

SECRETARY OF STATE FOR THE STATE OF OREGON

In the matter of:

**Alleged Unlawful Voting, Unlawful
Voter Registration, and False
Swearings by Charles Hales;
Disqualification from City of
Portland Candidacy and/or Service
in City of Portland Office, if Elected
in November 2012**

COMPLAINT

Unlawful Voting

Unlawful Voter Registration

**False Swearing on Voter
Registration Form**

**False Swearings on Vote-by-Mail
Envelopes**

INTRODUCTION

Complainant alleges that Charles Hales, who states his current residence as 7136 S.E. 27th Avenue, Portland, Oregon:

1. unlawfully voted in Oregon several times since the beginning of 2004;
2. unlawfully registered to vote in Oregon in 2008;
3. made false swearings on his voter registration card filed on March 18, 2008;
4. made false swearings in signing each of his vote-by-mail envelopes submitted in Oregon since the beginning of 2004; and
5. violated Portland City Code § 2.08.050 and Portland City Charter § 2-202 and is not legally qualified to be a candidate for Mayor of Portland or to serve in that office.

Complainant requests that your response to this Complaint be communicated to me by email to seth@swoolley.org, as I am currently away from my residence.

This Complaint is based upon facts reported in Oregon newspapers over the past year. Most of these violations of law stem from the apparent fact, reported by those newspapers, that Charles Hales for the years 2004 through 2009 filed Oregon nonresident income tax returns, each of which stated that his residence address was in Stevenson, Washington (and not in Oregon) for the entire year.

A person who files an Oregon nonresident income tax return is required by law to swear under oath that he is not a "resident" of Oregon. Oregon law defines "resident of this state" for income tax purposes as "An individual who is domiciled in this state." Oregon tax regulations define "domicile" as "the place an individual considers to be

the individual's true, fixed, permanent home." Thus, Charles Hales swore to the State of Oregon on all of his 2004-09 income tax returns that his "true, fixed, permanent home" during all of those years was not in Oregon.

Because he stated that his "true, fixed, permanent home" was not in Oregon, Charles Hales was not qualified to vote in Oregon elections during 2004-09, was not qualified to register to vote in Oregon when he purported to do so in 2008, was not qualified to become a candidate for Mayor of Portland in 2011, and is not legally qualified to serve in any elected office of the City of Portland.

In addition, his statement on his 2008 voter registration card that he resided at 7136 S.E. 27th Avenue, Portland, Oregon, appears to be a false swearing, because for 2008 and 2009 he continued to assert to the State of Oregon that his residence and domicile (his "true, fixed, permanent home") were in Washington.

Also, his signature on his vote-by-mail envelopes submitted to Oregon elections authorities since the beginning of 2004 appear to constitute false swearings that he was legally qualified to vote in the county that issued the ballots. He was not so qualified, because he did not have a valid Oregon voter registration since the time that he swore that his residence and domicile were in Washington.

His signature on his vote-by-mail envelopes submitted to Oregon elections authorities prior to March 18, 2008, appear to constitute additional false swearings that he still lived at the address where he was registered to vote, an address on Hayden Island, which again is contradicted by his sworn statements in his 2004-09 Oregon income tax returns.

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Complainant alleges:

FACTS

1. Complainant Seth Alan Woolley is an elector of Oregon who resides at 3403 N.E. Stanton Street in Portland, Oregon.
2. Charles Hales resigned his position as an elected Portland City Commissioner in April 2002.
3. THE OREGONIAN reported on June 27, 2011 (attached):

"From 2004 to 2009, Hales and his wife, Nancy, claimed residency in Stevenson, Wash. They filed tax returns claiming their home in Washington -- which, unlike Oregon, has no personal income tax.

At the same time, Hales kept voting in Oregon elections."

4. WILLAMETTE WEEK reported on April 11, 2012 (attached):

Between 2004 and 2009, Hales told Oregon tax officials that Stevenson, Wash., was his residence.

