

ROUGH DRAFT-FOR DISCUSSION PURPOSES ONLY AT THE NOV 7 MEETING

NOTE: THIS DRAFT IS PROVIDED TO THE REGISTRARS TO FACILITATE DICUSSION OF THE COMPLAINT AT THE 5PM MEETING OF THE REGISTRARS ON NOVEMBER 7.

NOTE: INDIVIDUAL REGISTRARS SHOULD NOT DISCUSS AMONG THEMSELVES THIS PRIOR TO THE MEETING.

NOTE: A COPY OF M.G.L c. 51 § 48, IS ATTACHED AS ATTACHMENT B.

IT IS ANTICIPATED THAT THE FOLLOWING MOTION WILL BE MADE AND THEN THE REGISTRARS CAN DISCUSS IT.

THE COMPLAINT WILL BE CONSIDERED AND EVALUATED BASED ON THE INFORMATION CONTAINED IN THE COMPLAINT. NO ADDITIONAL INFORMATION WILL BE ACCEPTED FROM THE COMPAINANT OR WITNESSES.

Moved: That the Board of Registrars of Voters

- (a) hereby determines that the Board is not satisfied that there is sufficient ground for the Complaint under M.G.L c. 51 § 48, filed by Tommasina Olson (“Complainant”) dated November 1, 2022, and filed with the Board of Registrars of Voters on November 3, 2022;
- (b) hereby adopts the analysis of the insufficiency and deficiency of the Complaint set forth in Exhibit A hereto;
- (c) hereby dismisses and denies the Complaint for one or more of the reasons further described in Exhibit A hereto; and
- (d) hereby authorizes and directs the Chair of the Board of Registrars to notify the Complainant of such decision, using the format of the attached letter set forth in Attachment A hereto.

ATTACHMENT A

This Attachment A consists of a form of letter
which attaches “Exhibit A”

Town of Belmont
Board of Registrars of Voters

Belmont Town Hall
455 Concord Avenue
Belmont, Massachusetts 02478
November 7, 2022

Ms. Tommasina Olson
10 Bay State Road
Belmont, MA 02478

Re: Your Complaint under M.G.L c. 51 § 48, dated November 1, 2022

Dear Ms. Olson:

This letter is to officially notify you that the Belmont Board of Registrars of Voters at a duly called meeting on November 7, 2022, determined that there is not sufficient ground for your Complaint, that the Complaint is defective, and that the Board has denied and dismissed your Complaint.

You are referred to Exhibit A to this letter which details the reasoning and bases for the decision of the Board.

Sincerely,

Robert E. McGaw,
Chair of the Belmont Board of Registrars of Voters

Cc: Town Clerk

Sent by email, mail, and hand delivery

DRAFT – FOR DISCUSSION PURPOSES ONLY
November 7, 2022

EXHIBIT A

On November 3, 2022, Tommasina Olson (“Complainant”), of 10 Bay State Road,¹ Belmont, filed a complaint (the “Complaint”) with the Belmont Board of Registrars of Voters (“BoR”) asserting that she has reason to believe that a list of individuals who **are registered** to vote in Belmont are “**illegally or incorrectly registered to vote in Belmont.**” [Emphasis added.] Attached to the Complaint, purportedly as the basis for her suspicion, a document that is labelled “Declaration of Stephen J. Stuart,” which is purportedly signed by Stephen J. Stuart, in which he states that he is the President of Stuart Research, LLC, located in Deland, Florida.² The “Stuart Declaration” references a list of 1,109 individuals who he alleges are registered to vote in Belmont but who are claimed by Mr. Stuart to have completed change of address (“COA”) forms with the United States Postal Service. Mr. Stuart states that the list of registered voters was provided to Mr. Stuart by the “Colarusso for Congress Campaign.” The BoR is aware that similar complaints have been filed with other towns and cities in the Fifth Congressional District. The Complaint provides no additional information about these individuals or any other reasons, beyond the COA forms, to substantiate a belief that the 1,109 persons were illegally or incorrectly registered to vote in Belmont. Ms. Olson states that she has also submitted what she calls a “CD” with separate complaints for each of the 1,109 individuals; and she says those complaints contain the individuals’ name, original address and forwarding address, but the “Stuart Declaration” does not include any specific information as to any individual.

