

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

IN THE MATTER OF THE CONTEST OF )  
THE CANDIDACY OF **KENNETH** )  
**ROBERT TAPP** FOR THE OFFICE OF ) CAUSE NO. 2020-11  
STATE REPRESENTATIVE, DISTRICT 61 )

**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 Tuesday, April 21, 2020, meeting pursuant to lawful notice and posting of an agenda consistent with the Open Meeting Act and SB 661, 2020 O.S.L. 3, § 3, amending the Open Meeting Act.

The following members of the State Election Board (“Board” or “SEB”) were present: Mr. Tom Montgomery, Chair<sup>1</sup>; Dr. Tim Mauldin, Vice Chair<sup>2</sup>; and Ms. Heather M. Cline<sup>3</sup>, Member (videoconference). Also present were Paul Ziriaux, Secretary; and counsel for the State Election Board, Niki Batt, Vice-Deputy Attorney General; and Thomas R. Schneider, Assistant Attorney General. Also present, but not participating were Jerry Buchanan, Alternate Member<sup>4</sup>; and Debi Thompson, Alternate Member<sup>5</sup>.

Petitioner, State Rep. Kenton Patzkowsky, appeared by counsel Anthony J. Ferate of SPENCER FANE LLP. Contestee Kenneth Robert Tapp appeared in person and with counsel, Jonathan Krems of LIBERTY LEGAL SOLUTIONS, LLC.

Petitioner Patzkowsky’s Petition for Contest of Candidacy was filed and Notice of Hearing was issued on Tuesday, April 14, 2020. The Board received proof from the Petitioner that the Cimarron County Sheriff’s Office successfully served Contestee Tapp within 24 hours of setting the Petition for hearing, as required by 26 O.S. 2011, § 5-124. The Petitioner provided Return of Sheriff Service to the Secretary of the State Election Board before or on the date of the hearing.

Contestee Tapp did submit 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 Answer.

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

<b>Petitioner’s Exhibits</b>	
Petitioner’s Exhibit A (Declaration of Candidacy of Kenneth Robert Tapp)	<b>ADMITTED</b>

<sup>1</sup> Chairman Montgomery appeared by videoconference.

<sup>2</sup> Vice Chair Dr. Mauldin appeared by teleconference.

<sup>3</sup> Member Cline appeared by videoconference.

<sup>4</sup> Alternate Member Buchanan appeared by videoconference.

<sup>5</sup> Alternate Member Thompson appeared by videoconference.

<b>Petitioner's Exhibits</b>	
Petitioner's Exhibit B (Agricultural Property Appraisal Record for 27761 CR C, Campo, CO)	<b>ADMITTED</b>
Petitioner's Exhibit C (Facebook Photo Post of Kenneth Robert Tapp)	<b>ADMITTED</b>
Petitioner's Exhibit D (Facebook Photo Post by Rachel Watts Tapp.)	<b>ADMITTED</b>
Petitioner's Exhibit E (Facebook Photo Post by Rachel Watts Tapp.)	<b>ADMITTED</b>
Petitioner's Exhibit F (Google Maps printout showing distance between Boise City, OK to Campo, CO)	<b>ADMITTED</b>
Petitioner's Exhibit G (Affidavit of Mr. Alan Shields)	<b>OBJECTION, SUSTAINED</b>
Petitioner's Exhibit H (Screenshot of Facebook comments by Kenneth Robert Tapp)	<b>ADMITTED</b>
Petitioner's Exhibit I (Affidavit of Ted Embry)	<b>OBJECTION, SUSTAINED</b>
Petitioner's Exhibit J (Facebook post of Rachel Watts Tapp)	<b>ADMITTED</b>
Petitioner's Exhibit K – (Affidavit of OCWD Game Warden Rusty Menefee)	<b>ADMITTED<sup>6</sup></b>
Petitioner's Exhibit L (Affidavit of Mr. Shiloh Freed)	<b>OBJECTION, SUSTAINED<sup>7</sup></b>
Petitioner's Exhibit M (Voter registration data from Tapp family)	<b>ADMITTED</b>
Petitioner's Exhibit N (Cimarron Cnty. plat map 6N, 4E)	<b>ADMITTED</b>
Petitioner's Exhibit O (Cimarron Cnty. plat map 6N, 5E)	<b>ADMITTED</b>

