

Dear State Election Commissioner Anthony Albence and Tracey Dixon,

I write to you as a resident of the 13th Senate District concerning Sen. David McBride's failure to meet the residency requirements to run for State Senate as defined in Art. II, §3 of the State Constitution. Specifically, the requirement that State Senators must be "an inhabitant of the Senatorial District in which he or she shall be chosen" for at least one (1) year before the general election.

Sen. David McBride lists 7 Nicole Ct, New Castle, 19720 as his place of residence on his candidate filing form.

*However, from at least November 3rd, 2019 onward Sen. McBride did not reside at 7 Nicole Ct, New Castle, 19720 according to publicly available sewer records which demonstrate zero (0) or negligible use at the property.*

On June 1st, 2018 New Castle County passed ordinance No. 18-025 which set the annual minimum charge for sewer service at fifty-six (56) dollars. The subsequent ordinance, No. 19-036 passed on May 29th 2019, also set the minimum charge for sewer service at fifty-six (56) dollars.

*In both the 2019 and 2020 tax year, Sen. David McBride paid the minimum \$56 annual sewer bill fee, demonstrating zero (0) or negligible use. A copy of the information which is publicly available on New Castle County's Parcel Search System (parcel number 1002820133) is provided as Exhibit A in the appendix.*

In addition, neighboring properties all show at least some sewer use, and 7 Nicole Ct, New Castle, 19720 is the only one showing a minimum fee.

Previous sewer bills at 7 Nicole Ct, New Castle, 19720 between 2008 and 2016 also indicate zero (0) or negligible use when the minimum annual fee was \$50, indicating Sen. McBride was previously ineligible to run for the office he currently serves.

I believe the question of Sen. McBride's residency should meet the same requirements as the standards for determining Delaware residency for state tax purposes.

The Constitution does not define what it means to be an inhabitant, but Delaware State Code gives guidance here which I believe consistent with the intent of the Constitutional term. It clearly defines "inhabitant" and "resident" in the following ways:

1. "Inhabitant' means a resident in any place." (Title 1. § 302)
2. "A resident individual of this State means an individual..." (Title 30. § 1103 - The State Tax Code)

- “Who is domiciled in this State...”
- “Who maintains a place of abode in this State and spends in the aggregate more than 183 days of the taxable year in this State”

Applying the Delaware State Tax Code definitions of “inhabitant” and “resident” to the State Constitution requirement of State Senators would read as follows:

“A resident individual of the Senate District means an individual...”

- “Who is domiciled in this Senate District; or”
- “maintains a place of abode in the Senate District and spends in the aggregate more than 183 days of the taxable year in the Senate District.”

The Delaware Supreme Court concluded In *New York Trust Co. v. Riley*, 16 A.2d 772 (Del. 1940) that “[t]he essentials of domicile...are the fact of physical presence at a dwelling place and the intention to make that place home.”

Similarly, in *Fritz v. Fritz*, 187 A.2d 348 (Del. 1962), the Delaware Supreme Court stated: “a domicile is defined as a dwelling place with the intention to make that place the resident’s permanent home. It requires a concurrence of the fact of living at a particular place with the necessary intention of making that the permanent home. Absent this intent, no domicile exists...”

Delaware is a member of the Northeastern States Tax Officials Association Cooperative Agreement on Determination of Domicile (the ‘NESTOA Agreement’). Section 2 of the NESTOA Agreement states: “This agreement establishes the factors which the member agencies shall evaluate in their determination of an individual’s domicile...The factors to be utilized are: Home - Time - Items Near and Dear - Active Business Involvement - Family Connections.”

The Department of Elections can use these same factors in assessing Sen. McBride’s residency. Additional details on the NESTOA Agreement factors are listed as Exhibit B in the appendix.

Sen. David McBride also owns a house in Sussex at 35759 Tarpon Dr, Lewes DE 19958 with his spouse, listed as Exhibit C in the appendix. His spouse is registered to vote at the Sussex address.

*While Sen. David McBride votes in the Senate District and pays his taxes on his property there, these are both irrelevant factors in determining “residency” as defined in the Delaware State Code.*

*Publicly available sewer records clearly demonstrate that Sen. David McBride has failed to “reside” at the property he lists as his primary residence, at least since November 3rd, 2019.*

In light of this information, I ask that the Department of Elections remove Sen. David McBride from the ballot in the 2020 primary election as a qualified candidate considering his failure to meet the one (1) year residency requirement as defined in Art. II, §3 of the State Constitution.