Board of Registrars Review under M.G.L. c. 51, § 48

M.G.L. c. 51, § 48, requires the BoR, upon receiving a complaint, to “examine into such complaint” to determine if “there is sufficient ground therefor.” The statute predates the Open Meeting Law as it exists today, but because the BoR’s examination into the Complaint is public business within its jurisdiction, this examination is a deliberation that should be conducted at a duly noticed meeting. The examination of the Complaint need not be a public hearing at which either the Complainant or any registered voter is entitled to specific notice or opportunity to speak. The BoR’s determination of sufficiency must consider the following questions:

¹ Ms. Olson’s Complaint lists her address as “Baystate Road” instead of “Bay State Road.”

² According to the Massachusetts Secretary of State website, Stuart Research, LLC, is not listed as having qualified to do business in Massachusetts.

1. Was the Complaint signed and sworn to by a registered voter?
2. Does the Complaint state that the Complainant has reason to believe and does believe that a voter was/is incorrectly or illegally registered?
3. Does the Complaint state the reasons for that belief or is it accompanied by evidence of such?

The BoR has determined that the Complaint is insufficient and deficient for any one or combination of the following reasons.

First. Although the Complaint bears the purported signature of Tommasina Anne Olson, who is a registered voter in Belmont, it was not “sworn to” by her. Preceding Ms. Olson’s signature on the Complaint is the following,

I declare under penalty of perjury under laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Signed and sworn to by:

Tommasina Anne Olson

These statements, without more, do not create a statement “sworn to” by Complainant. The phrase “sworn to” as used in M.G.L c. 51, § 48, means that it must be “notarized, i.e., she failed to make oath (or affirmation) before an official qualified to administer oaths. See Cook Borden & Co. v. Com., 293 Mass. 174, 180 (1936) (“sworn statement” required “certificate evidencing that the affidavit was properly made before an officer qualified to administer oaths”). A “sworn statement is designed in part to be the basis of action by others who are entitled to like relief and by public officers. To hold that there need be no jurat attached would open the door to fraud difficult to detect.” *Id.* Furthermore, reference to “laws of the United States of America” is not apropos, since the laws of the Commonwealth of Massachusetts are the relevant reference. Even if 28 U.S.C. 1746 were applicable, the Complainant did not comply with the required form because it impermissibly qualifies the affirmation by adding the clause “to the best of my knowledge.”

Second. There is insufficient support for the Complaint’s assertions. Ms. Olson does not contest that the listed individuals were legally and correctly registered when they first registered. Ms. Olson does not present any evidence that the listed individuals were not legally and correctly registered originally. Ms. Olson confounds and confuses “registration” with her concern about the person’s later change of domicile. This fact alone would be sufficient to warrant dismissal of the Complaint. The Complaint contains a conclusory statement that Ms. Olson states:

“I allege that each individual listed in Exhibit B [to the Complaint] is illegally or incorrectly registered to vote in Belmont because, as evidenced by their new address, they have moved outside of Belmont to another state or to another jurisdiction within Massachusetts over six months ago.”

According to the Complaint that she allegedly signed, Complainant has not made specific inquiry as to any of the 1,109 persons and does not have personal knowledge of any of the 1,109 individuals. The support for that statement is the form “Declaration” from Mr. Stuart, which suffers from the same deficiencies as Ms. Olson’s declaration in that it is not notarized. Mr. Stuart is not a registered voter in Belmont; he indicates that he resides in Florida. According to the Stuart Declaration, Mr. Stuart has not made specific inquiry as to any of the 1,109 persons and does not have personal knowledge of any of the 1,109 individuals. To the extent that the evidentiary support for the Complaint comes through him, and not through Ms. Olson’s personal knowledge of the individuals listed in the Complaint, the evidentiary support is insufficient under the statute. It strains credibility to believe that Ms. Olson investigated and learned the actual circumstances of each of the 1,109 persons during the nine-day period from October 24, 2022 (the date of the Stuart Declaration) and November 1, 2022 (the date of the Complaint). Furthermore, even if all of the information in the Stuart Declaration were taken at face value, none of it contests that any of the 1,109 voters were legally and correctly registered initially. And, the credibility of the Stuart Declaration is severely diminished by the fact that at first glance, at least four of the persons listed are known to the Town Clerk’s Office and are known to be living in Belmont, which demonstrates that the Stuart Declaration was a flawed data set that cannot be relied on.