5. WILLAMETTE WEEK on June 27, 2011 (attached) reported receiving email from Charles Hales, stating (emphasis added):

After our marriage, Nancy and I lived in her home in Stevenson and in our condo on Hayden Island. Starting in 2004 and until 2009, we filed our joint federal and Oregon tax returns as residents of Washington.

6. WILLAMETTE WEEK reported on April 4, 2012 (attached) that Charles Hales continued to file his income tax returns for the year 2009 as a resident of Washington:

As *WW* first reported last summer, Hales created a problem for himself (and saved some money) by claiming Washington residency for tax purposes in 2008 and 2009. Unlike Oregon, which has one of the nation's highest income tax rates, Washington does not levy income taxes. * * *

The tax returns [2008-2010] he provided *WW* show that Hales saved him about \$30,000 in Oregon income taxes for the two years he claimed Washington residency.

7. Charles Hales remained registered to vote in Oregon at an address on Hayden Island until March 18, 2008. On that date, he filed a form to register to vote as a resident of Oregon residing at 7136 S.E. 27th Avenue in Portland.
8. THE OREGONIAN reported on June 27, 2011 (attached):

During that time [2004-09], he claimed residency in Stevenson [WA], where his second wife owned a home, which meant salary earned outside Oregon was not taxable. But he voted in 15 of 19 Multnomah County elections, listing a condominium on Hayden Island as his residence in October 2002 and changing it in March 2008 to the Eastmoreland home he purchased a year earlier.
9. Charles Hales since March 18, 2008, has not filed another Oregon voter registration application.

JURISDICTION

The Secretary of State has jurisdiction to consider this Complaint pursuant to ORS 246.110 (which designates the Secretary of State as the state's "chief elections officer") and ORS 260.345 (which requires the Secretary of State to investigate every written complaint alleging that a violation of an election law has occurred). ORS 260.345(3) requires:

(3) Upon receipt of a complaint under subsection (1) or (2) of this section the Secretary of State or Attorney General immediately shall examine the complaint to determine whether a violation of an election law or rule has occurred and shall make any investigation the Secretary of State or Attorney General considers necessary.

This jurisdiction is not limited to violations of election laws adopted by the Oregon Legislature; it applies to all election laws. Thus, your conclusion in your letter to me of April 19, 2012, that the Secretary of State has no jurisdiction over the alleged violation of Portland City Code § 2.08.050 and Portland City Charter § 2-202 (and is thus not legally qualified to be a candidate for Mayor of Portland or to serve in that office) is incorrect.

Your letter also incorrectly stated that "county elections officials have the responsibility to determine voter eligibility." Your letter cites no legal authority for that conclusion. ORS 247.174 states:

**Determining if person qualified to register or update registration;
hearing.**

(1) The qualifications of any person who requests to be registered or to update a registration shall be determined in the first instance by the county clerk or official designated by the county clerk to register persons as electors from the evidence present.

Note that the county official merely determines the qualifications of the person "in the first instance." This does not excuse the Secretary of State from her responsibility to enforce Oregon's election laws, including those pertaining to voter registration.

VIOLATION NO. 1: Charles Hales unlawfully voted in Oregon, several times, during the years 2004 through 2009.

1. Charles Hales voted repeatedly in Oregon during 2004-09.

As indicated by the recitation above, THE OREGONIAN on June 17, 2011, reported that Charles Hales voted in 15 of 19 Multnomah County elections during the 2004-09 period.

2. Charles Hales repeatedly swore to the State of Oregon that his domicile and residence during 2004-09 were not in Oregon.

The recitation above indicates that Charles Hales filed Oregon nonresident income tax returns for the years 2004 through 2009.

A person who files an Oregon nonresident income tax return is required by law to swear under oath that he is not a "resident" of Oregon. Oregon Form 40N requires that the taxpayer state his current address and be a nonresident of Oregon. The instructions state: "You're a nonresident if your permanent home was outside Oregon all year." Just above the signature line for the taxpayer is this attestation: "Under penalty for false swearing, I declare that the information in this return is true, correct, and complete."