If Sen. McBride is allowed ballot access despite his clear disregard of Delaware's State Constitution, then this will set a negative precedent for other elected officials that they can ignore the residency requirement if they so desire.

Sincerely,  
Darlene Battle  
63 Robinson Dr  
New Castle, DE 19720  
(302) 588-1782  
delaca.staff@gmail.com

## Appendix

### Exhibit A: Sewer Bill at 7 Nicole Ct, New Castle, 19720

 **NEW CASTLE COUNTY**  
DELAWARE

Home > Parcel Search > Parcel Details

**Parcel # 1002820133**

[View Map](#)   [View Tax and Sewer Bills](#)   [Buildings/Sketches](#)   [Recent Sales](#)   [Tax and Sewer Only](#)  
[Code Enforcement Fees](#)   [Code Violation Details](#)   [Elevator Certificates](#)   [Construction Violation Details](#)

Property Address: 7 NICOLE CT  
NEW CASTLE, DE 19720-  
Subdivision: HAWKS NEST  
Owner: MCBRIDE DAVID & MARGARET JEAN  
7 NICOLE CT  
Owner Address:  
NEW CASTLE, DE 19720  
Municipal Info: Unincorporated

**Sewer** History as of 7/16/2020 3:02:20 AM

Tax Year	Principal Due	Penalty Due	Date Paid	Amount Paid
2005S1	\$0.00	\$0.00	3/1/2005	\$116.83
2006S1	\$0.00	\$0.00	5/4/2006	\$130.76
2007S1	\$0.00	\$0.00	2/27/2007	\$148.73
2008S1	\$0.00	\$0.00	2/29/2008	\$50.00
2009S1	\$0.00	\$0.00	2/10/2009	\$50.00
2010S1	\$0.00	\$0.00	2/9/2010	\$50.00
2011S1	\$0.00	\$0.00	2/10/2011	\$50.00
2012S1	\$0.00	\$0.00	2/28/2012	\$50.00
2013S1	\$0.00	\$0.00	2/14/2013	\$50.00
2014S1	\$0.00	\$0.00	3/26/2014	\$50.00
2015S1	\$0.00	\$0.00	3/4/2015	\$50.00
2016S1	\$0.00	\$0.00	2/18/2016	\$50.00
2017S1	\$0.00	\$0.00	2/27/2017	\$206.65
2018S1	\$0.00	\$0.00	2/23/2018	\$68.88
2019S1	\$0.00	\$0.00	2/5/2019	\$56.00
2020S1	\$0.00	\$0.00	3/2/2020	\$56.00

### Exhibit B: Factors to Determine Domicile

The NESTOA Agreement, to which Delaware is a member, states “An agency's staff shall review the following issues within these factors [for determining domicile]:”

- “Home...Where are they located? How are they used?”
- “Time...Where and how the individual spends time during the tax year shall be considered”
- “Items "Near & Dear"...The location of the items or possessions that the individual considers "near and dear" to his or her heart, of significant sentimental value, family heirlooms...”
- “Active Business Involvement...How the taxpayer earns a living”
- “Family Connections...Where the individual's minor children attend school and, in certain circumstances and discrete situations, the residence of the individual's immediate family”

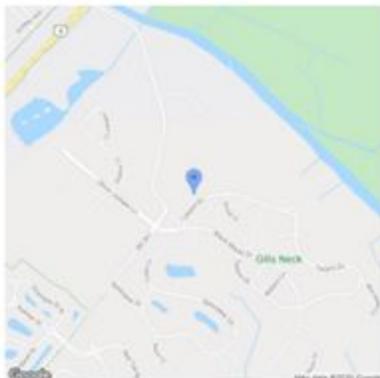
### Exhibit C: Sussex property at 35759 Tarpon Dr, Lewes DE 19958

35759 Tarpon Dr, Lewes, DE 19958-5047

Lewes Rehoboth  
Hundred

Tax ID 335-09.00-202.00

Public Records



Summary Information

Owner: David B McBride  
Owner Address: 35759 Tarpon Dr  
Owner City State: LEWES DE  
Owner Zip+4: 19958-5047  
Owner Occupied: Yes  
No Mail(P): No  
Owner Carrier Rt: R812

Property Class: Residential  
Annual Tax: \$3,435  
Record Date: 06/10/05  
Settle Date: 06/01/05  
Sale Amount: \$827,200  
Book: 3155  
Page: 227  
Tax Record Updated: 05/08/20