

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

STATE BALLOT LAW COMMISSION

Docket No. 02-05

Docket No. 02-06

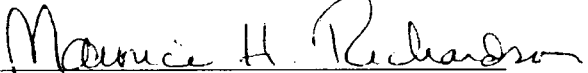
_____)
)
 SUSAN THOMSON,)
 Objector)
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 v.)
)
 MITT ROMNEY,)
 Respondent)
 _____)

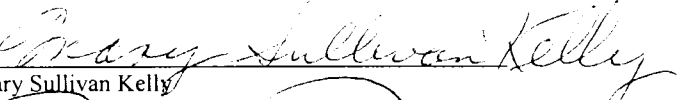
_____)
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 AARON I. GINSBURG,)
 Objector)
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 v.)
)
 MITT ROMNEY,)
 Respondent)
 _____)

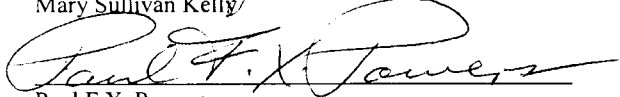
DECISION


The Objections of Susan Thomson and Aaron I. Ginsburg are OVERRULED on the merits and the Secretary is ordered to print Respondent Mitt Romney's name on the primary ballot as Republican candidate for the office of Governor of Massachusetts.

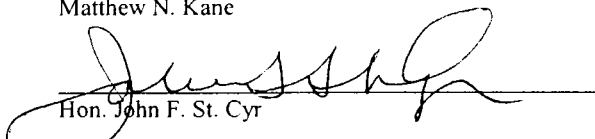
STATE BALLOT LAW COMMISSION


 Hon. Maurice H. Richardson, Chair


 Mary Sullivan Kelly


 Paul F.X. Powers


 Matthew N. Kane


 Hon. John F. St. Cyr

Dated: June 25, 2002

IMPORTANT:

Judicial review of this decision may be sought by civil action under G. L. c. 30A, § 14, within 5 days after receipt of this notice.

Respondent became an inhabitant of the state of Utah, thereby abandoning his Massachusetts domicile.

The Commission finds, rules and concludes that the Respondent's testimony was credible in all respects regarding the fact that the Respondent intended Massachusetts to be his domicile from 1971 to the present. The Commission further finds that the Objectors have failed to prove by a preponderance of the evidence that the Respondent ever abandoned his Massachusetts domicile and established domicile in Utah. The Commission finds, rules and concludes, as a matter of fact and law, that the Respondent has been a continuous inhabitant of Massachusetts from 1971 to present.

The Respondent therefore has met the inhabitancy qualification of the Massachusetts Constitution and is eligible to appear on the ballot as candidate for the office of Governor of the Commonwealth of Massachusetts.

II. OBJECTIONS

On June 7, 2002, three objections were filed, one by Susan Thomson, one by Aaron I. Ginsburg and one by Thomas P. Tierney, challenging the Respondent's qualifications, claiming he had not been an inhabitant of the Commonwealth of Massachusetts for seven years preceding the election to be held on November 5, 2002.¹

The State Ballot Law Commission (Commission) has jurisdiction to hear such objections pursuant to General Laws chapter 55B, section 4.

¹ The objection of Mr. Tierney was withdrawn on June 18, 2002. See SBLC 02-07.

III. PRELIMINARY PROCEDURAL MATTERS

On June 14, 2002, a pre-hearing conference was noticed by the Commission in order to consider preliminary matters. All Objectors were present together with counsel for Objector Thomson and Respondent Romney.²

A. Consolidation

At the pre-hearing conference, the Commission, on its own initiative and without objection from any of the parties, consolidated the matters in so far as they contained the same objections to the Respondent's qualifications. Objector Thomson was allowed to proceed as the lead case while reserving an opportunity for Objectors Ginsburg and Tierney to present additional evidence.

B. Objector Thomson's Request for Approval to Take Deposition of Lisa Riley Roche

Objector Thomson, in accordance with 950 C.M.R. § 59.03 and 801 C.M.R. § 1.01(8)(c), filed a Request for Approval to Take Deposition of Lisa Riley Roche, a newspaper reporter with the *Deseret News* located in Salt Lake City, Utah. Ms. Roche reported two articles, one on April 11, 2000 and the other on June 7, 2002, relative to the Respondent. The Respondent assented to the taking of Ms. Roche's deposition, and both parties agreed to submit the deposition of Ms. Roche in lieu of testimony.

The Commission allowed Objector Thomson's Request to take the deposition of Ms. Roche. However, Ms. Roche objected to such taking and thus on June 17, 2002, proceedings took place before Judge Nehring of the Third Judicial District Court of Salt Lake County, Utah. Judge Nehring limited the deposition to certain narrow areas requested by Objector Thomson or, in the alternative, allowed Ms. Roche to submit an

² Objectors Ginsburg and Tierney proceeded *pro se*.

affidavit in lieu of being deposed. The parties ultimately agreed to accept an affidavit from Ms. Roche, and Ms. Roche's affidavit was submitted, without objection as Exhibit # 50.

As a general practice, the Commission does not accept affidavits that bear directly on an ultimate fact in dispute. 950 C.M.R. § 59.03(20A). In this case, however, there appeared to be good cause shown for submission of an affidavit given that the witness was located out of state, the narrow issues involved and the assent of the parties.

C. Respondent's Motion to Take Deposition of Barbara J. Kresser

The Respondent, in accordance with 950 C.M.R. § 59.03 and 801 C.M.R. § 1.01(8)(c), filed a Motion to Take the Deposition of Barbara J. Kresser, County Assessor, Summit County, Utah. The Respondent further requested that such deposition be by audiovisual means pursuant to Rule 30A of the Massachusetts Rules of Civil Procedure. Objector Thomson assented to the taking of Ms. Kresser's deposition, but did not assent to the taking of the deposition by audiovisual means. Both parties agreed to submit the deposition of Ms. Kresser in lieu of testimony.

The Commission allowed the Respondent's Motion to Take Deposition of Ms. Kresser but denied the taking of such deposition by audiovisual means. The signed Deposition of Ms. Kresser was provided to the Commission on June 24, 2002.

D. Respondent's Motion for Protective Order as to Tax Documents

The Respondent, in accordance with 801 C.M.R. § 1.01(8)(a), filed a Motion for Protective Order as to the Respondent's Tax Documents.³ The Objector had sought copies of the Respondent's tax filings (Massachusetts, Utah and federal) as well as

³ Prior to the commencement of these proceedings, the Respondent, by his own initiative, provided redacted portions of both state and federal tax returns that related to the residency issues.

communications with the Respondent's tax preparers. The Commission allowed the motion insofar as Objector Thomson sought to compel production of tax filings and other related documents.

With respect to Massachusetts state tax returns, there is a long-standing privilege set forth in statute and case law against the disclosure of state tax returns. G. L. c. 62C, § 21; Finance Commissioner of Boston v. Commissioner of Revenue, 383 Mass. 63, 67-69 (1981); Finance Commissioner of the City of Boston v. McGrath, 343 Mass. 754, 766-68 (1962); Leave v. Boston Elevated Ry. Co., 306 Mass. 391, 398-403 (1940); James Millar Co. v. Commonwealth, 251 Mass. 457, 464 (1925). Further, tax preparers are generally prohibited from disclosing to third parties any information obtained in the preparation of a client's tax returns. G. L. c. 62C, § 74.

Since the Objector presented no evidence regarding Utah legal authority for release or withholding of Utah state income tax returns, the Commission applied the same standard to the Respondent's Utah tax filings as that applied to his Massachusetts state income tax filings.