Under Oregon tax law, the term "resident" refers to someone whose "domicile" is in Oregon.

Oregon imposes a state income tax on every resident of this state and every nonresident with Oregon-source income. ORS 316.037(1), (3). Oregon defines a "resident" as "[a]n individual who is domiciled in this state * * *." ORS 316.027(1)(a)(A). Thus, residency is statutorily equated with domicile. Domicile is a common law concept composed of two components: (1) "a fixed habitation or abode in a particular place" and (2) "an intention to remain there permanently or indefinitely." *del Rosa v. Dept. of Rev. (del Rosa)*, 313 Or 284, 289, 832 P.2d 1228 (1992) (citation omitted). Oregon Administrative Rule (OAR) 150-316.027(1)(1)(a) defines "domicile" as "the place an individual considers to be the individual's true, fixed, permanent home" and as "the place a person intends to return to after an absence." Although an individual can have more than one residence, he "can have but one domicile." *del Rosa*, 313 Or at 289 (citation omitted).

Hillenga v. Department of Revenue, 2012 WL 858581 (Oregon Tax Court 2012).

Thus, by filing Oregon income tax returns as an Oregon nonresident for the years 2004-09, Charles Hales necessarily asserted to the State of Oregon that during those

years he was not domiciled in Oregon. This is further confirmed by the instructions from the State of Oregon for filing nonresident returns:

Nonresident: You are a nonresident if your permanent home is outside Oregon all year.

Charles Hales repeatedly asserted to the State of Oregon that his domicile and residence during 2004-09 were not in Oregon for any part of those years and that his "permanent home is outside Oregon all year."

3. A person without Oregon domicile or residence cannot lawfully remain a registered voter in Oregon.

Despite his move to Washington and his sworn lack of domicile in Oregon for 2004-09, Mr. Hales did not cancel his Oregon voter registration, and he continued to vote in Oregon elections during the 2004-09 period.

A person who is not domiciled in Oregon is not eligible to be a registered voter in Oregon or to vote in Oregon elections. ORS 247.035 provides:

(1) An elections official, in determining the residence and qualifications of a person offering to register or vote, shall consider the following rules, so far as they may be applicable:

(a) The person's residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

(b) If a person's property is split by a jurisdictional line, the person shall be registered where the residence is located. If the residence is split by a jurisdictional line, the person shall register where the greatest value of the residence is located according to county assessment and taxation records.

(c) A person shall not be considered to have gained a residence in any location in this state into which the person comes for temporary purposes only, without the intention of making it the person's home.

(d) If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

(e) If a person goes from this state into any other state or territory and votes there, the person shall be considered to have lost residence in this state.

(f) A person who has left the place of the person's residence for a temporary purpose only shall not be considered to have lost residence.

(2) Notwithstanding subsection (1) of this section, a person who has left the place of the person's residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the person's residence was located before the person left.

1. Charles Hales during the years 2004-09 did not qualify as an Oregon resident under ORS 247.035(1).

Mr. Hales did not qualify as an Oregon resident under ORS 247.035(1). He failed to satisfy subsection (a), the basic rule, because he did not have a fixed habitation in Oregon "to which, when the person is absent, the person intends to return." This statute defines "residence" by using the exact terms that define "domicile":

(a) The person's residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

Instead, Mr. Hales asserted to the State of Oregon in sworn statements that his domicile for all of the years 2004-09 was in Washington, pursuant to this statutory definition of "Domicile" in ORS 316.027(1):

(a) "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time.

Mr. Hales asserted in his Oregon nonresident tax returns for each of the years 2004-09 that he did not have domicile in Oregon, which means he necessarily asserted that he did not consider Oregon to be his true, fixed, permanent home. Consequently, he necessarily failed the basic test for Oregon residency under ORS 247.035(1)(a).