*Witnesses for Petitioner*  
 Mr. Rusty Menefee  
 Mr. Shiloh Freed

<b>Contestee's Exhibits</b>	
Contestee's Exhibit A (Declaration of Candidacy for Kenneth Robert Tapp)	<b>ADMITTED</b>
Contestee's Exhibit B (Copy of Oklahoma Driver's License issued to Kenneth Robert Tapp)	<b>ADMITTED</b>
Contestee's Exhibit C (Copy of Oklahoma Voter Registration Card for Kenneth Robert Tapp)	<b>ADMITTED</b>
Contestee's Exhibit D (Affidavit of Paul Wells)	<b>ADMITTED</b>
Contestee's Exhibit E (Copy of 2018 Oklahoma Tax Return for Kenneth Robert Tapp and Rachel Watts [Tapp])	<b>ADMITTED</b>

<sup>6</sup> Contestee initially objected to the introduction of Mr. Menefee's affidavit (*see Pet'r.'s Ex. K*) as he would not have the opportunity to cross examine Mr. Menefee. On the conclusion of Mr. Menefee's testimony by telephone, Contestee withdrew his objection, and Petitioner moved for admission without objection. During the hearing, Witness Menefee conceded that he did not know who wrote his affidavit.

<sup>7</sup> Contestee initially objected to the introduction of Mr. Freed's affidavit (*see Pet'r.'s Ex. L*) as he would not have the opportunity to cross examine Mr. Freed. On the conclusion of Mr. Freed's testimony by telephone, Contestee withdrew his objection, but Petitioner decided against moving for admission of the affidavit.

<b>Contestee's Exhibits</b>	
Contestee's Exhibit F (Copy of 2019 Oklahoma Tax Return for Kenneth Robert Tapp and Rachel Watts [Tapp])	<b>ADMITTED</b>

*Witnesses for Contestee*

Contestee Kenneth Robert Tapp, *for himself*  
Rachel Wells Tapp  
Paul Wells

The Board conducted the hearing. After considering all evidence and testimony offered and admitted, and after hearing arguments by the Parties, the Board makes the following findings of fact and conclusions of law:

1. Contestee, Kenneth Robert Tapp, filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 61, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
2. Petitioner, State Rep. Kenton Patzkowsky, filed with the State Election Board a Declaration of Candidacy for the office of State Representative, District 61, during the 2020 Candidate Filing Period occurring on April 8 through April 10, 2020.
3. The SEB received proof of personal service made on Contestee within twenty-four (24) hours of setting the Petition for hearing, as required by 26 O.S. 2011, §§ 5-124 & 5-125.
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.
5. The allegation contained in the Petition filed by Petitioner Patzkowsky argues that since Contestee Tapp has not been a resident in House District 61 for the six (6) months immediately preceding the filing period, he does not qualify to be a candidate under 14 O.S. 2011, § 108. Instead, Petitioner proffered that Contestee lives out of state and across the Oklahoma-Colorado border in a rental house in Campo, Baca County, Colorado.
6. Pursuant to 14 O.S. 2011, § 108, a candidate for State Representative “must have been a registered voter in such district and a resident residing within such district for at least six (6) months immediately preceding the filing period prescribed by law.”
7. The filing period began on Wednesday, April 8, 2020, pursuant to 26 O.S. 2011, § 5-110. Consequently, Contestee Tapp was required to have been a registered voter and resident of House District 61 on or before October 7, 2019.
8. Contestee Tapp’s Declaration of Candidacy lists his residential address and mailing address as HCR 3 Box 14, Boise City, OK 73933. *See* **Petitioner’s & Contestee’s Exhibit A.**

9. Voter registration records indicate that Contestee Tapp and his wife, Rachel Kay Tapp, are registered voters in Cimarron County, OK<sup>8</sup>. *See* **Petitioner's Ex. M**.
10. Contestee Tapp possesses a valid Oklahoma Driver's License, which expires on January 31, 2021. The driver's license lists the same residential address as the address set forth on Contestee Tapp's Declaration of Candidacy (*see* **Pet'r.'s & Contestee's Ex. A; Finding of Fact 8**). *See* **Contestee Exhibit B**.
11. Contestee Tapp possesses an Oklahoma Voter Registration Card for address HCR 3 Box 11, Boise City, OK 73933. *See* **Contestee Exhibit C**.
12. Contestee Tapp and his wife, Rachel Tapp, filed state tax returns in the State of Oklahoma for tax years 2018 and 2019. *See* **Contestee Exhibits E & F**.
13. During the Petitioner's presentation of his case, the Election Board heard from a game warden for the State of Oklahoma (Rusty Menefee) and a county commissioner for Baca County, Colorado (Shiloh Freed). Both indicate that they have seen Contestee Tapp's vehicle at the Colorado rental house (*see* **Finding of Fact 5**). In fact, Freed testified during the hearing that he personally saw Mr. Tapp at the Colorado rental home "three weekends ago." However, both stopped short of testifying that they knew for a fact that Contestee Tapp intended to the Colorado rental home his residence. Notably, Witness Menefee testified that it was his belief, based on his knowledge and experience that he would not recommend Contestee Tapp for an in-state hunting and fishing license based on possible dual residency issues. Although Witness Freed did admit to not knowing specifics about the Contestee's living arrangements in Campo, CO, he still considers Contestee Tapp a constituent. In short, witnesses for Petitioner lacked the requisite personal knowledge to provide credible, material information that would have been of sufficient probative value to support the Petitioner's contentions.
14. During the Contestee's presentation of his case, the Election Board heard from the Contestee, his wife, and Contestee Tapp's employer. Testimony elicited from Contestee Tapp indicated that he, his wife, and their daughter live with his father in his father's Oklahoma residence where Contestee Tapp works on the family ranch. He also does work for Witness Wells. Contestee Tapp also stated that he, his wife, and their daughter "stay most nights"<sup>9</sup> of the week in a rental house leased by his father across the border in Colorado to "get out of his father's hair." Notwithstanding, Contestee Tapp testified that he spends a majority of his time at the ranch house in Oklahoma, which he considers his home.<sup>10</sup> When asked where he considers his "residence," Contestee Tapp answered Boise