Although it is recognized that federal tax returns are not absolutely privileged as are the Massachusetts returns, they may only be discovered under appropriate circumstances where there is a sufficient showing of need. Town Taxi Inc. v. Police Commissioner of Boston, 377 Mass. 576, 587-588 (1979). The Commission found that the Respondent's federal income tax returns are relevant insofar as they relate to residency only and that financial information may be redacted. Although financial information contained within the tax filings may show financial benefits afforded to the

Respondent, the Commission determined that the privacy rights of the Respondent outweigh any probative value, if any, that this evidence might have.

The Respondent agreed to produce his federal, Utah and Massachusetts income tax returns in a redacted form. Accordingly, the Respondent's Motion for Protective Order was allowed.

E. Objector Thomson's Request for Approval to Serve Interrogatories

On Friday, June 14, 2002, Objector Thomson, in accordance with 950 C.M.R. § 59.03 and 801 C.M.R. § 1.01(8)(g), filed a Request for Approval to Serve Interrogatories, with answers to be provided by 9:00 a.m. on Monday, June 17, 2002. Objector Thomson had originally provided the Respondent with the Request for Interrogatories on June 12, 2002, but had received no response. Although the time frame was narrow, the Commission found that the Respondent had sufficient notice of such questions and therefore allowed Objector Thomson's Request in part and denied in part.

Specifically, the Commission ordered the Respondent to answer Interrogatories 1, 2, 4, 5, 6, 9, 10, 11, and 12. The Commission denied the Objector's request for answers to Interrogatories 3, 7, 8, 13, and 14. The Commission found that Interrogatories 7, 8 and 13 were too broad and therefore were denied. Consistent with its previous allowance of the Protective Order, the Commission denied the remaining requests.

F. Objector's First Request for Production of Documents; Objector's Second Request for Production of Documents; Objector's Motions to Compel Production of Documents

On June 7, 2002, Objector Thomson, in accordance with 950 C.M.R. § 59.03 and 801 C.M.R. § 1.01(8)(b), filed Objector's First Request for Production of Documents.

For convenience, the requested documents are listed below together with the response of the Respondent in italics and in parenthesis after each request.

1. The first page of Form 1 or Form 1-NR/PY of your Massachusetts Income Tax Returns for each of the years 1998, 1999, 2000 and 2001, including, but not limited to, all amended returns, redacted to show only your address and whether you filed a Form 1 Resident Income Tax Return or a Form 1-NR/PY Non-Resident/Part-Year Resident Income Tax Return for each of these years. *(The Respondent agreed to provide redacted copies of the same).*
2. All property tax bills for the property at 171 Marsh Street, Belmont, Massachusetts. *(The Respondent agreed to provide redacted copies of the same).*
3. All property tax bills for the property 3853 Rising Star Lane, Park City, Utah. *(The Respondent agreed to provide redacted copies of the same).*
4. All property tax bills for any other land, houses, condominiums, townhouses or apartments in which you and/or your wife have ownership interest. *(The Respondent agreed to provide redacted copies of the same.)*
5. All excise tax bills for any motor vehicle owned by you or your wife. *(The Respondent agreed to provide redacted copies of the same).*
6. All motor vehicle licenses, both expired and current. *(The Respondent agreed to provide redacted copies of the same).*
7. All automobile insurance policies and bills for all motor vehicles owned by you or your wife. *(The Respondent agreed to provide redacted copies of the same).*
8. All automobile registrations for all motor vehicles owned by you or your wife. *(The Respondent agreed to provide redacted copies of the same).*
9. All water and sewer bills for the property at 171 Marsh Street, Belmont, Massachusetts. *(The Respondent agreed to provide redacted copies of the same).*
10. All fishing, hunting or other recreational licenses or registration. *(The Respondent agreed to provide non-redacted copies of the same.)*
11. All documents evidencing membership or participation in any charitable, social or civic organization. *(The Respondent agreed to provide redacted copies of the same).*

12. All correspondence sent by you, or on your behalf, to the Summit County Assessor's office. (*The Respondent agreed to provide non-redacted copies of the same.*)
13. All correspondence received by you or your agents from the Summit County Assessor's office. (*The Respondent agreed to provide non-redacted copies of the same.*)
14. All correspondence between you and your tax accountants, tax preparers, and any other tax advisors. (*The Respondent objected to this request.*)

On June 10, 2002, Objector Thomson, in accordance with 801 C.M.R.

§ 1.01(8)(b), filed Objector's Second Request for Production of Documents. For convenience, the requested documents are listed below together with the response of the Respondent in italics and in parenthesis after each request.

15. All of your federal and state income tax returns for each of the years 1998, 1999, 2000, and 2001, including, but not limited to, all schedules, worksheets, and amended returns. (*The Respondent objected to this request.*)
16. All documents, memoranda, correspondence and communications, evidencing: (1) stock trades or any other event triggering a capital gain or loss for each of the years 1998, 1999, 2000, 2001; (2) capital gains taxes incurred by you in Utah and Massachusetts for each of the years 1998, 1999, 2000 and 2001; (3) short-term and long-term capital gains taxes paid by you in Massachusetts and Utah for each of the years 1998, 1999, 2000 and 2001. (*The Respondent objected to this request.*)
17. All United States passports, both expired and current. (*The Respondent agreed to provide non-redacted copies of the same.*)
18. A cancelled check from each bank account or money market account held in your name, either individually or jointly, for each of the years 1998, 1999, 2000, and 2001. (*The Respondent agreed to provide redacted copies of the same.*)
19. One month's bank statement for each of the years 1998, 1999, 2000 and 2001 for each savings and checking account held by you, individually or jointly, redacted to show only (1) your name; (2) your mailing address; (3) name of the financial institution; and (4) address of the financial institution. (*The Respondent agreed to provide redacted copies of the same.*)

20. All cancelled checks evidencing the payment of your property taxes and state income taxes in Massachusetts and Utah. *(The Respondent agreed to provide redacted copies of the same).*
21. All documents filed with, or received from, the Summit County Assessor's office, including, but not limited to, a Signed Statement of Primary Residence. *(The Respondent agreed to provide redacted copies of the same).*
22. All correspondence, communication (including email communications), press releases, press statements, and any other documents regarding your residency status, including, but not limited to, your intention to remain in Utah or move to Massachusetts after the 2002 Winter Olympic Games. *(The Respondent agreed to provide redacted copies of the same).*
23. One month's electricity, gas, oil, and telephone bill for the property at 171 Marsh Street, Belmont, Massachusetts for each of the years 1998, 1999, 2000 and 2001. *(The Respondent agreed to provide redacted copies of the same).*
24. A sample bill for each of the years 1998, 1999, 2000, 2001 and 2002, for the payment of dues or membership fees for each social, recreational, civic, political or charitable organization or club of which you are a member. *(The Respondent agreed to provide redacted copies of the same).*
25. All documents, correspondence, and communications regarding jury service in any federal court, any Massachusetts state court, and any Utah state court. *(The Respondent agreed to provide non-redacted copies of the same.)*

On June 13, 2002, the Respondent filed a response to the Objector's First and Second Requests for Production of Documents, which included the above noted responses as well general objections to the production of the requested documents. The Respondent objected to Requests # 14, # 15, and # 16 on the grounds that such requests were overbroad, unduly burdensome and not reasonable calculated to lead to the discovery of relevant or admissible evidence, that such requests sought documents that are privileged and confidential, and that they were designed to harass, annoy or oppress the Respondent.

On June 14, 2002, Objector Thomson, in accordance with 950 C.M.R. § 59.03 and 801 C.M.R. § 1.01(8)(i), filed a Motion to Compel Production of Documents. In her

Motion and at oral argument, Objector Thomson limited her requests, seeking only the following:

- a. transmittal letters accompanying completed Massachusetts and Utah tax returns sent to Romney for review and signature;
- b. such correspondence as may refer or relate to Romney's tax filing status (resident or non-resident);
- c. documents evidencing stock trades and capital gains taxes incurred and/or paid in Utah or Massachusetts.