Oregon courts have recognized that "residency" under ORS 247.035 is the same as "domicile" under Oregon tax law. *Caton v. Department of Revenue*, 2004 WL 2212147 (Or Tax Court 2004), for example, concluded that Ms. Caton's domicile for income tax purposes was in Oregon:

During the years Plaintiff claims not to be domiciled in Oregon, she was a registered Oregon voter, and vote several times. Voter registration requires the voter to swear to Oregon residency [citing ORS 247.035]. Plaintiff's

claim that she was not domiciled in Oregon is inconsistent with being a registered Oregon voter.

The Court recognized that the test for voting residence and tax domicile are the same. By disclaiming, under oath, Oregon domicile for tax purposes, Mr. Hales was also disclaiming Oregon residency for voting purposes.

In addition, ORS 247.035(1)(d) independently makes clear that Charles Hales was not an Oregon resident during 2004-09.

(d) If a person moves to another state with the intention of making a permanent home, the person shall be considered to have lost residence in this state.

Mr. Hales swore under oath in his Oregon nonresident tax returns for each of the years 2004-09 that his domicile was in Washington, which means he necessarily asserted that Washington was "the place" he "considers to be the individual's true, fixed, permanent home." That by itself proves that he "move[d] to another state with the intention of making a permanent home" and thus "lost residence in this state" for voting purposes.

2. Charles Hales during the years 2004-09 did not qualify as an Oregon resident under ORS 247.035(2).

ORS 247.035(2) states:

Notwithstanding subsection (1) of this section, a person who has left the place of the person's residence for a temporary purpose only, who has not established another residence for voter registration purposes and who does not have a place in which habitation is fixed shall not be considered to have changed or lost residence. The person may register at the address of the place the person's residence was located before the person left.

Mr. Hales failed to qualify as an Oregon resident under ORS 247.035(2), which requires that the person "does not have a place in which habitation is fixed." This subsection is aimed at persons such as traveling salespersons living in motels or members of the military forces living in barracks or college students living in dormitories or apartments. Charles Hales asserted in his Oregon nonresident tax returns for each of the years 2004-09 that his domicile was in Washington, which means he necessarily asserted that he had a "true, fixed, permanent home" in Washington and was not roaming around without fixed habitation.

Mr. Hales certainly had a fixed habitation during 2004-09. He was not a vagrant or a student living in dormitories or a traveling salesperson or a soldier living in various military barracks. Both before and after the time he last registered to vote in Oregon (2008), he swore to the State of Oregon that his fixed habitation was his home in Washington.

Further, even if somehow Charles Hales can somehow (1) recharacterize his sworn statements to the State of Oregon that during 2004-09 his residence and domicile were in Washington and (2) retroactively deny that he had "a place in which habitation is fixed," anywhere, he remains not lawfully registered to vote in Oregon under ORS 247.035(2), because the statute authorizes only that the person "may register at the address of the place the person's residence was located before the person left." Before Charles Hales left for Washington, his residence was on Hayden Island. When he allegedly returned in 2008, he did not register to vote at that address. Instead, he registered using the address 7136 S.E. 27th Avenue, Portland, Oregon.

Finally, if Mr. Hales was only "temporarily away from Oregon," then he falsely swore to the State of Oregon at least 6 times on his "nonresident" Oregon income tax returns that he was not a resident of Oregon.

On April 18, 2012, Tim Scott, Director of Elections for Multnomah County, wrote to me:

To address the second question of whether Charles Hales was eligible to be registered to vote in Multnomah County when he lived in Washington State, ORS 247.035(1)(a) states:

The person's residence shall be the place in which habitation is fixed and to which, when the person is absent, the person intends to return.

In the same interview of April 18, 2012, I asked Mr. Hales if, during the time he lived in Washington State, he considered his Oregon residence address the place to which his habitation was fixed, and whether or not he intended to return. He said that during that time he considered himself to be temporarily away and that he always intended to return to his Oregon residence.

First, Mr. Scott conducted no formal investigation, and Mr. Hales was not put under oath. Second, the statement attributed to Mr. Hales does not negate the fact that he had a fixed habitation in Washington during those years and swore to that fact 6 times in his Oregon nonresident income tax returns for 2004-09. Third, if it is true that "during that time he considered himself to be temporarily away and that he always intended to return to his Oregon residence" and was thus continuously during that time an Oregon resident, then he committed tax fraud by filing 6 consecutive nonresident Oregon income tax returns for the years 2004-09.