---

<sup>8</sup> Contestee Tapp and his wife possess different mailing addresses. During the hearing, Contestee Tapp explained that this was due to renumbering of the box by the United States Postal Service.

<sup>9</sup> Answering a question from Member Cline about quantifying his time at the Colorado rental house, Contestee Tapp estimated that 85-90% of his week nights are spent at the rental house.


<sup>10</sup> Testimony from Contestee Tapp also gave insight about where he keeps his clothing and possessions, where his daughter's clothing and toys are located, and where he eats his meals. In sum, it varies. Possessions are located at both the ranch house in Oklahoma and the rental house in Colorado. Furthermore, Contestee Tapp also admitted to making a monthly payment by check to his father's landlord of the Colorado rental house for utilities.

- City, OK. Contestee also offered that he is a current precinct chairman at his polling place in Boise City, OK. Contestee Tapp also offered that he has never voted in the State of Colorado or paid income taxes in Colorado.
15. Testimony from Ms. Tapp, Contestee Tapp's wife, indicated that she considers her primary residence to be HCR 3 Box 14, Boise City, OK 73933. She confirmed that Contestee Tapp's father (her father-in-law) rents the Baca County Colorado home. When asked about her daughter's education, Ms. Tapp offered that she intends to register as homeschooling in the State of Oklahoma. Ms. Tapp also stated that she and her family spend a majority of nights at the Colorado rent house and a majority of days at the Oklahoma ranch house. She does currently work jobs in Oklahoma. In 2020, she has earned some income, which she plans to claim on her state tax return for tax year 2020 to the State of Oklahoma. Ms. Tapp affirmed that the Boise City address was her primary residence. On cross examination, Ms. Tapp was asked about whether she agreed with Contestee Tapp's testimony that she, Mr. Tapp, and their daughter spend 85-90% of their week nights at the Colorado rental home. She was unable to confirm this percentage as accurate.
  16. 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* 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).
  17. 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).
  18. In light of the evidence admitted, specifically that Contestee Tapp has a valid Oklahoma Driver's License (**Contestee's Ex. B**), that he possesses a Oklahoma Voter Registration Card (**Contestee's Ex. C**), that he and his wife have filed state tax returns in the State of Oklahoma for tax years 2018 and 2019 at an Oklahoma address (**Contestee's Exs. E & F**), and the testimony given, as described above, by Contestee Tapp and Ms. Tapp, Contestee Tapp has met the six-month residential requirement under 14 O.S. 2011, § 108.
  19. Petitioner Kenton Patzkowsky has not sustained 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 Tapp does not meet the six-month residential requirement set forth in 14 O.S. 2011, § 108.
  20. Petitioner Patzkowsky's Petition is therefore **DENIED**, pursuant to 26 O.S. 2011, § 5-130, and Contestee Tapp's name shall appear on the ballot as a candidate for the office of State Representative, District 61.

21. Costs are assessed against Petitioner State Rep. Kenton Patzkowsky pursuant to 26 O.S. 2011, § 5-131.

On the 21st day of April, 2020, all members of the State Election, constituting a quorum, voted to **DENY** Petitioner State Rep. Kenton Patzkowsky's Petition for Contest of Candidacy and **RETAIN** the candidacy of Contestee Kenneth Robert Tapp on the ballot.

5-18-20  
Date

OKLAHOMA STATE ELECTION BOARD  
  
TOM MONTGOMERY, *Chairman*