At the pre-hearing conference held on June 14, 2002, the Commission allowed that Motion to Compel insofar as it sought correspondence that may refer or relate to the Respondent's tax filing status as a "resident" or "non-resident." Consistent with allowance of the Protective Order, the Commission denied the remaining requests.

On June 17, 2002, Objector Thomson filed a Second Motion to Compel Production of Documents seeking copies of completed and signed signature pages of the Respondent's 1999 and 2000 part-year resident and non-resident Massachusetts income tax returns. The Respondent stated that he did not have signed copies of the requested documents but that he would seek such copies from the Massachusetts Department of Revenue. Since the Respondent agreed to produce the requested documents in redacted form, the Commission directed the Respondent to make a diligent effort to obtain the requested copies and to produce these documents when they became available from the Department of Revenue but no later than Friday, June 21, 2002. The Respondent provided the requested documents, in redacted form, at the hearing on Tuesday, June 18, 2002.

G. Respondent's Motion in Limine to Exclude Expert Testimony

On June 14, 2002, the Respondent filed a Motion in Limine to Exclude Expert Testimony. At the pre-hearing conference, Objector Thomson indicated that she intended to call two expert witnesses. The first was represented as an eminent scholar in the legal history of the inhabitancy qualification of the Massachusetts Constitution. The second was represented as an expert in tax issues that might arise in the case.

With respect to the proposed legal historian, the Commission allowed Respondent's Motion to Exclude such testimony. An expert witness would be appropriate and helpful to the Commission if his or her testimony would be useful in determining a fact in issue or in understanding the evidence presented. The expert testimony of a historian on the meaning of 'inhabitation' or 'domicile' tends to offer evidence in an area of the law which the Commission finds is within its unique knowledge and expertise based upon its own past decisions and applicable court rulings.

With respect to the proposed tax expert, the Commission allowed the Motion in Limine. Given the Commission's previous rulings that any tax issues had been narrowed to refer only to the issue of inhabitancy, there was no need for testimony of a tax expert. Therefore, Respondent's Motion in Limine to Exclude Expert Testimony was allowed in both instances.

H. Respondent's Request to Present His Case First

At the pre-hearing conference, the Respondent requested that he be allowed to present the testimony of the Respondent himself first in accordance with 801 C.M.R.

§ 1.01(10)(e)(2). Since the Objectors have the burden of going forward and proving their cases by a preponderance of the evidence, they are generally given the right to proceed first. Therefore the Commission denied Respondent's request.

IV. HEARING

Evidence was received for three (3) consecutive days beginning on June 17, 2002. One (1) witness, the Respondent, Mitt Romney, testified; fifty-one (51) exhibits were received in addition to the Deposition of Barbara J. Kresser. The matter having been heard and after consideration of the pleadings, stipulations, evidence and argument of the parties, the Commission finds, rules and concludes as set forth in the following sections of this decision.

V. FINDINGS OF FACT

1. The Respondent first established inhabitancy in Massachusetts in the early 1970's, when he purchased a home with his wife in Belmont and began studies at Harvard Law School, and has remained a continuous inhabitant of Belmont, Massachusetts until at least February 11, 1999.
2. The Respondent has been continuously registered to vote in the town of Belmont since 1971. The Respondent has not registered to vote nor has he voted in any place other than Belmont since 1971.
3. The Respondent or his spouse have continuously owned homes in Belmont. The first home was purchased in 1971, the next home (on Tyler Road) purchased approximately seven years later and the present home (on 171 Marsh Street) purchased approximately five to ten years later.

4. The Respondent raised his five children in Belmont, Massachusetts. All of them attended schools in Belmont.
5. The Respondent was employed in Massachusetts from 1975 until 1999.
6. In 1994, the Respondent was the Republican nominee for the office of United States Senator of Massachusetts.
7. At present, the Respondent or his wife own three properties: 171 Marsh Street, Belmont Massachusetts (in wife's name); 87 Clafin Road, Wolfeboro, New Hampshire (in wife's name); and 3853 Rising Star Lane, Park City, Utah (in Respondent's name).
8. In 1996, the Respondent and his wife purchased the property now known as "3853 Rising Star Lane, Park City, Utah," (hereinafter referred to as "the Utah property") to build a vacation home. In 1997, the Utah property was listed as "non-primary building" and "non-primary land" by the Summit County Assessor's office. Exhibit # 1. In 1998, the Utah property was listed as "non-primary improved property" by the Summit County Assessor's office. Exhibit # 2. In 1999, 2000 and 2001, the Utah property was listed as "primary improved property" by the Summit County Assessor's office. Exhibits # 3, # 5, # 6, # 7, # 8 and # 9. The Respondent received a tax exemption in the years 1999, 2000 and 2001 because of the classification of the Utah property as "primary improved residence."
9. The Respondent did not file or submit any form or request asking for a tax exemption or claiming that the Utah property was his primary residence. The property tax classification and resulting tax exemption were the result of an

error by the Summit County Assessor's office. Exhibit # 11; Deposition of Barbara J. Kresser at 49-52.

10. At the time the Utah property was purchased, the Respondent did not intend to reside in Utah for purposes of running the Olympic Games, but rather intended to build a vacation home.
11. As of January 1, 1999, all of the Respondent's bank and investment accounts were held at Boston area financial companies (Fleet Bank and Goldman Sachs, Boston Office, respectively).
12. As of January 1, 1999, the Respondent was a director of four corporations—Staples, Inc., headquartered in Framingham, Massachusetts; Life Like Corporation, headquartered in Colorado; Marriott International, headquartered in Bethesda, Maryland; and the Sports Authority, headquartered in Fort Lauderdale, Florida.
13. The Respondent is a corporator of the Belmont Hill School and a member of the Belmont Hill Club and has been since at least 1999.
14. On February 11, 1999, the Respondent went to Utah to take the position of Chief Executive Officer (CEO) for the Salt Lake Organizing Committee of the 2002 Winter Olympic Games, a non-profit organization burdened by scandal and fiscal crisis.
15. On or about February 11, 1999, the Respondent became an employee of the Salt Lake Organizing Committee for a fixed term of three years. While so employed, the Respondent worked, on average, over 12 hours per day, 6 _ days per week.

16. When the Respondent went to Utah in February 1999, he took only some clothes and items he would need for his employment. The Respondent did not take his furniture, personal documents, business documents (including tax filings, financial records, bank statements, marriage certificate and graduation certificates) and family portraits. Those items remained at his home in Belmont, Massachusetts. The Respondent did not take his medical records and retained his primary care physician in Massachusetts.
17. After arriving in Salt Lake City, Utah in 1999, the Respondent first rented an apartment before ultimately staying at the Utah property.
18. As part of his employment with the Salt Lake Organizing Committee, the Respondent traveled to: Colorado for meetings with the United States Olympic Committee; Washington, D.C. for meetings with the White House Task Force for Organizing the Winter Games and other federal agencies; international locations to meet with the International Olympic Committee; and other widespread locations, including Massachusetts, to meet with potential Olympic Game sponsors. While employed with the Salt Lake Organizing Committee, the Respondent also traveled to Atlanta, Detroit, Washington, D.C. and New York City to attend the passing of the Olympic torch. The Respondent returned to Massachusetts and spent an entire day with the Olympic torch.
19. In addition to his Olympic-related trips to Massachusetts, the Respondent made several other social and business trips to Massachusetts. In particular, the Respondent returned to Massachusetts in June 1999 to attend his son's

graduation and speak at the commencement for the Belmont Hill School. In addition, the Respondent returned to Massachusetts to celebrate Thanksgiving, to tour a newly constructed temple built by his church and again for its dedication, to celebrate the marriage of his son at that temple and returned for the birth of his grandchildren as well as other social occasions.