Third. The statute dictates that only one person can be complained of. The Complaint applies to 1,109 individuals registered to vote in Belmont. The Complaint acknowledges that the individuals are registered to vote in Belmont. The statute, M.G.L. c. 51, § 48, states that a complaint may be filed as to **“a certain person,”** not hundreds of people. [Emphasis added.] The Complainant chose to file her Complaint against multiple persons. Despite the Complainant’s statement (which was made by her under penalties of perjury) that she included on a “CD” a separate “single complaint” for each of the individuals, no such single complaints were found on the “CD.” The “CD” allegedly containing individual complaints contains only one copy of the Complaint and many copies of the Stuart Declaration, which do not contain individualized information as to any individual voter.

Fourth. The Stuart Declaration is based on information that has been potentially illegally gathered from the USPS National Change of Address (“NCOA”) system.

That system is not publicly accessible. According to the USPS website for NOCA, “[t]he NCOALINK Product is a secure dataset of approximately 160 million permanent change-of-address (“COA”) records constructed from names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service TM.” The system is only accessible to companies that have been licensed by the Postal Service. Licensed companies are limited to using that information “to update existing mailing lists that are used to prepare mail for the purpose of acceptance and delivery by the United States Postal Service.” Here, there is no evidence that Stuart Research, LLC, or any of its subsidiaries have been licensed to access this information, and the use of this data for this Complaint exceeds the rights granted under the typical license issued by USPS. Reliance by the BoR on the NCOA data in the Stuart Declaration would be improper.

Fifth. A change of address for mailing purposes is not the equivalent of a change of domicile³ for voting purposes. A person's domicile is usually the place where the person has their home, meaning where the person dwells and which is the center of the person’s domestic, social, and civil life. See Dane v. Bd. of Registrars of Voters of Concord, 374 Mass. 152, 161-162 (1978). It is entirely possible for an individual to file a change of address form to ensure that their mail is sent elsewhere without actually changing their “dwelling” and the “center of their domestic, social and civil life.” Therefore, an individual’s having filed a change of address form with the U.S. Postal Service does not, by itself, indicate or prove that such individual’s domicile has changed. Military personnel, members of the United States State Department, college students, prisoners, and hospitalized persons are a few examples of persons that can maintain their domicile in Belmont while located elsewhere. Domicile once acquired is not lost until a new one is obtained, White v. Stowell, 229 Mass. 594, 597 (1918), and the original domicile is presumed to have continued in the absence of compelling evidence that it was changed. Commonwealth v. Davis, 284 Mass. 41, 49 (1933).

Sixth. M.G.L. c. 51, § 48, is not applicable to the issue Ms. Olson raises, because § 48 applies to complaint by a registered voter that a certain named individual was *initially* illegally or incorrectly registered, **rather than** to questions of whether the person who was initially correctly registered is no longer qualified to vote. See, for example, the Dane case mentioned earlier. Ms. Olson accepts and does not contest that the 1,109 persons were legally and correctly registered when they were initially registered. Even if each of the 1,109 individuals listed in the Complaint have, in fact, moved their respective domiciles from Belmont, the Complaint is insufficient in that it does not prove that those individuals were “illegally or incorrectly registered” when they were

³ Massachusetts courts use the spelling “domicil,” but the more common spelling “domicile” is used in this discussion.

