

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

SECRETARY OF STATE BRIAN KEMP, :
Challenger/Petitioner, :
 : Docket No.:
v. : OSAH-SECSTATE-CE-1452369-67-Malihi
 :
RICHARD UNDERWOOD, :
Candidate/Respondent. :
 :

INITIAL DECISION

I. Introduction

Petitioner, Brian Kemp, the Secretary of State of Georgia, challenges Respondent’s qualification to be a candidate for Senate District 48. Specifically, Petitioner contends that Respondent is not a legal resident of Senate District 48. The hearing on this matter was held today, May 16, 2014. Based on the evidence presented, the Court concludes that Respondent is not qualified to be a candidate for Senate District 48.

II. Findings of Fact

1.

Since 1981, Respondent has continuously resided at [REDACTED], Georgia (hereinafter “the Nora Lane Address”). The Nora Lane Address is located in Gwinnett County in the “Pinckneyville I” voting precinct (hereinafter “Pinckneyville I”). *Petitioner’s Exhibits 1, 2; Respondent’s Exhibit 4; Testimony of Richard Underwood; Testimony of Gina Wright.*

2.

The Nora Lane Address and Pinckneyville I were formerly located in Senate District 48. However, the Georgia Senate redrew district lines, including those of Senate District 48,

pursuant to Senate Plan 14. The updated district lines proposed in Senate Plan 14 were adopted by the General Assembly through passage of Senate Bill 430 (SB 430) in the 2012 legislative session. After SB 430 was passed into law, the updated district map (hereinafter “the Senate Plan 14 Map”) was “precleared” with the United States Attorney General pursuant to Section 5 of the Voting Rights Act and thereafter implemented for use in the 2014 election cycle.¹
Petitioner’s Exhibit 2; Testimony of Gina Wright.

3.

The Nora Lane Address and Pinckneyville I are located within Senate District 5, and outside of the boundaries of Senate District 48 on the Senate Plan 14 map. *Petitioner’s Exhibit 2; Testimony of Gina Wright.*

4.

On March 5, 2014, Respondent filed a sworn Declaration of Candidacy and Affidavit seeking the Democratic nomination for Georgia State Senate District 48. In the document, Respondent listed the Nora Lane Address as his residence and swore that he had been a resident of Senate District 48 for 33 consecutive years. *Petitioner’s Exhibit 1.*

5.

On May 13, 2014, Petitioner, Secretary of State Brian Kemp, challenged the qualification of Respondent to seek and hold the public office of Senate District 48 pursuant to O.C.G.A. § 21-2-5. Petitioner initiated this action asserting that Respondent is not a legal resident of the territory embraced by Georgia Senate District 48 as required by Article III, Section II, Paragraph III(b) of the Constitution of the State of Georgia. *Petitioner’s Request for Hearing dated May 13, 2014.*

¹ Because the updated district lines had not been precleared in time for the 2012 election cycle, the new district lines were not implemented until the 2014 election cycle.

6.

At the hearing of this matter, Petitioner contended that, after implementation of the Senate Plan 14 Map at the beginning of the 2014 election cycle, Respondent's residence was no longer encompassed by Senate District 48.

7.

Respondent asserted that he resided in Senate District 48 and introduced into evidence maps labeled "Georgia State Senate District 048" and "Georgia State Senate District 005", which, he argued, demonstrated that he resided within Senate District 48. Both of these maps, which were not properly authenticated, include the caption "Senate12". Ms. Gina Wright, Executive Director of the Legislative and Congressional Reapportionment Office in the Georgia General Assembly, explained in her testimony that the maps proffered by Respondent illustrate the district lines proposed by an earlier redistricting plan, called Senate Plan 12, and do not show the current district lines. *Respondent's Exhibits 1 and 2; Petitioner's Exhibit 2; Testimony of Richard Underwood; Testimony of Gina Wright.*

8.

Ms. Wright further testified that, after plotting the Nora Lane Address on the Senate Plan 14 Map, she was able to determine that Respondent currently resided within Senate District 5, and not within Senate District 48. Petitioner submitted current maps of Senate Districts 5 and 48, which show the Nora Lane Address and the Pinckneyville I voting district within Senate District 5. *Petitioner's Exhibit 2; Testimony of Gina Wright.*

III. Conclusions of Law

1.

Respondent bears the burden of proof to establish his eligibility for office. *Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

Every candidate for state office must meet all the constitutional statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a) (2013). One such requirement is that at the time of their election, members of the Georgia Senate must “have been legal residents of the territory embraced within the district from which elected for at least one year.” Ga. Const., art. III, § 2, para. 3(b); O.C.G.A. 28-2-1(b) (2013). The Secretary of State is authorized by law to challenge the qualifications of any candidate at any time prior to the election of such candidate. O.C.G.A. § 21-2-5(b) (2013).

3.

In this case, Petitioner demonstrated that Respondent is not a legal resident of the territory embraced within Senate District 48. According to the most current map of Senate districts, Respondent is a resident of the territory embraced within Senate District 5. Respondent does not dispute that he resides at the Nora Lane Address. Petitioner definitively established that this address is within Senate District 5 according to the most current map of Senate districts. Accordingly, Respondent does not meet the legal residence requirement expressed in Article III, Section II, Paragraph III(b) of the Constitution of the State of Georgia and is therefore not qualified to be a candidate in Senate District 48.

IV. Decision

IT IS HEREBY ORDERED THAT Respondent is not qualified to be a candidate for Senate District 48.

SO ORDERED, this the 16th day of May, 2014.

MICHAEL MALIHI, Judge