are properly registered to vote in Pitkin, Colorado.**

The Secretary of State has the authority to determine whether Petitioners are properly registered to vote under Colorado law, and finds that Petitioners have provided sufficient evidence to show that they are properly registered to vote at their residence address in Pitkin, Colorado.

*a. Colorado law gives the Secretary the duty to enforce and make uniform interpretations regarding the provisions of the Colorado Election Code.*

The Secretary of State is authorized under Colorado law to enforce the provisions of the Uniform Election Code of 1992 (Code), and with the assistance and advice of the attorney general, to make uniform interpretations of the Code.<sup>6</sup> The Secretary of State may also promulgate such rules as he finds necessary for the proper administration and enforcement of the state's election laws,<sup>7</sup> and has the authority to promulgate, oversee, and implement changes to the statewide voter registration system.<sup>8</sup>

Section 1-1-103(1), C.R.S., states that the Code must be “liberally construed so that all eligible electors may be permitted to vote and those who are not eligible electors may be kept from voting in order to prevent fraud and corruption in elections.”

The Secretary of State has broad authority to interpret and enforce the Code, including whether an individual is properly registered to vote in Colorado.

*b. Article 2 of Title 1, C.R.S. governs the qualification and registration of electors in Colorado.*

Section 1-2-102(a)(I), C.R.S., defines the residence of a person, for voter registration, to be, “the principal or primary home or place of abode of a person. A principal or primary home or place of abode is that home or place in which a person’s habitation is fixed and to which that person, whenever absent, has the present intention of returning after a departure or absence, regardless of the duration of the absence.”

A variety of factors are used to determine the principal or primary place of abode for voters in question including:

- (a) Business pursuits;
- (b) Employment;
- (c) Income sources;
- (d) Residence for income or other tax purposes;

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<sup>6</sup> Section 1-1-107(1) (b) and (c), C.R.S.

<sup>7</sup> Id. at (2)(a).

<sup>8</sup> Section 1-1.5-104 (1) (b), C.R.S.


- (e) Age;
- (f) Marital status;
- (g) Residence of parents, spouse, or civil union partner, and children, if any;
- (h) Leaseholds;
- (i) Situs of personal and real property;
- (j) Existence of any other residences and the amount of time spent at each residence;  
and
- (k) Motor vehicle registration<sup>9</sup>

Here, a preponderance of the evidence presented shows that all of the Petitioners consider their residences in Pitkin to be their principal or primary home, and that they have proven through one or more of the factors listed above that they are residents of Pitkin and entitled to vote there. As a result, the Secretary's official interpretation of the Code is that Petitioners are currently properly registered and entitled to vote in Pitkin, Colorado.

### **Finding**

For the reasons set forth above, the Secretary of State grants Petitioners' request for a declaratory order in this matter and orders that, given the facts presented in the Petition, Petitioners are properly registered to vote at their residence addresses in Pitkin, Colorado, and may vote using those addresses in the November 6, 2018, general election. The Secretary of State also finds that this order applies to any similarly situated elector regarding his or her voter registration and entitlement to vote.

Dated September 26, 2018.

  
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Suzanne Staiert  
Deputy Secretary of State  
1700 Broadway, Suite 200  
Denver, CO 80290  
(303) 894-2200

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<sup>9</sup> Section 1-2-102 (b), C.R.S. *See also* Section 31-10-201 (3)(a), C.R.S.

## CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Declaratory Order was served by U.S. Mail to:

Marie Rossmiller  
608 Main Street  
Pitkin, CO 81241

Kevin Brophy  
618 Main Street  
Pitkin, CO 81241

David Bower  
406 State Street  
Pitkin, CO 81241

Brian David Holt  
618 Main Street  
Pitkin, CO 81241

cc:

Dan W. Hotsenpiller  
District Attorney, Seventh Judicial District  
1140 N. Grand Ave., Suite 200  
Montrose, CO 81401

Dated September 26, 2018



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Suzanne Staiert