20. While employed with the Salt Lake Organizing Committee, the Respondent continued to serve on three (3) boards of directors (Staples, Marriott International and Life Like). The Respondent returned to Massachusetts from Utah to attend meetings at Staples. The Respondent declined to join any boards in Utah, with the exception of the Salt Lake Chamber of Commerce, which he joined as an ex-officio member in an effort to promote and coordinate the Winter Olympics.
21. While in Utah, the Respondent opened one checking account with a local Utah bank for purposes of convenience. After February of 1999, the Respondent continued to maintain accounts in Boston at Fleet Bank and Goldman Sachs.
22. When first employed with the Salt Lake Organizing Committee, the Respondent continued to have his bills sent to his Belmont home and instructed one of his children to forward the bills to Utah. Sometime shortly after going to Utah, the Respondent retained the services of a bookkeeper in Massachusetts. Some of the Respondent's bills were sent to the bookkeeper at a Post Office box in Wellesley Hills. The bookkeeper paid those bills from a Massachusetts Fleet checking account in the Respondent's name.

23. From 1999 to 2001, some of the Respondent's bills, including, but not limited to American Express bills and certain tax bills, were directed by the Respondent's wife to be sent to the Utah property.
24. From February 1999 until February 2002, the Respondent continued to pay utilities (gas, electricity and telephone lines) and cable television for the property located at 171 Marsh Street, Belmont. Exhibits # 36 and # 37.

During that time, the Respondent maintained insurance on his Belmont house, the Utah property and automobiles in Utah and Massachusetts through a local Belmont insurance agent. Exhibits # 41 and # 49.
25. The Respondent was physically present in Utah more than in Massachusetts from February 1999 until February 2002.
26. Between February 1999 and June 2001, the town of Belmont held seven (7) elections. The Respondent voted in two (2) of those elections: the March 7, 2000 presidential preference primary and the November 7, 2000 state election. Exhibit # 25.
27. In 1999 and 2000, the Respondent contributed money to the United Way of the Great Salt Lake Area chapter. In his 1999 donation of \$13,000, the Respondent directed that \$10,000 be designated to the United Way of Massachusetts Bay and that \$2000 be designated to the Belmont Mercy House. In his 2000 donation of \$18,000, the Respondent directed that \$10,000 be designated to the United Way of Massachusetts Bay and that \$4000 be designated to the Belmont Mercy House. Exhibits # 23A, # 23B and

- # 38. The Respondent also contributed to the Fidelity Charitable Foundation in Boston during at least the years 1999, 2000 and 2001. Exhibit # 40.
28. The Respondent relied upon PricewaterhouseCoopers for preparation of all of his tax returns in 1999, 2000 and 2001. PricewaterhouseCoopers provided the Respondent with two copies of his completed returns--one for Respondent to sign and send to the appropriate agency and the other for the Respondent's own records together with a cover sheet. The cover sheet instructed the Respondent where to sign and date and where to send the signed form. PricewaterhouseCoopers also attached a "sign here" flag to such returns. PricewaterhouseCoopers did not designate any other portion of the tax filings for the Respondent to complete prior to signing and mailing.
29. In 1999, the Respondent filed a "Part-Year" Resident Income Tax form for the State of Utah. Exhibit # 12.
30. In 1999, the Respondent filed a "Part-Year" Resident Income Tax form for the Commonwealth of Massachusetts. The Respondent did not designate a place of domicile on the line provided on the form. Exhibits # 29, # 30, # 45A and # 45B. The Respondent did not notice this line when signing his return.
31. Filing as a part-year resident for both Utah and Massachusetts in 1999 made sense to the Respondent because he had been physically present in both states for part of that year.
32. In 1999, the Respondent listed 3853 Rising Star Lane, Park City, Utah as his address on his United States Income tax return. Exhibit # 16A.

33. In 2000, the Respondent filed a Resident Income Tax form for the State of Utah. Exhibit # 15.
34. In 2000, the Respondent filed a Non-Resident Income Tax form for the Commonwealth of Massachusetts. The Respondent did not designate a place of domicile on the line provided on the form. Exhibits # 32A, # 32B and # 45C. The Respondent did not notice this line when signing his return.
35. In 2000, the Respondent listed 3853 Rising Star Lane, Park City, Utah as his address on his United States Income tax return. Exhibit # 16B.
36. In April 2002, the Respondent amended his 1999 and 2000 Massachusetts state Income Tax returns to change from part-year and non-resident to resident. Exhibits # 26 and # 27.
37. The Respondent's testimony was credible in all respects regarding the fact that the Respondent intended Massachusetts to be his domicile from 1971 to the present.

VI. ISSUES OF LAW AND CONCLUSIONS

A. Evidentiary Standard Used by the Commission

The Commission's findings are based on substantial evidence, which is defined as "such evidence as a reasonable mind might accept as adequate to support a conclusion." G. L. c. 30A, § 1(6); Capezzuto v. State Ballot Law Commission, 407 Mass. 949, 952 (1990); Hershkoff v. Registrars of Voters of Worcester, 366 Mass. 570, 574 (1974); Labor Relations Commission v. University Hospital, Inc., 359 Mass. 516, 521 (1971); Almeida Bus Lines, Inc. v. Department of Public Utilities, 348 Mass. 331, 341 (1965).

In proceedings before the Commission, the objector has the burden of going forward. Hamill v. Sawyer, SBLC 90-14 (June 27, 1990). The objector must meet his burden of proof by proving his allegations by a preponderance of the evidence. DeJong v. Owens, SBLC 90-10 (June 22, 1990).

B. Constitutional Requirements of Inhabitancy for the Office of Governor of Massachusetts

The Constitution of Commonwealth of Massachusetts requires that an individual who seeks the office of Governor shall be an inhabitant of this Commonwealth for at least seven years preceding the date of the election for that office. The Constitution of the Commonwealth of Massachusetts states, in pertinent part, that:

[n]o person shall be eligible to this office, unless at the time of his election, he shall have been an inhabitant of this commonwealth for seven years next preceding. . .

Mass. Const., Pt. 2, C. 2, § 1, Art. 2.

The seven-year inhabitancy requirement is one of the original qualifications for the office of Governor, established by the framers of the Massachusetts Constitution. While other original qualifications have since been abolished, the seven-year inhabitancy requirement has endured for well over two centuries.⁴ The inhabitancy requirement established in the Massachusetts Constitution is an essential qualification for those who seek the office of Governor, and it is by no means a mere technicality.

An examination of the seven-year inhabitancy requirement must logically begin with a consideration of the term “inhabitant” and its meaning as applied to the instant matter before the Commission. Throughout its history, the State Ballot Law Commission

⁴ Originally, the Massachusetts Constitution required that a person seeking the office of governor “declare himself to be of the Christian religion” (a qualification which was annulled in 1821 by Amended Article 7) and “be seised in his own right, of a freehold within commonwealth of a value of one thousand pounds” (a qualification that was annulled in 1892 by Amended Article 34).

has considered numerous cases dealing with the issue of inhabitancy as it relates to a candidate's qualification to seek elective office. See, e.g., Valliere v. Reyes, SBLC 00-1 (June 20, 2000); Gonsalves v. Merolla, SBLC 98-3 (June 18, 1998); Hastie v. Stebbins, SBLC 91-1 (August 27, 1991). Although the instant matter is the first time in which the Commission has considered the issue of inhabitancy for the office of Governor, the legal issues applicable to this case are in no way a matter of first impression to the Commission. While the durational inhabitancy requirements for particular elective offices may differ, the basic legal principles that have been applied by this Commission remain applicable notwithstanding the office sought.⁵

The term "inhabitant" appears throughout numerous constitutional and statutory provisions relating to a person's right to vote and seek electoral office. It is long settled that the term "inhabitant" in the context of voting is directly applicable when determining inhabitancy in the context of a candidate's qualification to hold office. Mass. Const. Pt. 2, C. 1, § 2, Art. 2; Opinion of the Justices, 240 Mass. 601 (1922).