In addition, the law requires residence and domicile to be determined on the basis of the person's actions, not his later, self-serving declarations.

"[T]riers of the fact of domicile rely heavily upon the overt acts of the individual as true indicators of his state of mind. Nevertheless, the whole

aim of the inquiry is to discern the true intent." *Hudspeth v. Dept. of Revenue (Hudspeth)*, 4 OTR 296, 298-99 (1971). Thus, "determination of an individual's domicile is based on intent supported by facts and circumstances rather than merely the statements of the individual." *Butler v. Dept. of Rev. (Butler)*, TC-MD No 050801 D, WL 2041284 at *4 (July 18, 2006).

Hillenga v. Department of Revenue, supra, 2012 WL 858581 (Oregon Tax Court 2012). *Hudspeth*, 4 OTR at 298, *supra*, noted:

Regrettably, there have been instances in which the individual subsequently found it to his advantage to deny his intent. Self-serving statements are therefore suspect and the triers of the fact of domicile rely heavily upon the overt acts of the individual as true indicators of his state of mind.

The overt acts of Mr. Hales were his sworn statements on his 2004-09 tax returns that he was a full-time nonresident of Oregon.

Why do these sworn statements by Mr. Hales on his 2004-09 tax returns override the evidence of Oregon residency consisting of his alleged continuing voter registration in Oregon elections during that period? Because:

- (1) His sworn statements on his tax returns were made after he last registered to vote in Oregon before moving to Washington; and
- (2) The Oregon Supreme Court has ruled that registering to vote is very weak evidence of domicile.

In *Volmer v. Volmer*, 231 Or 57, 60 (1962), the Oregon Supreme Court stated:

As noted by the court in *Miller v. Miller*, 67 Or at 366-367, 136 P 15, the act of registering to vote often is self-serving and, standing alone, is entitled to little weight.

- 3. The factors under ORS 247.035(3) are not necessary, but none of them show that Charles Hales qualified as a resident of Oregon during 2004-09.**

ORS 247.035(1) and (2) establish the standards for determining whether a person qualifies to be a registered voter in Oregon. Where the application of those provisions may not be clear, ORS 247.035(3) offers criteria as guidelines:

(3) An elections official may consider, but is not limited to considering, the following factors in determining residency of a person for voter registration purposes:

- (a) Where the person receives personal mail;
- (b) Where the person is licensed to drive;
- (c) Where the person registers motor vehicles for personal use;
- (d) Where any immediate family members of the person reside;
- (e) The address from which the person pays for utility services; and
- (f) The address from which the person files any federal or state income tax returns.

In this case, it is clear that Charles Hales did not qualify to be an Oregon registered voter under ORS 247.035(1) and (2), so reference to ORS 247.035(3) is not proper or necessary.

If the ORS 247.035(3) factors are considered: To date, Complainant is not aware for the period 2004-09 where Charles Hales received his personal mail, where he was licensed to drive, where he registered motor vehicles for personal use, where his immediate family members resided, or where he paid for utility services. The Secretary of State should seek authenticated information on these matters (which Multnomah County did not). It is known, however, from the press articles cited above that he filed his federal and state income tax returns from his address in Washington.

4. Voting in an Oregon election while not lawfully registered in Oregon violates several laws.

1. ORS 260.694(4).

ORS 260.694(4) states:

A person may not vote or offer to vote in any election knowing the person is not entitled to vote.

Violation of this statute is a Class A misdemeanor, punishable by a prison term of up to one year and/or a fine of \$6,250. ORS 260.993(3), ORS 161.615(1), ORS 161.635(1)(a).

The "knowing" element of a crime does not require proof of a defendant's actual mental state of guilt of a specific crime. ORS 161.085(8) provides:

"'Knowingly' or 'with knowledge,' when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists."

