

**STATE OF RHODE ISLAND
BOARD OF ELECTIONS**

IN THE MATTER OF: ROQUE DE LA FUENTE – UNITED STATES SENATE

ORDER

This matter was heard on July 24, 2018 before the Board of Elections on a motion to disqualify Roque De La Fuente as a Republican candidate for the United States Senate by Marion O'Brien.

Ms. O'Brien challenges Mr. De La Fuente's right to seek the nomination of the Republican party for the United States Senate on the basis of R.I. Gen. Laws §§ 17-14-2, which requires a candidate to be qualified to vote in a primary within the district for the office which he or she seeks at the time of filing a declaration. R.I. Gen. Law § 17-14-2(a).

The evidence presented at the hearing established that Mr. De La Fuente was not, at the time of his filing of a declaration, qualified to vote in a primary within the State of Rhode Island. The challenge brings into focus the competing requirements for declaration of office between Rhode Island General Laws and the United States Constitution. Specifically, Article I, § 3 of the United States Constitution sets forth the requirements for being eligible to seek the office of the United States Senate: "No person shall be a Senator who shall not have attained to the age of thirty years, and then nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen." U.S. Const. Art. I § 3, cl. 3. Thus, the plain text of the United States Constitution requires that a person's eligibility be determined at the time *when elected*. This issue has been addressed by the United States Supreme Court in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). The Court indicated that states may not

alter the qualifications for office established by the United States Constitution by either adding or subtracting from them. The decision makes clear that the terms of the Constitution are the only qualifications which may be imposed for federal office. Thus, the residency requirement found in our General Laws must yield to the residency requirement set forth in the United States Constitution, which indicates that the determination of residency is established “when elected” to that office. *See also, Texas Democratic Party v. Benkiser*, 459 F.3d 585 (5th Cir. 2006) (A state political party cannot declare a federal candidate ineligible to seek an endorsement based upon the determination that the candidate resides in another state where that determination is not made at the time “when elected.”). *See also, Dylan v. Fiorina*, 340 F.Supp. 725, 731 (D.N.M. 1972). Thus, the Board finds that with respect to the office of the United States Senate, residency must be determined as of the time that the candidate is elected to office.

For the reasons set forth above, Ms. O’Brien’s motion to disqualify Roque De La Fuente as a Republican candidate for the United States Senate is denied.

So ORDERED, this 6th day of August, 2018.



Diane C. Mederos, Chairwoman