

5.

Respondent admits that he is a defaulter of federal taxes; however, he is making payments on his federal tax deficiency under a payment plan through his Chapter 13 bankruptcy plan. He argues, therefore, that his ineligibility has been removed because he is "making payments to the tax authority pursuant to a payment plan." (Testimony of Respondent.)

II. CONCLUSIONS OF LAW

1.

The Georgia Election Code (the "Code") mandates that "[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. § 21-2-5(a).

2.

Both the Secretary of State and the electors of Georgia are granted the authority under the Code to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b), which authorizes any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

3.

Respondent qualified on May 24, 2012, during the qualifying period of May 23, 2012 to May 25, 2012 for the July 31, 2012 general primary election ballot.¹ The Code requires that each candidate file a notice of candidacy and affidavit with the Secretary of State stating that he is eligible to hold such office. O.C.G.A. § 21-2-132(f)(1)(7).

4.

To be timely, complaints challenging a candidate's qualifications in the general primary had to be filed no later than June 8, 2012. Petitioner, as an elector eligible to vote for Respondent, timely filed a challenge with the Secretary of State on May 25, 2012.

5.

Petitioner challenges Respondent's qualifications for the office of Superior Court Judge because Respondent allegedly does not meet the constitutional requirements to run for the office. The Georgia Constitution mandates that no person shall be eligible to hold any office or appointment of honor or trust in this state:

¹ Each candidate for the office of judge of the superior court desiring to have his name placed on the nonpartisan election ballot shall file a notice of candidacy with the office of the Secretary of State at the same time as candidates for party nomination in the general primary. O.C.G.A. § 21-2-132(i)(1)(A). The candidates "shall commence qualifying at 9:00 A.M. on the Wednesday immediately following the third Monday in May immediately prior to such primary and shall cease qualifying at 12:00 Noon on the Friday immediately following the Wednesday immediately following the third Monday in May." O.C.G.A. § 21-2-153(c)(1).

...who is a defaulter for any federal, state, county, municipal, or school system taxes required of such officeholder or candidate if such person has been finally adjudicated by a court of competent jurisdiction to owe those taxes, but such ineligibility may be removed at any time by full payment thereof, or by making payments to the tax authority pursuant to a payment plan....

Ga. Const. Art. II, § II, Para. III.

6.

The burden of proof is entirely upon Respondent to establish affirmatively his eligibility for office:

[T]he statutes place the affirmative obligation on [the challenged candidate] to establish his qualifications for office. [The challenger] is not required to disprove anything regarding [the candidate's] eligibility to run for office, as the entire burden is placed upon [the candidate] to affirmatively establish his eligibility for office.

Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The standard of proof on all issues is the preponderance of the evidence standard. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

7.

Therefore, Respondent must prove that he meets the constitutional and statutory qualifications for superior court judge – specifically that he is not a defaulter of federal taxes or, if so, is a defaulter of taxes who has been released by making full payment thereof or by making payments to the tax authority pursuant to a payment plan.

8.

Respondent admits that he is a defaulter of federal taxes as described in Georgia Constitution Article II, Section II, Paragraph III, but he contends that his ineligibility has been removed because he is making payments to the Internal Revenue Service to pay the back taxes under his Chapter 13 bankruptcy plan.

9.

The payments being made under the Chapter 13 bankruptcy plan are being paid to a bankruptcy trustee who in turn makes the payments to the creditors, including the IRS. This Court interprets these payments as being sufficient for “making payments to the tax authority pursuant to a payment plan.” Ga. Const. Art. II, § II, Para. III.

10.

In 2006, the Georgia Supreme Court held,

Our duty is to construe and apply the Constitution as it is now written. This Court must honor the plain and unambiguous meaning of a constitutional provision. Where a constitutional provision is plain and susceptible of but one natural and reasonable construction, the court has no authority to place a different construction upon it, but must construe it according to its terms.

Serv. Employees Int'l Union v. Perdue, 280 Ga. 379, 380 (2006) (citation omitted). Here, the Constitution demands only that the candidate show he is "making payments to the tax authority pursuant to a payment plan." The plain language of the provision does not require that a candidate have a payment plan *with* the tax authority. The Court concludes that the provision must be read as it is written; and that, as it is written, it only requires payments to the tax authority under a payment plan. Because there is no other "natural and reasonable construction" of that language, the Court is "not authorized either to read into or to read out that which would add to or change its meaning." Blum v. Schrader, 281 Ga. 238, 240 (2006) (citation omitted). The Court cannot construe terms that are not there.

11.

Respondent has met the minimum burden of proof. Accordingly, this Court finds that Respondent meets the qualifications for and is therefore eligible to be a candidate for superior court judge.

DECISION

IT IS HEREBY ORDERED THAT Respondent is qualified to be a candidate for superior court judge, and his name shall remain on the ballot. Whether Respondent is elected to the Superior Court is for voters to decide.

July 16, 2012.



MICHAEL M. MALIHI, Judge