

COUNTY/DISTRICT COURT  
County of Saguache, Colorado  
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Date: October 16, 2006



SAGUACHE COUNTY, STATE OF COLORADO  
DISTRICT COURT  
Court Address: P.O. Box 164, Saguache, Colorado  
81149

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Clerk of the County/District Court  
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CO Saguache County District Court  
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Clerk of District Court

**PLAINTIFFS:** GAIL HOLBROOK and EDGAR  
CARPENTER

v.

**DEFENDANTS:** JOAN L. SELVAGE, ROBERT L.  
SELVAGE, RICHARD T. WILLIAMS, BETH A. POOL, and  
the TOWN OF BONANZA, a Colorado municipality

**COURT USE ONLY**  
Case Number: 06CV27

**ORDER AND FINAL JUDGMENT**

Thirteen days following the April 4, 2006 municipal election in the town of Bonanza, Saguache County, Colorado, plaintiffs, as registered electors of Bonanza, filed this election challenge action *pro se* alleging that the defendants, who had been elected to municipal offices in the election, had not resided in Bonanza for the twelve months immediately preceding the election and were, therefore, ineligible to serve in the offices to which they were elected. Defendants answered. Plaintiffs, through counsel, amended their complaint on June 29, 2006, and defendants filed an answer to the amended complaint. A bench trial was held on December 8, 2006. The Court makes the following findings of fact and conclusions of law.

Bonanza is a small town situated in the San Juan Mountains. Having less than ten full-time residents, there are no business establishments, medical facilities, or schools in the town. It is classified as a statutory town and is governed by a board of trustees composed of a mayor and four trustees. Plaintiffs and Mary Osmond attended a town meeting on March 4, 2006 and nomination petitions supporting their candidacies for election as trustees. Defendants and two other people submitted affidavits to run as write-in candidates. Defendant Joan Selvage was the only candidate running for the office of mayor. The others sought seats as trustees.

After the meeting, the town clerk and recorder drew names to determine the placement of the candidates' names on the official ballot. Despite the fact that the defendants and two others were write-in candidates, the clerk and recorder decided to place all of the names of the candidates on the ballot.

The clerk and recorder posted the ballot on the town bulletin board on March 15, 2006, and mailed copies of the ballot to those people whose



names appeared on the town voter rolls. The election was held by mail on April 4, 2006. Mrs. Selvage was elected mayor, and the three other defendants were elected as trustees. Plaintiffs and Ms. Osmond received the next highest number of votes, but were not elected.

Plaintiffs failed to object to the write-in affidavits and the form of the final ballot before the election, but hand-delivered challenges to the candidacies of the defendants on election day. On April 10, 2006, plaintiffs asked the district attorney to intercede. He declined to bring an action, and this case followed a week later.

Plaintiffs contend in their first and fourth claims for relief that defendants, who have had homes and employment in the Pueblo area for years and who visit properties in Bonanza on an infrequent basis, did not reside in Bonanza for election purposes for the one year immediately preceding the April election and are, therefore, ineligible to serve in the positions to which they were elected. Plaintiffs request that the Court remove defendants from office and declare that plaintiffs and Ms. Osmond, the next highest vote-getters, replace them. At trial, plaintiffs withdrew their second claim for relief alleging due process violations. In their third claim for relief, plaintiffs maintain they were denied equal protection under the law by the conduct of the election and their claimed election irregularities.

Members of a municipal board of trustees must be registered electors who have resided within the limits of the municipality for a period of at least twelve consecutive months immediately preceding the election. C.R.S. 34-4-301(1) and C.R.S. 34-10-301. Residence is defined as a person's principal or primary home or place of abode. C.R.S. 31-10-201(3). A principal or primary home or place of abode "is that home or place in which his habitation is fixed and to which a person, whenever he is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of absence." C.R.S. 31-10-201(3)(a). A person cannot be considered to have gained residency in a municipality while retaining his home or domicile elsewhere. C.R.S. 31-10-201(3)(c). Legal residence is a question of fact to be determined objectively rather than subjectively. *Zivian v. Brooke-Hitching*, 28 P.3d 970 (Colo. App. 2001).

Each of the defendants has long-standing family and/or emotional ties to Bonanza. Mrs. Selvage's family has owned property in Bonanza for over one hundred years. She and Mr. Selvage purchased property in the town in 1967. Ms. Pool's family has owned property there since at least 1963. Mr. Williams purchased property in Bonanza in 1970. Prior to the election in 2006, each had held public office in Bonanza.

The defendants consider themselves to be residents of Bonanza and that circumstances such as employment, schooling, medical treatment and other services require that they be absent from the town they love and to which they intend to return. Mr. and Mrs. Selvage declared their residency in Bonanza by registering to vote there in 1999. Mr. Williams registered in 1997. Ms. Pool registered in 2004.

All the defendants have, however, continuously maintained homes in the Pueblo area both before and after registering to vote in Bonanza. They grew up and were educated in Pueblo. They raised their families in Pueblo and sent their children to Pueblo schools. They received and continue to receive all their mail there, pay property and income taxes there, and have been employed there. The majority of their personal property is located in Pueblo. Their cars are registered there. They bank there and subscribe to Pueblo newspapers. Prior to registering to vote in Bonanza, all of them voted in the Pueblo area.