State v. Bell, 220 Or.App. 266, 185 P.3d 541 (2008), explained:

The state may prove a defendant's knowledge with circumstantial evidence and reasonable inferences flowing from that evidence. *Delgado v. Souders*, 334 Or. 122, 135, 46 P.3d 729 (2002).

The circumstantial evidence here is that Charles Hales knowingly asserted to the State of Oregon for each of the years 2004-09 that he was not a resident or domiciliary of Oregon. It can be inferred that he knew that the privilege of voting in Oregon elections was limited to Oregon residents.

In a recent Oregon case, the Ninth Circuit Court of Appeals concluded:

What the law presumes is that everyone is aware of the obligations the law imposes on them. When a piece of legislation--usually of a criminal nature--adjusts the legal responsibilities of citizens, they cannot escape the effect of that law by claiming ignorance. Were the rule otherwise, citizens could frustrate the legislature's exercise of authority by an ostrich-like effort not to learn their legal obligations.FN4

FN4. Cases in which the Oregon Supreme Court has invoked this adage do, indeed, all involve situations where the law in question imposed a specific obligation on the individual. For example, *Dungey v. Fairview Farms, Inc.*, 205 Or. 615, 290 P.2d 181 (1955), dealt with a driver knowing what a "residence district" was for purposes of the motor vehicle laws.

Bibeau v. Pacific Northwest Research Foundation Inc., 188 F.3d 1105, 1110-11 (1999).

2. 260.715(6).

Voting by Charles Hales in Oregon elections during 2004-09 appears to have violated ORS 260.715(6):

A person may not willfully place a fraudulent ballot among the genuine ballots.

His ballots during those years were fraudulent, because he was not validly registered to vote in Oregon, as shown above. This is a Class C felony, punishable by a fine of up

to \$125,000 and/or a prison term of up to 5 years. ORS 260.993(2); ORS 161.605(3); ORS 161.625(1)(d).

3. ORS 247.009.

Voting by Charles Hales in Oregon elections since 2004 appears to have violated ORS 247.009:

Unless specifically provided otherwise, a person may vote in an election of a political subdivision of this state only if the person is an elector registered in the political subdivision.

If Charles Hales was not a validly registered elector in any of the political subdivisions applicable to the address on Hayden Island or the address at 7136 S.E. 27th Avenue, Portland, Oregon, during the years 2004-09, each of his votes in those elections violated ORS 247.009. Each is subject to a civil penalty of up to \$250 for each violation, pursuant to ORS 260.995.

4. Article II, § 2, of the Oregon Constitution.

Voting by Charles Hales in Oregon elections since 2004 appears also to have violated Article II, § 2, of the Oregon Constitution, which states:

Section 2. Qualifications of electors.

(1) Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen:

(a) Is 18 years of age or older;

(b) Has resided in this state during the six months immediately preceding the election, except that provision may be made by law to permit a person who has resided in this state less than 30 days immediately preceding the election, but who is otherwise qualified under this subsection, to vote in the election for candidates for nomination or election for President or Vice President of the United States or elector of President and Vice President of the United States; and

(c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law.

Charles Hales did not meet these requirements, because he had not "resided in this state during the six months immediately preceding the election" and was not registered to vote in the manner provided by law.

VIOLATION NO. 2: Charles Hales continued to vote unlawfully in Oregon after changing his residence and domicile back to Oregon as of 2010.

Charles Hales changed his domicile and residence back to Oregon as of 2010, as indicated by his filing of an Oregon resident state income tax return for that year. Since then, however, he has not lawfully registered to vote in Oregon.

His current alleged Oregon voter registration is based upon his filing of a voter registration card on March 18, 2008, listing his Oregon residence address as 7136 S.E. 27th Avenue, Portland, Oregon. At that time, however, Charles Hales was not a legal resident of Oregon, because he swore to the State of Oregon that Washington was his true, fixed, permanent home during all of 2008 (and all of 2009). See Violation No. 1, part B, above. Consequently, his attempt at that time to register to vote in Oregon was invalid and did not result in a valid voter registration.