It is well settled that the term "inhabitant" for electoral purposes as used in our state constitution and statutory provisions means "domicil."⁶ Hershkoff, 366 Mass. at 576 (citing cases); Opinion of the Justices, 365 Mass. 661, 663 (1974). "Every person must have a domicile, and he can have only one domicile at a time, at least for the same purpose. 'A person's domicile is usually the place where he has his home'. . . 'Home is

⁵ To seek the office of state representative, a candidate must have been an "inhabitant" of that district "for one year at least immediately preceding his election." Mass. Const. Amend. Art. 101, § 1. To seek the office of state senator, a candidate must have been an "inhabitant" of the Commonwealth of Massachusetts for "five years at least immediately preceding his election." Mass. Const. Amend. Art. 101, § 2. The Commission has considered numerous cases dealing with the inhabitancy requirement of candidate's for state representative and state senator.

⁶ The Commission recognizes that case law uses the word "domicil" while the more recognized spelling currently is "domicile." Throughout the Commission's Statement of Reasons, the word will appear generally as "domicile" unless quoting from a source in which the word originally appears as "domicil."

the place where a person dwells and which is the center of his domestic, social and civil life. A change of domicile takes place when a person . . . is physically present in a place and intends to make that place his home for the time at least; ‘the fact and intent must concur.’” Dane v. Board of Registrars of Voters, 374 Mass. 152, 161-162 (1978) (citations omitted); Hershkoff, 366 Mass. at 576-77 (1974) (citations omitted); Cook v. Bradley, SBLC 87-1 at 5 (July 21, 1987); Shaird v. Oliver, SBLC 82-5 at 2 (June 10, 1982), aff’d sub. nom. Oliver v. State Ballot Law Commission, No. 82-825 (Mass. Super., 1982); Harrington v. Marion, SBLC 80-11, at 1-2 (June 16, 1980) aff’d sub. nom. Harrington v. Connolly, No. 42734 (Mass. Super., 1980); Hastie, SBLC 91-1 at 3-4.

The determination of a person’s domicile is a question of fact coupled with a determination as to where the person intended his/her domicile to be. Both the fact and intent must concur. Hershkoff, 366 Mass. at 577. Once a domicile has been established, it remains as such unless, through compelling evidence, it is shown to have changed.⁷ Dane 374 Mass. at 162 (“Domicile once acquired is not lost until a new one is obtained . . . and the original domicile is presumed to have continued in the absence of compelling evidence that it has changed.”) (citation omitted); Commonwealth v. Davis, 284 Mass. 41, 49 (1933). “Mere temporary absence does not change [domicil], and personal presence in a place, even for a protracted period, does not of necessity fix the domicil in that place.” White v. Stowell, 229 Mass. 594, 597 (1918); Hastie, SLBC 91-1 at 3-4.

However, an individual’s mere assertion that he/she considers a particular place his/her

⁷ As noted above, the Objector’s burden before the Commission is proof by a preponderance of the evidence. However, the Dane case indicates that, when dealing with a change of domicile, “compelling evidence,” must be introduced which some may suggest is a higher standard for the Objector to meet. As set out below, the Commission need not address this issue since it finds that the Objectors have failed to prove their case by a preponderance of the evidence, a lesser standard, let alone by a compelling evidence standard.

domicile is not, in and of itself, sufficient to satisfy the intent requirement. This intent must be supported by objective manifestations that the person has sufficient contacts with the place he intends to call his domicile. Dane, 374 Mass. at 172-173.

While there are no fixed and certain elements to support this intent, such elements must be of a character and nature that would be consistent with a person maintaining a household and lifestyle in the community.⁸ A review of applicable case law and past Commission decisions indicate that elements supportive of intent include existence of a home, voter registration, voter participation, civic, charitable and religious affiliations, payment of taxes and insurance, registration of automobiles, location of bank accounts, location of personal records, celebration of important holidays and events, bills demonstrating a continuation of a household such as telephone, water, cable, electricity and heat. However, these are by no means meant to be an exhaustive list. Moreover, no factor standing alone can be dispositive. McDonnell v. Lozier, SBLC 84-12 at 3 (June 20, 1984).

A person may establish domicile by being physically present in a particular place for “the time at least.” Hershkoff, 366 Mass. at 578; Dane, 374 Mass. at 174. Once established, however, domicile is not lost without compelling evidence that it was the intention of the party to abandon his/her old domicile coupled with the future intention of establishing a new domicile. Dane, 374 Mass. at 162; Hastie, SBLC 91-1 at 4.

This is particularly applicable in certain employment situations. The courts and this Commission have recognized that an individual may be absent from his or her

⁸ As noted earlier, the law does not require a constant, uninterrupted actual presence at the chosen domicile, however, if a person is physically absent from his/her intended domicile for a time, he/she must retain objective, identifiable contacts which are of a nature to support the intention that the particular place is his/her permanent home. See Restatement 2nd Conflict of Laws, § 17.

intended domicile while fulfilling certain employment obligations, without having been considered to have abandoned that intended domicile. Commonwealth v. Gross, 324 Mass. 123, 126 (1949) (“domicile was not affected by [defendant’s] temporary absence in government service”); Hastie, SBLC 91-1 at 4 (holding that candidate did not abandon his Massachusetts domicile when he moved to Virginia to work at the Department of Transportation and the White House); see also District of Columbia v. Murphy, 314 U.S. 441, 454 (1941); Lewis v. Splashdam By-Products Corporation, 233 F. Supp. 47, 49 (W.D. Va. 1964); Walker v. Paradise Taxicabs, Inc., 202 F. Supp. 469, 470 (D.P.R. 1962) (“It is widely agreed in the law of domicile that a person’s physical presence at another place for the purpose of performing a job of a definite duration is not inconsistent with his retention of an earlier domicile as his home.”).⁹

Therefore, physical presence in a new location, even for “the time at least” will not be considered establishment of a party’s domicile in that location without evidence that a person intended to abandon his/her old domicile and intended to establish the new place as his/her domicile.¹⁰

C. Respondent’s Domicile Between the Early 1970’s and 1999

⁹ See also Johnson v. Johnson, 245 Cal.App.2d 40, 45 (Cal. Dist. Ct. App. 1966); Gallagher v. Board of Supervisors of Elections, 148 A.2d 390, 395 (Md. 1959) (holding that Maryland Governor met the residency requirement to run for mayor of Baltimore even though he had lived in Annapolis in connection with his gubernatorial responsibilities); Gasque v. Gasque, 143 S.E.2d 811, 813 (S.C. 1965); Wheat v. Smith, 7 S.W. 161, 166 (Ark. 1888); see also Restatement (Second) of Conflict of Laws § 12 ill. 4; Robert A. Leflar, American Conflicts Law § 10, at 17 (3d ed. 1977) (“Generally speaking, a public officeholder does not lose his former domicile by living at a new place where the duties of his office require him to be.”); 13B Charles A. Wright et al., Federal Practice and Procedure § 3620, at 573 (2d ed. 1984) (“It is generally held that individuals who, pursuant to their vocational obligations, must live near the place of their employment retain their domicile in the state wherein they formerly resided.”).

¹⁰ The Commission notes that in the controlling cases in which Massachusetts courts have found a domicile established for “the time at least,” the particular individual seeking to establish domicile for “the time at least” *intended* that the “the time at least” place to be his or her domicile. Hershkoff, 366 Mass. at 571 (students seeking to prove their domicile in Worcester); Dane, 374 Mass. at 162 (inmates seeking to prove their domicile in Concord); Coulumbre v. Board of Registrars, 3 Mass. App. Ct. 206 (1975) (patient seeking to establish domicile in Worcester). The Commission finds no such intent by the Respondent to establish Utah as his “the time at least” domicile.

