



IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH	
<p>HUBERT HUH,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>LAURA OSCARSON, DRAPER CITY, and SALT LAKE COUNTY,</p> <p style="text-align: center;">Respondents.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING PETITION</p> <p>Case No. 190906531</p> <p>Judge Keith Kelly</p>

This matter came before the Court on the Verified Petition to Set Aside Municipal Primary Election Results of Petitioner Hubert Huh (“Petitioner”). On September 6, 2019, this Court conducted an evidentiary hearing on Petitioner’s petition. Petitioner was represented by Karra Porter and Todd Weiler of Christensen & Jensen. Respondents Draper City and Laura Oscarson were represented by Andrew Morse and Scott Young of Snow Christensen & Martineau. Respondent Salt Lake County was represented by David Miller of the Office of the Salt Lake County District Attorney. Having considered the testimony and other evidence offered by the parties, and the arguments of counsel, the Court makes the following findings of fact, conclusions of law, and order:

1. The Court issued its findings of fact from the bench at the end of the September 6, 2019 hearing and expressly incorporates those findings herein. Based upon

the Court's findings of fact, the Court Concludes that Draper City followed the laws set forth in Utah's Municipal Code (Title 10 of the Utah Code) when it disqualified Mr. Huh from the primary election: "In a year in which a municipal primary is held, each candidate who will participate in the municipal primary shall file a campaign finance statement with the municipal clerk no later than seven days before the [election day]." [U.C.A. § 10-3-208\(3\)\(b\)](#). "A campaign finance statement required under this section is considered filed if it is received in the municipal clerk or recorder's office by 5 p.m. on the date that it is due." [U.C.A. § 10-3-208\(10\)](#). Any candidate who fails to timely file a campaign finance statement faces the following consequences:

If a candidate fails to timely file a campaign finance statement required under Subsection (3), the municipal clerk or recorder shall inform the appropriate election official who:

(i) shall:

(A) if practicable, remove the candidate's name from the ballot by blacking out the candidate's name before the ballots are delivered to voters; or

(B) if removing the candidate's name from the ballot is not practicable, inform the voters by any practicable method that the candidate has been disqualified and that votes cast for the candidate will not be counted; and

(ii) may not count any votes for that candidate.

[U.C.A. § 10-3-208\(9\)\(a\)](#).

2. The case of [Pugh v. Draper City, 2005 UT 12, 114 P.3d 546](#) is controlling here. Like Mr. Huh, "Petitioner Summer Pugh was a candidate for the [] Draper City Council election, but her name was removed from the ballot when Draper City determined that she had not complied with [Utah Code section 10-3-208](#)." *Id.*, ¶ 1. The

deadline for Ms. Pugh’s disclosure was 5:00 p.m. on October 28, 2003; however, “Ms. Pugh filed her financial disclosure with the Draper City Recorder’s Office the following day, on October 29.” *Id.*, ¶ 4. Ms. Pugh filed a petition to regain access to the ballot, arguing that she had *substantially* complied with the financial disclosure requirements of [Utah Code § 10-3-208](#) by filing her disclosures within a day of the deadline. The district court disagreed, and the Utah Supreme Court affirmed. In doing so, the Utah Supreme Court construed the financial disclosure statute as requiring *strict* compliance:

We hold that the plain language and structure of [section 10–3–208](#) require strict compliance with its interim reporting requirements. Candidates are unambiguously required to file financial disclosure statements seven days before the election. In this case, Ms. Pugh was required to file these statements by 5 p.m. on October 28. Because she did not file her statement until October 29, she did not *strictly* comply with the plain meaning of the statute, and the city recorder correctly directed city elections officials to remove her name from the ballot.

[Id.](#), ¶ 17 (emphasis added).

3. Three years after the [Pugh](#) decision, the Utah legislature amended Utah’s Election Code to effectively codify the strict compliance standard set forth in *Pugh*:

- (1) Whenever any controversy occurs between any election officer or other person or entity charged with a duty or function under this title and any candidate....either party may file a verified petition with the district court.
- (2) After reviewing the petition, the court shall:
 - (b) summarily hear and dispose of any issues raised by the petition to obtain:
 - (i) **strict compliance with all filing deadlines for financial disclosure reports under:**
 - (A) [Section 10-3-208](#), regarding campaign finance statements in municipal elections;

[Utah Code § 20A-1-404](#).

4.. *Pugh* and the current versions of [Utah Code §§ 10-3-208 and 20A-1-404](#)

require strict compliance. Mr. Huh did not meet this standard and, as a result, he was rightfully disqualified from the primary election.

5. Mr. Huh knew, or should have known, the deadline to submit his campaign finance statement was August 6, 2019, at 5:00 p.m. He had run for Draper City Council once before in 2017. He was familiar with the process and with the requirements to timely file various declarations and disclosures, including his campaign finance statement. On June 5, 2019, he met with Ms. Oscarson and received a City of Draper Candidate Guide, which identified the correct deadline of August 6, 2019, at 5:00 p.m. Although there were two communications from Draper City containing an erroneous date, Ms. Oscarson sent Mr. Huh and the other candidates multiple correspondence in the following weeks that unequivocally corrected the prior emails and identified the correct deadline. Mr. Huh responded to emails on July 19th and July 29th with the correct deadline, thanking Ms. Oscarson for the reminders. Mr. Huh even admits this in his Verified Petition:

Ten days later, on July 29, 2019, Ms. Oscarson sent an email with the subject line Campaign Finance Disclosure “reminder.” Neither the subject line nor the body of the email mentioned that the earlier “official notice” had an incorrect date. The body of the “reminder” stated the correct (August 6) deadline.

Mr. Huh saw the word “reminder” and sent a thank-you response.

Verified Petition, ¶¶ 12-13. Thus, *before* Ms. Oscarson’s errant correspondence, Mr. Huh had documents in his possession that revealed the correct deadline, and *after* the errant correspondence, Mr. Huh received and acknowledged receipt of several

correspondence that identified the correct deadline.

6. Mr. Huh did not have his campaign finance statement when he arrived at Draper City Hall at 5:01 p.m. on August 6. Mr. Huh told Mr. Dobbins that he had not brought any disclosure documents with him at that time and that the documents were at his home.

7. Even if Mr. Huh had brought the necessary disclosures with him, Mr. Huh did not even arrive at the Draper City Hall in time to file his campaign finance disclosures. Ms. Oscarson's Apple Watch and Draper City's computers and telephones all showed that Mr. Huh arrived after 5:01 p.m. Draper City's video surveillance system, which recorded Mr. Huh's arrival at Draper City Hall, confirms he arrived after 5:01 p.m. The time displayed on all of those devices is received through NTP services and reflects the actual time.

8. Mr. Huh failed to strictly comply with [Utah Code §§ 10-3-208 and 20A-1-404](#) when he waited until 6:38 p.m. on August 6, more than 1 ½ hours after the deadline, to make his campaign financial disclosures. Therefore, Mr. Huh's disqualification was proper.

9. Mr. Huh admitted he was in error in an email on August 7th, the day after the primary election, to Ms. Oscarson, stating:

Like I said **I was totally mistaken thinking I had more time. I know you sent me kind reminders but somehow I only paid attention to your first letter.** I feel so embarrassed. My degree of embarrassment is beyond description. I couldn't go to sleep at all.

ORDER

Based on the foregoing findings of fact and conclusions of law, this Court hereby enters **JUDGMENT FOR THE RESPONDENTS and DISMISSES THE PETITIONER'S VERIFIED PETITION.**

DATED AND SIGNED ABOVE.