Mr. Selvage has been a Pueblo fire fighter for forty-four years. Mrs. Selvage renewed her driver's license a month after the 2006 election, giving her home address as Pueblo West. Ms. Pool's husband is a physician whose medical practice is in Pueblo. He uses their marital address in Pueblo for voter registration purposes. Her father, who owns the property in Bonanza, lives in Pueblo. Mr. Williams worked for and retired from CF&I in Pueblo.

The defendants return to Bonanza only when their everyday lives in Pueblo allow. In the twelve months preceding the election in 2006, the Selvages spent approximately ninety days in Bonanza consisting of weekend visits and two or three one-to-two week stays in the summer. Mr. Williams spent two weeks in Bonanza during the summer and estimated he spent one weekend a month during the remainder of the year. For about a year while she was the town clerk, Ms. Pool spent about half of her time at her parents' place in Bonanza and half in Pueblo. When she became pregnant, she resigned her municipal position and returned to Pueblo. Mrs. Selvage referred to their property in Bonanza as "the cabin", while characterizing their property in Pueblo West as "the house".

The Court finds that defendants did not reside within the town limits of Bonanza for the twelve consecutive months immediately preceding the election. It further finds that they did not gain residency in the town when they registered to vote. A principal or primary home or place of abode is that home or place where habitation is fixed. While they had grown fond of, and held dearly, the beauty and tranquility of the small, mountain town life-style of Bonanza, their lives had been lived, their homes established, in Pueblo well before they determined to declare residency in Bonanza. Their lives fixed in Pueblo, they continued to go about their everyday lives in Pueblo even after they registered to vote in Bonanza, only seeking refuge in Bonanza from the drudgery of their day-to-day routines in Pueblo. One does not gain residence in one municipality while retaining his home elsewhere. C.R.S. 31-10-201.

Accordingly, the Court concludes that defendants are not eligible to serve in the capacities for which they were elected. The Court **ORDERS** that Mrs. Selvage, as mayor, and Mr. Selvage, Ms. Pool, and Mr. Williams, as trustees, be removed from their respective offices in the town of Bonanza and that they shall cease and desist acting in their elected capacities. It is **FURTHER ORDERED** that Ms. Holbrook, Mr. Carpenter and Ms. Osmond, as the individuals receiving the next highest number of votes in the election, shall be installed as trustees on the Bonanza board of trustees. **JUDGMENT**

**ENTERS FOR PLAINTIFFS AND AGAINST DEFENDANTS ON PLAINTIFFS' FIRST AND FOURTH CLAIMS FOR RELIEF.**

Plaintiffs maintain in their third claim for relief that plaintiffs and defendants were on equal footing as candidates, but that defendants, by virtue of being allowed to submit affidavits as write-in candidates instead of nomination petitions like plaintiffs and that defendants' names appeared on the ballot in a similar fashion as plaintiffs', were given preferential treatment by the town clerk and recorder. Both nomination petitions (C.R.S. 31-10-302) and write-in affidavits (C.R.S. 31-10-306) are statutorily sanctioned ways to declare one's candidacy. The clerk and recorder, acting in his municipal capacity, however, placed the names of the write-in candidates on the ballot in a similar manner as the petition candidates.

Plaintiffs became aware of the names of all of the candidates at the March 4, 2006 town meeting. They did not attend the drawing of names, but saw the official ballot when it was posted and mailed on March 15<sup>th</sup>. They failed to object to any of the write-in affidavits and the ballot until election day. C.R.S. 31-10-305 provides that objections to nomination petitions and write-in affidavits must be made within three days of their filing. Objections to perceived irregularities must be made in a timely manner in order for corrections, if any, to be made before an election. Plaintiff's objections were untimely. In addition, no evidence was presented supporting the argument that the clerk and recorder added the write-in names intending harm to plaintiffs. The Court finds that his conduct was inadvertent.

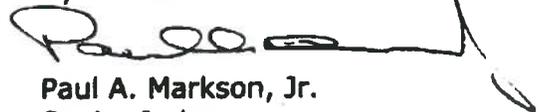
**JUDGMENT ENTERS FOR DEFENDANTS AND AGAINST PLAINTIFFS ON PLAINTIFFS' THIRD CLAIM FOR RELIEF. PLAINTIFFS' SECOND CLAIM FOR RELIEF HAS BEEN WITHDRAWN.**

Defendants argue that should the Court decide as it has that they were not residents of Bonanza for the year prior to the election they object to the installation of plaintiffs and Ms. Osmond as trustees because some of those who signed their nomination petitions may also have been non-residents. As the Court has pointed out, there is a statutory means by which people may object to the validity of nomination petitions. If defendants felt that any or all of the petitions were not valid, they had the opportunity to object and did not. An election challenge, however, is a different matter. It assails the authority of a sitting official to hold the office, not the status of one who signed a petition to get the official elected. The latter must be resolved before the election, and the former is resolved after the election.

The parties shall pay their own attorney fees and costs.

Done this 15<sup>th</sup> day of January, 2007.

By the Court

  
Paul A. Markson, Jr.  
Senior Judge