There is no dispute that the Respondent's domicile between the early 1970's and February 11, 1999 was Massachusetts, as set out in the Respondent's own testimony. The Objector presented no evidence to support or even suggest that the Respondent was not domiciled in Massachusetts from 1971-1999 and conceded this point in her Post-Hearing Memorandum. The Respondent testified that he came to Massachusetts, more particularly to Belmont, in 1971 to attend Harvard Law School. At that time, he bought a home in Belmont that he shared with his wife, Ann, and one son. He remained in the original home for approximately seven years, after which he purchased another home on Tyler Road in Belmont. He remained in the Tyler Road home for approximately five to ten years, after which he and his wife purchased the present home at 171 Marsh Street, Belmont.

The Respondent registered to vote in Belmont in 1971 and has remained a registered voter in Belmont to date. The Respondent has voted in Belmont, although not in every single election, continuously since that time. The Respondent has been, and continues to be, a member of the Republican Town Committee in Belmont.

The Respondent's other four children were born and raised in Belmont and all five children attended Belmont schools. The Respondent has been, and continues to be, a member of the Belmont Hill Club.

Upon completion of his studies, the Respondent was employed with the Boston Consulting Group in 1975. In 1978, the Respondent began working with Bain and Company, which in 1984 became Bain Capital. The Respondent remained actively employed at Bain Capital until January 1, 1999, at which time he left to take the position

of President and Chief Executive Officer of the Salt Lake Organizing Committee for the 2002 Winter Olympic Games.

The Commission therefore finds and rules that during the years 1971 to 1999 the Respondent was a continuous inhabitant of Belmont, Massachusetts.

D. Objectors' Claim That the Respondent Fails to Satisfy the Seven-Year Inhabitancy Requirement of the Massachusetts Constitution

Objector Thomson's case consisted of thirty-five (35) exhibits and testimony from the Respondent, Mitt Romney.

The Objector claims that, regardless of the Respondent's testimony as to his intent, other evidence presented shows that his domicile from 1999 until 2002 was Utah. The Objector has presented several categories of evidence, which are discussed below. However, the Commission finds and rules that the Objector has failed to demonstrate by a preponderance of the evidence that the Respondent's domicile was any place other than Massachusetts for the years 1999, 2000, and 2001 and to the present.

1. Filing of Utah Income Tax Returns

The Objector alleges that the act of filing of part-year (1999) and full-time resident (2000, 2001) income tax returns in the State of Utah demonstrates that Utah was his domicile for those years.

The Respondent testified that he filed a part-year resident tax return (1999) and a full-time resident tax return (2000, 2001) in the State of Utah. He testified that it seemed logical to him to do so since he was living in the state most of the time during those years. He further testified that he did not intend to change his domicile to the State of Utah by the filing of these returns.

The Objector contends that the filing of tax returns in Utah obviates his testimony as to his intent. Indeed, testimony alone cannot satisfy the domicile requirement unless it is evidenced by “outward indicia” of supporting facts consistent with domicile. Dane, 374 Mass. at 172. One such “outward indicia” noted in Dane is the “payment of taxes or lack thereof.”¹¹ Id. at 164.

The Commission finds the Respondent’s testimony to be credible as to the fact that he did not intend to create a new domicile in Utah by the filing of resident Utah tax returns. In addition, the Commission does not consider the mere filing of Utah resident income tax returns a sufficient demonstration of intent given the evidence submitted.

The Objector presented the Respondent’s redacted Utah income tax returns for the years 1999 (part-year), 2000 (resident) and 2001 (resident). Exhibits # 12 and # 15. Accompanying those Exhibits, the Objector introduced the Utah 1999 Individual Income Tax Forms and Instructions. Exhibits # 13 and # 14. Additionally, the Respondent introduced the Utah Tax Code. Exhibit # 43.

The Objector concludes that, by filing a Utah Resident tax return, a person is declaring Utah as their domicile. A reading of the documents submitted by the Objector, however, belies their position. The Utah tax instructions define a “Utah Resident” as an individual who:

1. is domiciled for the entire year in Utah . . .
2. is domiciled in Utah for any period of time during the taxable year. . (emphasis supplied); or
3. even though domiciled outside Utah, maintains a permanent place of abode within the state. (emphasis supplied)

¹¹ It should be noted that the term taxes is used broadly presumably to include income taxes, property taxes and excise taxes.

The Utah Code provides a similar definition of “Utah Resident.” In particular, the Utah Code defines a “Utah Resident” as an individual who is either:

1. an individual domiciled in [Utah] for any period of time during the taxable year, but only for the duration of such period; or
2. an individual who is not domiciled in [Utah] but maintains a permanent place of abode in [Utah] and spends the aggregate 183 or more days of the taxable year in [Utah]. (emphasis supplied).

Exhibit # 43.

The foregoing definitions suggest that a Utah resident taxpayer need not be domiciled in the State of Utah at all. Hence, he or she can be domiciled in another state, yet file a Utah resident tax return.

In addition, the parties have submitted two separate definitions of “part-year resident” within the meaning of the Utah tax laws. The Objector submitted the Utah tax instructions, stating that a “part-year resident” is “an individual who is domiciled in Utah for part of the year and is domiciled outside of Utah for part of the year.” Exhibit # 14 (emphasis supplied). By contrast, the Respondent submitted the Utah State Code, which provides that a “part-year resident” is “an individual who changes his status during the tax year from a resident to a non-resident or from a non-resident to a resident.” Exhibit # 43 (emphasis supplied). Faced with two conflicting definitions—one based on domicile and the other based on residency (which under Utah law can include non-domiciliaries)—this Commission finds this to be equally unpersuasive in demonstrating the a Utah domiciliary intent by the Respondent.

2. Utah Property Tax Classification as “Primary Residence”

The Objector claims that the classification of the Respondent’s house in Utah as a “primary residence,” so designated by the county assessor, is a further demonstration that

Utah was the Respondent's domicile. She also points to the fact that the Respondent received tax advantages as a result of such classification. Included in her original Objection at Exhibit D, Objector Thomson attached a blank form entitled "Signed Statement of Primary Residence, Summit County, State of Utah," which must be submitted in connection with such a classification. Exhibit # 48.

The Objector presented property tax notices and bills showing that the Respondent's property in Utah was reclassified from non-primary building and non-primary land in 1997 and 1998 to primary improved property in 1999 through 2001. Exhibits # 1, # 2, # 3, # 5, # 6, # 7, # 8 and # 9. The Objector suggests that the designation of primary improved property and the corresponding tax exemptions are evidence that the Respondent intended Utah to be his domicile.

The Respondent testified that he was not aware that his property tax classification had changed but, even if he had noticed the change, he would not find it unusual since at the time it was his primary residence. He further testified that he never sought any such designation of "primary residence" nor did he sign or submit a statement of primary residence.

The Respondent's testimony regarding the fact that he never sought or submitted a "Signed Statement of Primary Residence" is supported by additional evidence and ultimately, by a stipulation by the Objector that no such statement was ever submitted by the Respondent.

Objector Thomson herself submitted evidence supporting the Respondent's testimony that no such statement of primary residency was made or filed. Apparently, the Civil Division of the County Attorney's Office of Summit County conducted an

examination of the circumstances surrounding the primary residential property tax exemption given to the Respondent in the years 1999, 2000 and 2001. Exhibit # 11. The County Attorney's Office concluded that:

In the case of Mr. Romney, no affidavit requesting and asserting a factual predicate for primary residence was ever filed with Summit County. Objector's Exhibit # 11 at page 2.