ORS 247.012(3) provides:

Registration of a qualified person occurs:

(a) When a legible, accurate and complete registration card is received in the office of any county clerk, the Office of the Secretary of State, an office of the Department of Transportation, a designated voter registration agency under ORS 247.208 or at a location designated by a county clerk under subsection (7) of this section.

The voter registration card filed by Charles Hales on March 18, 2008, was not accurate, because it stated that his residence was in Oregon. Thus, his registration as a voter in Oregon did not occur.

According to the Secretary of State's current voter registration database, Charles Hales since March 18, 2008, has not filed another Oregon voter registration card. He has not filed such a card since resuming his residence in Oregon in 2010. Consequently, he is not validly registered to vote in Oregon, and his votes in Oregon elections in 2010, 2011, and 2012 were unlawful, in addition to his votes in Oregon elections during the years 2004-09.

While county elections officers can investigate and cancel invalid voter registrations under ORS 247.174(2) and ORS 247.195, it is the Secretary of State who has jurisdiction to investigate violations of Oregon law pertaining to voting. Since Charles Hales voted in Oregon several times during the years 2008-12 based upon a voter registration which did not validly occur, the Secretary of State has jurisdiction to investigate and prosecute these violations and refer criminal violations to the Attorney General for prosecution.

As with his votes in Oregon during 2004-09 discussed above, his votes in Oregon since March 18, 2008, appear to have violated ORS 260.715(6), ORS 247.009, and Article II, § 2, of the Oregon Constitution. The available penalties for each violation include:

- > a fine of up to \$125,000 and/or a prison term of up to 5 years, pursuant to ORS 260.993(2), ORS 161.605(3), ORS 161.625(1)(d); and
- > a civil penalty of up to \$250 for each violation, pursuant to ORS 260.995.

VIOLATION NO. 3: Charles Hales made a false swearing in his voter registration application filed on March 18, 2008.

As noted above, Charles Hales filed an Oregon voter registration card on March 18, 2008, listing his Oregon residence address as 7136 S.E. 27th Avenue, Portland, Oregon. At that time, however, Charles Hales was not a legal resident of Oregon, because he swore to the State of Oregon that Washington was his true, fixed, permanent home during all of 2008. See Violation No. 1, part B, above.

Consequently, he made false statements on his Oregon voter registration card: the claim that his residence address was in Oregon and that he was qualified to be an elector. His signature on the card attested to this declaration:

"I swear or affirm that I am qualified to be an elector and I have told the truth on this registration."

This attestation is required by ORS 247.171(3)(f) and ORS 247.171(7).

ORS 247.171(5) prohibits any person from supplying any information on his voter registration card "knowing it to be false." Violation of ORS 247.171(5) is a Class C felony, punishable by a fine of up to \$125,000 and/or a prison term of up to 5 years. ORS 260.993(2); ORS 161.605(3); ORS 161.625(1)(d).

The meaning of the term "knowing" as an element of a criminal offense is discussed at page 10 above. The government could conclude that Charles Hales knew that his claim of residence in Oregon in 2008 was false, because he knew that he had filed Oregon nonresident income tax returns in each of the years 2004-09 and in each of those filings swore that he was not a resident of Oregon during each year.

In addition, attesting to false information, when such information is required under the election laws, is also a violation of ORS 260.715(1):

A person may not knowingly make a false statement, oath or affidavit when a statement, oath or affidavit is required under the election laws.

Charles Hales appears to have violated this statute by falsely claiming on his voter registration card to be a resident of Oregon and to be "qualified to be an elector." Violating ORS 260.715(1) is a Class C felony, punishable by a fine of up to \$125,000 and/or a prison term of up to 5 years. ORS 260.993(2); ORS 161.605(3); ORS 161.625(1)(d).

VIOLATION NO. 4: Charles Hales made false swearings in signing each of his vote-by-mail envelopes submitted in Oregon since the beginning of 2004.