initially registered. Once a voter is registered, they stay “registered,” even if they are put on the “inactive voter list.” See, M.G.L. c. 51, § 37A. As set forth in the Complaint, the Complainant implicitly admits that the individuals were properly registered to vote in Belmont, but asserts that their registration has now lapsed due to a change of address. A registered voter who has changed domicile has not violated the Massachusetts elections laws merely because their name has not been removed from the list of registered voters. A separate statute—M.G.L. c. 51, § 38—provides a separate mechanism for “de-registering” individuals who registered correctly. Under that statute, in order for the registrars to remove a voter from the rolls, one of five conditions, as stated in § 38 must be satisfied:

- (a) the voter has died;
- (b) [the registrars] have received a duplicate copy of an affidavit of registration from the registrars of another city or town;
- (c) [the registrars] have received a change of address notification from the registry of motor vehicles;
- (d) [the registrars] have received a written request from the voter or the voter has confirmed in writing that he has moved to another city or town; or
- (e) the voter has not responded to the notice described in section thirty-seven and has not voted in the next two biennial state elections following the mailing of such notice.

To reiterate, M.G.L. c. 51, § 48, is not meant to be the mechanism for removing previously correctly registered individuals from the voter rolls; that function is performed by M.G.L. c. 51, § 38.

Seventh. The Complainant has elected to pursue the wrong remedy. Massachusetts laws and regulations provide procedures for properly challenging an individual’s right to vote at the time that the voter appears at the polls to vote. M.G.L. c. 51, §§ 84 and 84A, and 950 CMR 54.04(23). Simply stated, if a person who is on the “active voter list,” and it is suspected that they have not been domiciled in Belmont for the six months preceding the election, such person can be challenged when and if they attempt to vote, and if they can’t produce timely the appropriate evidence of identity and domicile, their ballot/provisional ballot will not be counted. Furthermore, there are other safeguards: even if there is no challenge made at the time a registered voter requests a ballot, under M.G.L. c. 51, §§ 4(c), 37, 37A, and 38, registered voters who have failed to timely return the annual town census form, and failed to vote often enough, can be put on the “inactive voter list,” and such persons will be required to present evidence of identity and domicile in order to receive a ballot. Having thus voted, such person is restored to the “active voting list.” If a person no longer

domiciled in Belmont does not attempt to vote, the election is not affected, and the person has not violated election laws.

Eighth. The Complaint is nearly identical to other challenges filed in multiple municipalities in the Massachusetts Fifth Congressional District at the statutory deadline for such Complaints, mere days before the upcoming November 8 national election. This fact alone is evidence that these “last-minute” complaints are intended to divert the attention of election officials, overwhelm the resources of election officials, and possibly disenfranchise voters, and thus function as an illegal abuse of process rather than a legitimate use.

Conclusion

In short, the Complaint is legally insufficient for a host of reasons, and the Belmont Board of Registrars of Voters is not obligated to schedule a hearing or continue an investigation into the individuals listed in the Complaint.

ATTACHMENT B

M.G.L. c. 51, Section 48: Complaint; time for filing; summons and service of process

Section 48. Upon complaint signed and sworn to by a registered voter and filed with the registrars at least fourteen days in a city, or at least four days in a town, before a primary, election or town meeting, stating that the complainant has reason to believe and does believe that a certain person by him therein named has been illegally or incorrectly registered, and giving the reasons for such belief, the registrars shall examine into such complaint and, if satisfied that there is sufficient ground therefor, they shall summon the person complained of to appear before them at a certain place and time before the next primary or election or town meeting to answer to the matters set forth in the complaint, and the substance of the complaint and a copy of this section and of section forty-nine shall be set forth in the summons. Service of the summons shall be made by an officer qualified to serve civil or criminal process, not more than fourteen nor less than two days before the day named for appearance, by delivering in hand a copy of the summons to the person therein named, or by leaving it at his place of residence, or, if personal service cannot be made and the person's residence is unknown to the officer and cannot be ascertained by inquiry at the place of alleged illegal or incorrect residence or at any later residence of such person appearing on the register, then at such person's last residence, if any, known to the officer, or, if the person's last residence is unknown, at the last place appearing as his residence in the register. The officer shall return the summons to the registrars before the day named for appearance with the certificate of his doings endorsed thereon.