The County Attorney concluded this designation was done in error. This conclusion is further supported by the Summit County Assessor herself, Ms. Barbara Kresser. Ms. Kresser testified that the designation was done in error and that, after a diligent search of her files, no statement was submitted by the Respondent. Deposition of Ms. Kresser at 49-52.

Therefore, the evidence is substantial, and the Objector has ultimately conceded, that the "primary improved property" tax designation was an error. The fact that the Respondent did not take any affirmative actions to seek this designation provides further support to the Respondent's testimony that he did not intend Utah to be his domicile.

The Objector argues that regardless of the fact that the Respondent did not seek the tax exemption, because he received it, although in error, he should have been aware of the error and that his acquiescence in retaining the tax exemption somehow demonstrates the Respondent's intent to establish his domicile in Utah. The Respondent testified that he was unaware of the tax exemption benefits totaling approximately \$54,000 over several years until it was brought to his attention within the past several months. The Objector suggests that it simply is not credible for a person to receive a \$54,000 tax break and not be aware of it. However, as the evidence demonstrated, the resulting \$54,000 tax benefit was not received in a lump sum. Rather, it was an

accumulation of property tax exemptions determined by the Assessor's computations over a number of years resulting from the Summit County Assessor's office's erroneous tax classification of the Respondent's property.

The Objector submitted the 1997 Summit County Assessor's tax bill on what the Respondent testified was "unimproved land" since his vacation house was not built at the time. Exhibit # 1. At the hearing, upon being presented with a copy of the bill and asked to carefully review it, the Respondent discovered, apparently for the first time, that the 1997 bill was incorrect because it taxed him for a building when none existed. That tax bill was in the amount of \$6495.50. In the successive years after the Respondent's house was built, the tax bills varied from year to year in an amount no greater than \$1400.00 during the years 1999, 2000, and 2001. The Respondent testified that he paid the 1999 tax bill and that it was likely that his wife paid the tax bills in the other years. The Respondent further testified that he did not have previous bills to compare and, as such, did not believe the amount he paid was unusual.

Upon review of the submitted Exhibits (# 1, # 2, # 3, # 5, # 6, # 7, # 8 and # 9), and the Respondent's testimony on the issue, the Commission concludes that the changes in the real estate tax bills were not so dramatic as would suggest that it was unreasonable for the Respondent not to notice the apparent tax exemption he was receiving, given the fact that he did not request one.

The Commission does not find the Respondent's failure to discover his erroneous property tax classification as supportive of the Objector's claim that it evidences a change of domicile.

3. Massachusetts Income Taxes

The Objector claims that the Respondent's filing of a "part-year resident" income tax return in 1999 and a "non-resident" income tax return in 2000 is further evidence that the Respondent did not intend Massachusetts to be his domicile.

The Respondent testified that he did sign "part-year" and "non-resident" returns in 1999 and 2000, respectively. However, he further testified that, in so doing, he never intended to terminate his domicile in Massachusetts. The Respondent testified that, although he attended law school, he does not have expertise in state and federal tax laws. He testified that he engaged the services of the accounting firm PricewaterhouseCoopers, a firm he has used for ten to twenty years for such services. PricewaterhouseCoopers prepared his taxes for 1999 and 2000 as they have over the years. The Respondent testified that he filed the particular tax forms PricewaterhouseCoopers prepared and he relied on their expertise as to the appropriate tax forms for filing.

The Respondent testified that he believed, at the time, that the forms used were appropriate since he was physically located only part of the time in Massachusetts in 1999 and mostly in Utah in 2000, and that he was filing income taxes for the state of Utah as a part-year resident in Utah in 1999 and a full-year resident in Utah in 2000. The Respondent testified that, as such, he believed that he could only file as a "resident" for one state. The Respondent testified that he never intended the filing of these forms to constitute a termination of his domicile in Massachusetts. Nevertheless, after becoming aware of the filing error, the Respondent amended his 1999 and 2000 Massachusetts income tax returns.

The Commission finds this testimony reasonable and credible. The Commission

accepts the Respondent's testimony that the original tax filings for Massachusetts were done in reliance on professionals and not intended to constitute a change of domicile.

The Respondent testified that he became aware of the error in his tax filings in late 2001 and filed his amended returns in April 2002. The Objector alleges that the length of time between the original filing of the 1999 and 2000 tax returns and the subsequent amended filings for the years 1999 and 2000 is in some way indicative of domiciliary intent. The Commission does not find this argument persuasive as it relates to the issue of domicile. The Objector has failed to demonstrate any relevant underlying motivations of the Respondent, and the Commission will not attach any.

The Objector further alleges that the Respondent failed to designate his domicile on the appropriate line of his tax forms. The Objector suggests that the omission should in some way be construed to constitute a change of domicile. The Respondent testified that the forms were prepared by PricewaterhouseCoopers and that he relied on their expertise in the preparation. The Respondent testified that PricewaterhouseCoopers, per their usual custom, sent him two sets of the completed returns—one for him to sign and send into the Department of Revenue and one for his own records. PricewaterhouseCoopers provided an instruction sheet directing the Respondent to sign and stating where to send the forms and attached a "sign-here" flag to the last page of the returns. The Respondent testified that he has never been instructed to complete any portion of the returns other than providing his signature and date. The Commission does not attach any significance to the extent the Objector suggests it may show intention as to domicile. The Commission does not find this issue supportive of the Objector's claims.¹²

¹² The Objector argues that the Commission should draw an adverse inference from the failure of the Respondent to call his tax preparer as a witness to corroborate his testimony. The Commission disagrees.

4. Charitable Contributions

In further support of her claim that the Respondent was an inhabitant of Utah, the Objector introduced “Campaign Investment Confirmations” from the Salt Lake Area United Way for the years 1999 and 2000. Exhibits # 23A and # 23B. Contained on the forms as “preferred address” and marked as “home” was the Respondent’s Utah address. This, according to the Objector, is further “outward indicia” that the Respondent considered Utah his domicile.

However, upon a full examination of these Exhibits, the Commission finds that the Exhibits are far more supportive of the Respondent’s position—that Massachusetts was his intended domicile even while being physically present in Utah.

In 1999, the Respondent contributed \$13,000.00 to the United Way of the Great Salt Lake Area, but specifically designated the substantial portion of the contribution to be distributed to Massachusetts charities as follows:

\$10,000—United Way of Massachusetts Bay
\$2,000—C.H.O.I.C.E.—Belmont Mercy House
\$1,000—Travelers Aid Society.

In 2000, the Respondent contributed \$18,000.00 to the United Way of the Great Salt Lake Area, but again specifically designated the substantial portion of the contribution to be distributed to Massachusetts charities as follows:

\$1,000—Traveler’s Aid Society
\$1,000—Boy Scouts of America
\$1,000—Volunteers of America, Utah
\$5,000—CHOICE Humanitarian restricted as follows:
 \$4,000—Belmont Mercy House
\$10,000—United Way of Massachusetts Bay.

The Commission allowed, by Interrogatory, the Objector to obtain the names of the Respondent’s tax preparers which therefore would provide the name of a witness for the Objector as well. Additionally, the preparer’s names appear on the redacted filings submitted as Exhibits # 45A, # 45B and # 45C.

The Commission finds that these Exhibits are not supportive of the Objector's claim. The Commission does, however, find that these Exhibits lend substantial support of the Respondent's position that his domicile remained in Massachusetts even while working in Utah. Indeed, the Respondent specifically directed the vast majorities of these contributions to benefit Massachusetts.

5. Floating Intention

The Objector claims that the Respondent had a "floating intention" to return to Massachusetts. The Respondent testified that he was uncertain concerning his future career plans. The Objector argued that the Respondent therefore did not have the requisite intent to maintain his Massachusetts domicile.

