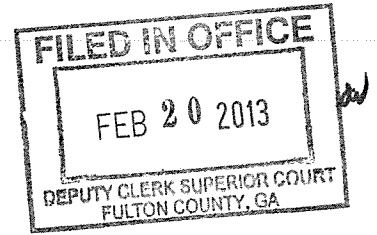


**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



JOHN B. LONG,

Petitioner,

v.

**BRIAN P. KEMP, in his official
capacity as Secretary of State for the
State of Georgia; and
WILLIE SAUNDERS,**

Respondents.

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Civil Action # 2012cv219360

FINAL ORDER

This matter is before the Court on a Petition for Judicial Review (“Petition”) of a final decision of Secretary of State Brian Kemp (the “Secretary of State”) finding that Respondent Willie Saunders (“Respondent Saunders”) was eligible to run for the office of judge of the Superior Court, Augusta Circuit. Petitioner has appealed that final decision of the Secretary of State pursuant to O.C.G.A. § 21-2-5. After consideration of the pleadings and oral argument in this case, the decision of the Secretary of State is hereby AFFIRMED.

I. STATEMENT OF THE FACTS

Petitioner John B. Long (hereinafter “Petitioner”) brought a challenge against the qualifications of Respondent Saunders to seek and hold the office of judge of Superior Court for the Augusta Judicial Circuit. Petitioner alleged that

Respondent Saunders was a defaulter on federal taxes for the tax years 2004 through 2009, and that accordingly Respondent Saunders was ineligible to seek and hold office in Georgia pursuant to the provisions of Article II, Section II, Paragraph III of the Georgia Constitution.

A hearing was held on July 3, 2012, at the Office of State Administrative Hearings before Administrative Law Judge Michael M. Malihi. Evidence was submitted by Petitioner, undisputed by Respondent Saunders, that Respondent Saunders was delinquent on payment of his federal taxes such that he was a “defaulter” under the Internal Revenue Code.

Evidence was also received by the administrative law judge, however, showing that Respondent Saunders had filed a Chapter 13 bankruptcy petition in the Bankruptcy Court for the Southern District of Georgia which confirmed a payment plan for Respondent Saunders for creditors including the Internal Revenue Service. This repayment plan encompassed sums due for all tax years 2004 through 2010 inclusive, although the repayment plan resulted in the discharge of at least a portion of the sums owed to the Internal Revenue Service by Respondent Saunders.

Petitioner’s counsel also elicited testimony from Respondent Saunders at the hearing that Respondent Saunders had filed for an extension of time in which to

file his tax return for tax year 2011. Respondent Saunders admitted at the hearing that he would have a tax liability once his return for tax year 2011 was filed.

The only evidence of any court order entered regarding the tax delinquencies of Respondent Saunders was an order from the Bankruptcy Court for the Southern District of Georgia, dated January 13, 2012, that confirmed the applicable payment plan presented by the bankruptcy trustee for calendar years 2004 through 2010. Nowhere in that order was there a finding that Respondent Saunders in fact owed said sums or was in fact delinquent in paying or “in default” on said sums. There was no order entered into evidence or testified to that related in any way to any deficiency for taxes owed by Respondent Saunders for calendar year 2011.

II. ANALYSIS

The election for which Respondent Saunders was a candidate has already occurred, and Respondent Saunders did not prevail in that election. Petitioner has brought this challenge arguing that the issues raised concern the interpretation of a constitutional disqualification for office, and that the issue, being one concerning an election challenge, is capable of repetition yet evades review. *See Poythress v. Moses*, 250 Ga. 452 (1983).

Petitioner has raised as an enumeration of error in his Petition that the Secretary’s decision was contrary to Article II, Section II, Paragraph III of the Georgia Constitution. The provision at issue in this challenge provides that no

person may hold office in Georgia “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 taxing authority pursuant to a payment plan, or under such other conditions as the General Assembly may provide by general law.” Ga. Const. Art. II, Sec. II, Par. III.

When an individual brings a challenge to the eligibility of one to seek or hold office, the burden is placed entirely on the candidate to establish his eligibility to hold office. *Haynes v. Wells*, 273 Ga. 106 (2000). In interpreting a provision that disqualifies one from office, however, any ambiguity must necessarily be read in favor of eligibility for office. The “right of a citizen to hold office is the general rule, ineligibility the exception; and therefore a citizen may not be deprived of this right without proof of some disqualification specifically declared by law.”

McLendon v. Everett, 205 Ga. 713, 716 (1949) (citing *Patten v. Miller*, 190 Ga. 123, 139 (1940)). The rule in Georgia is that “[s]tatutes limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking office.” *Hardin v. Brooks*, 275 Ga. 477, 478 (2002) (citing *Weems v. Glenn*, 199 Ga. 388, 391 (1945)).

Georgia courts “normally avoid construing statutes to leave parts of them meaningless.” *Walker v. State*, 290 Ga. 696, 698 (2012) (citing *State of Georgia v. C.S.B.*, 250 Ga. 261, 263 (1982)). As discussed by the Court of Appeals, courts must “give meaning to each part of the statute and [] avoid constructions which render a portion of the statute mere surplusage.” *Moritz v. Orkin Exterminating Co.*, 215 Ga. App. 255, 256-257 (1994) (internal citations omitted); *see also City of Buchanan v. Pope*, 222 Ga. App. 716, 717 (1996).

The constitutional provision at issue here contains a requirement that, in addition to being a defaulter on taxes owed, a candidate must also have been finally adjudicated by a court of competent jurisdiction to owe those taxes. No such court order has ever been entered against Respondent Saunders for any of the calendar year taxes raised by Petitioner. Accordingly, Respondent Saunders was not ineligible to seek the office of judge of the Superior Court. *See McLendon*, 205 Ga. at 716.

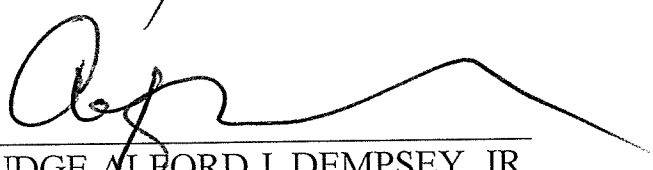
In addition, Respondent Saunders entered into a payment plan through the bankruptcy court that called for repayment of certain sums owed to the Internal Revenue Service. The safe harbor provision of the Article II provision here does not qualify the payment plan purging of the disqualification with the modifier “full” as it does in the purging provision dealing with “full” repayment. Given that a court must give liberal construction in favor of a candidate’s eligibility for office,

the payment plan entered by Respondent Saunders would purge his ineligibility even if he were in fact disqualified by the bankruptcy court's confirmation of his payment plan. *See Hardin*, 275 Ga. at 478.

III. CONCLUSION

Respondent has failed to show that the decision of the Secretary of State was contrary to the laws or the Constitution of the State of Georgia, nor has Respondent shown any other ground under O.C.G.A. § 21-2-5 as to why the decision of the Secretary of State should not be affirmed. The decision of the Secretary of State is hereby AFFIRMED.

So ordered this 20 day of February, 2013.



JUDGE ALFORD J. DEMPSEY, JR.
FULTON COUNTY SUPERIOR COURT

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