Charles Hales appears to further have violated ORS 260.715(1) each time he voted in Oregon since the beginning of 2004 by signing each of his vote-by-mail ballots submitted to a county elections office in Oregon. As indicated in the VOTE BY MAIL PROCEDURES MANUAL (p. 113) published by the Secretary of State, a person signing a vote-by-mail envelope is certifying that:

I am the person to whom this ballot was issued.
I am legally qualified to vote in the county that issued this ballot.
This is the only ballot I have voted this election
I still live at the address where I am registered to vote.

Signing each of such envelopes was certifying that the signer was legally qualified to vote in the county that issued this ballot. But Charles Hales had not been so qualified since the beginning of 2004. Further, for each of his votes in 2004, 2005, 2006, 2007, and until March 18, 2008, he was also certifying that he still lived at the address where he was registered to vote (the Hayden Island address). But, as shown above, he swore to the State of Oregon that his residence and domicile were in Washington for the years 2004-09. Thus, each of those certification were false statements for that reason as well.

VIOLATION NO. 5: Charles Hales violated Portland City Code § 2.08.050 and Portland City Charter § 2-202 and is not legally qualified to become a candidate for Mayor of Portland or to serve in that office.

The Secretary of State has authority under ORS 246.110 and ORS 260.345 to enforce any "election law." This includes election laws adopted by Oregon municipalities.

Portland City Code § 2.08.050 sets out the qualifications to run for Portland city office:

2.08.050 Qualifications of Candidates.

- A. Eligible electors filing for city offices shall meet the qualifications for elected officials described in Charter Section 2-202. The candidate shall be a citizen of the United States and of the State of Oregon, and a registered voter in the City of Portland who shall have been a resident of the City of Portland or of an area which has become part of the City prior to filing the declaration of candidacy or petition for nomination, for a period of not less than one year immediately preceding the nominating election. * * *

- C. The City Elections Officer shall reject the filing for candidacy if the City Elections Officer finds that a candidate is not a registered voter in the City of Portland, would otherwise be unable to qualify as an officer if elected, or if the filing is not in compliance with the law or the requirements of this Chapter in any other way.

Under this law, Charles Hales was not eligible to lawfully file a candidacy for mayor or any other Portland city office. At the time of his filing (May 2011), he was not "a registered voter in the City of Portland" for the reasons set forth at Violation No. 2 above: His purported Oregon voter registration depends solely upon the registration card he filed on March 18, 2008. But that card was not accurate, because it stated that his residence was in Oregon at the same time he was swearing, annually, that his true, fixed, permanent residence and domicile were in Washington. Thus, his registration as a voter in Oregon did not occur, because ORS 247.012(3) requires that the "qualified person" file "a legible, accurate and complete registration card."

As Charles Hales was not legally qualified to file a candidacy for any Portland city office, the Secretary of State should direct the county elections officers for Multnomah County, Clackamas County, and Washington County not to tally votes which may be cast for him in the November 2012 election. Even if those votes are tallied, Mr. Hales would rightfully be removed from office, if elected. The Portland City Charter, § 2-202, states:

Section 2-202 Qualifications.

Each elected official shall be a citizen of the United States and of the State of Oregon, and a registered voter who shall have been a resident of the City of Portland or of an area which has become part of the City prior to filing the declaration of candidacy or petition for nomination, for a period of not less than one (1) year immediately preceding the nominating election. If any officer shall be elected without such qualifications or shall cease to have the same, the office shall immediately become vacant.

It is not unusual for candidates for public office to be disqualified for failure to establish the required residency. In *In the Matter of the Contested Election of Gary L. Schoessler*, 140 Wash.2d 368, 998 P2d 818 (2000), the candidate won the November 1999 election for Mayor of Wenatchee. Such a candidate must have been a resident of the city for one year prior to the election. Mr. Schoessler claimed to have been a resident of Wenatchee as of November 2, 1998. Noting that the candidate in 1999 had filed his 1998 federal tax return with an address in Malaga, Washington, and other factors, the Washington Supreme Court concluded that he had not met the residency requirement and annulled his election.

Dated: September 27, 2012

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