The Objector's argument is based on a false set of premises. Domicile is not lost without a showing that a party abandoned his/her old domicile and established a new domicile. Dane, 374 Mass. at 162. Accordingly, the Objector assumes that the Respondent abandoned his Massachusetts domicile, adopted a Utah domicile and then exercised a "floating intention" to perhaps return to Massachusetts. The Commission disagrees with these assumptions.

First, the Respondent never abandoned his Massachusetts domicile. He never severed his ties to Massachusetts. Among other things, he continued to maintain his home and personal belongings in Massachusetts, voted in Massachusetts, directed charitable contributions to Massachusetts and maintained financial accounts in Massachusetts. Moreover, the Respondent testified that it was always his intention to return to Massachusetts. In fact, he returned to Massachusetts soon after the Winter

Olympic Games concluded. Accordingly, the Respondent did not lose his Massachusetts domicile. White, 229 Mass. at 597.

Second, as the Commission has found, the Respondent never took any action to establish a Utah domicile. For example, he did not file any affidavit seeking a primary resident tax deduction. He did not register to vote in Utah. He did not join any social clubs in Utah. He declined to participate on the boards of directors of community-based organizations.¹³ In sum, the Respondent never manifested an intent to adopt Utah as his new domicile.

Moreover, the case cited by the Objector is clearly distinguishable. In Cook v. Bradley, SBLC 87-1 (1987), this Commission held that Bradley changed his domicile when he moved from Ware, Massachusetts to Spencer, Massachusetts. In Cook, Mr. Bradley testified that “he planned to remain in Spencer indefinitely until he could afford to buy a house or purchase property in the town of Ware.” Id at 3. Mr. Bradley had “hoped to move to Ware if in the future he could find a suitable home and afford to do so.” Id at 7. Mr. Bradley’s intention was speculative and conditional. Unlike Mr. Bradley, the Respondent had an existing home in Belmont. Moreover, the Respondent did not intend to remain in Utah “indefinitely.” Instead, he had accepted a position with a limited, three-year term.

Accordingly, the Commission finds that the doctrine of “floating intention” is inapplicable to the instant case.

¹³ The Respondent did participate as an ex-officio member of the Salt Lake Chamber of Commerce. Based on his testimony, however, his role on the Chamber of Commerce was directed only to activities connected to the Olympic Games.

E. Respondent's Rebuttal

The Respondent, Mitt Romney, testified on his own behalf, introducing sixteen (16) exhibits and the Deposition of Ms. Kresser in response to the Objector's claims. The Respondent presented evidence to the Commission to show that the he has been a continuous inhabitant of the Commonwealth of Massachusetts from 1971 to the present.

As noted above, it is un rebutted that the Respondent was an inhabitant of Massachusetts from 1971 to 1999. The Respondent introduced evidence that from 1999 to the present he remained an inhabitant of Massachusetts.

1. Physical Presence in Utah

The Respondent concedes that he was physically present in Utah for the majority of the time in 1999 through February 2002. Under the law "mere temporary absence does not change [domicile] and personal presence in a place, even for a protracted period, does not of necessity fix the domicil in that place." White, 229 Mass. at 597.

The Respondent claims his presence in Utah was temporary and that he never intended to abandon his Massachusetts domicile or establish Utah as a new domicile. The Respondent testified that he went to Utah to take the position of President and CEO of the Salt Lake Organizing Committee for the 2002 Winter Olympic Games, for a fixed three-year term, charged with the responsibility to restore the public trust and to ensure successful games in the United States. In addition to the Respondent's unequivocal testimony that he intended Massachusetts to be his domicile, there is an abundance of "outward indicia" to support his intention.

2. Maintains a Home in Belmont, Massachusetts

The Respondent has maintained a family home in Belmont since the early 1970's.¹⁴ The Respondent continued to maintain his home in Belmont during the years 1999, 2000 and 2001 and does so to date. The Respondent produced numerous utility bills, maintenance bills and insurance bills demonstrating the Belmont house was continually being used during this period. Exhibits # 36, # 37 and # 41. The Respondent continued to pay real estate taxes on the Belmont home throughout 1999 to 2001. Exhibit # 39.

3. Registered to Vote and Voting Activity

The Respondent has been a registered voter in the town of Belmont since 1971. He remains a registered voter to date. The Respondent has voted in numerous elections throughout the years, even while physically present in Utah.

During the period the Objector claims the Respondent was domiciled in Utah, he remained a registered voter in Massachusetts and voted in person at the March 7, 2000, presidential preference primary and by absentee ballot in the November 7, 2000, state election. Exhibit # 25. While not conclusive evidence, the Commission considers where an individual is registered to vote and the act of voting particularly significant when determining a person's intended domicile.

4. Financial Accounts/Personal Documents

The Respondent introduced evidence that he continued to maintain his primary bank accounts in Massachusetts throughout 1999 to 2002. Exhibits # 34A, # 34B, # 35A,

¹⁴ The record owner of the Respondent's home at 171 Marsh Street is his wife. The Respondent testified and the documentary evidence supports the finding that he lives with his wife and family at that location. The Commission attaches no significance as to the manner in which title is held for a particular property so long as the preponderance of the evidence does not demonstrate that it is not the claimed dwelling of the challenged party.

35B. He further testified that all the family's investment accounts were located in Massachusetts.

All personal records, including birth and marriage certificates, family albums and portraits, remained at the Respondent's Belmont home. The Respondent testified that his medical records remained in Massachusetts with his primary care physician.

The Respondent testified and evidence was introduced showing that the Respondent used a local insurance agent from Belmont to maintain insurance coverage for all properties, including the houses in Utah and New Hampshire, and all automobiles. Exhibits # 41 and # 49.

5. Registration of Automobiles/Excise Taxes

The Respondent testified and evidence was introduced showing that the Respondent maintained and insured family automobiles in Massachusetts. Recreational vehicles used at the New Hampshire home were registered out of the Belmont address during 1999 to 2001. Excise taxes were paid in Belmont for the automobiles during that time. Exhibit # 39.

6. Ties to Massachusetts Organizations

The Respondent testified that he was a director of Staples, Marriott International and Life Like, as well as being a corporator of the Belmont Hill School, and that he remained on those boards throughout 1999 to 2001.

The Respondent further testified that he declined to serve on boards in Utah, except for the Salt Lake City Chamber of Commerce of which he became an ex-officio member because of his position with the Olympic Committee.

The Respondent continued to be a dues-paying member of the Belmont Hill Club. The Respondent continues to be a member of the Belmont Republican Town Committee. Exhibit # 42.

7. Family and Community Involvement

The Respondent testified that his children and grandchildren remained in Massachusetts while he and his wife were in Utah. During 1999 to 2001, the Respondent returned to Belmont for his son's graduation from high school, for his other son's wedding, the birth of his grandchildren in addition to spending holidays with his family.

The Respondent testified that his church is located in Belmont and he attended events there during the period 1999 to 2001. During the time while the Respondent was physically located in Utah, he contributed money to Massachusetts charities, including the United Way of Massachusetts Bay, the Belmont Mercy House, and the Fidelity Charitable Foundation in Boston. Exhibits # 23A, # 23B, # 38, and # 40.

VII. CONCLUSION

The Objectors have failed to prove by a preponderance of the evidence that the Respondent ever abandoned his Massachusetts domicile when he went to Utah to assume the position of President and CEO of the Salt Lake Organizing Committee for the 2002 Winter Olympics.

The Commission finds and concludes, as a matter of fact and law, that the Respondent has been a continuous inhabitant of Massachusetts from 1971 to present.

The Commission therefore finds, rules and concludes that the Respondent has met the inhabitancy qualification of the Massachusetts Constitution and is therefore eligible to appear on the ballot as candidate for the office of governor of the Commonwealth of

Massachusetts. The Objections are OVERRULED on the merits and the Secretary is ordered to print the Respondent's name on the Republican state primary ballot as a candidate for governor.