

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

GERALD GREENE,  
Challenger/Petitioner,

v.

JAMES RICARDO WILLIAMS,  
Candidate/Respondent.

:  
:  
: Docket No.: OSAH-SECSTATE-CE-1638940-47-  
: Walker  
:



FILED  
OSAH

MAY 18 2016

**INITIAL DECISION**

Kevin Westray, Legal Assistant

**I. INTRODUCTION**

Challenger/Petitioner challenges Candidate/Respondent's qualifications to be a candidate for Georgia House of Representatives District 151. The undersigned held a hearing in this matter on April 19, 2016,<sup>1</sup> and the record closed on May 17, 2016.<sup>2</sup> For the reasons indicated below, the undersigned Administrative Law Judge finds that Respondent **is not qualified** to be a candidate for Georgia House of Representatives District 151.

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<sup>1</sup> Prior to commencing the hearing, the undersigned denied Respondent's Motion for a Change of Hearing Location, Motion to Dismiss, Motion for Declaratory Relief, Motion for Agency Records, Motion to Challenge the Regularity of the Process and Motion to Recuse the Secretary of State's Office. Respondent's Motion for Complete Recordation of All Proceedings was granted. (T-13-20).

<sup>2</sup> The parties had agreed to submit closing briefing by May 10, 2016. As the hearing transcript was completed later than originally anticipated, the undersigned **GRANTED** Respondent's Motion for an Extension of Time to May 16, 2016. Petitioner did not oppose Respondent's motion. Petitioner timely filed post-hearing pleadings. Respondent filed post-hearing pleadings on May 17, 2016; however, the undersigned will allow a one-day extension of time to Respondent.

## II. FINDINGS OF FACT

### A. Background

1.

On or about March 7, 2016, Respondent filed a Declaration of a Notice of Candidacy and Affidavit (“Declaration”) seeking the office of State Representative for Georgia House of Representatives District 151 (“District 151”). (Transcript at pp. 223-224 (hereinafter T-)); Exhibit R-D). In conjunction with the Declaration, Respondent paid a qualification fee “to the Secretary of State’s Office, Democratic party.” (T-223). He is a candidate in the Democratic Primary election to be held on May 24, 2016. (Exhibit R-D). Respondent worked for the City of Albany Police Department for thirty years and currently is retired. (T-215; Exhibit R-F).

2.

The Declaration listed Respondent’s address as “112 Shady Glen LN, Albany, GA 31721-95630.” Respondent affirmed that he resided at that address, and that he had lived in Dougherty County for 53 years and District 151 for 18 years. (T-215, 226, 233; Exhibit R-D).

3.

Petitioner resides at 5805 US Highway 82 West in Cuthbert, Georgia. (T-52). He is a resident of and registered to vote in District 151. (T-52-53). Petitioner has been District 151’s State Representative for thirty three years, and is a member of the Republican Party. (T-32, 53).

4.

Maintaining that Respondent will not have been a legal resident of District 151 for one year prior to the November 8, 2016 election as required under Georgia law, Petitioner has filed a challenge to Respondent’s qualifications for candidacy. (T-42-44, 49, 53-54; OSAH FORM 1).<sup>3</sup>

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<sup>3</sup> Should Petitioner prevail in his challenge, he will be unopposed in the general election for State Representative in November 2016. (T-50-51).

5.

Prior to challenging Respondent's qualifications, Petitioner contacted Georgia Secretary of State Brian Kemp to inquire about filing a challenge. (T-43-44). Secretary Kemp is Georgia's Chief Election Officer. (T-180). He directed Petitioner to David Dove, Secretary Kemp's Chief of Staff and Legal Counsel. (T-44).

6.

On March 14, 2016, Petitioner sent an email to Mr. Dove. (T-42; Exhibit R-B). Petitioner's email stated that he had "documentation (legislative Reapportionment Map) that clearly indicates that [Respondent] in fact resides in District 154." (Exhibit R-B). After sending the email, Petitioner contacted Mr. Dove and asked him if there was "anything else that I needed to do." (T-43).

7.

When the Secretary of State's office receives a challenge to a candidate's qualifications, it notifies the candidate and forwards the challenge to the Office of State Administrative Hearings ("OSAH"). (T-199-200). On March 21, 2016, the challenge was forwarded to OSAH for hearing.<sup>6</sup> After the undersigned Administrative Law Judge issues an Initial Decision, it will be sent to the Secretary of State for his review. (T-173).<sup>7</sup>

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<sup>6</sup> The hearing in this case originally was scheduled for April 13, 2016. On April 6, 2016, Respondent filed a Motion for Continuance, stating that he was retained on April 5, 2016, and had not had adequate time to review the case file, meet with his client, subpoena witnesses, complete his investigation, interview all witnesses or prepare for hearing. Petitioner did not object to a brief continuance, but in a written response to Respondent's motion advised that his attorney would begin an unexpected medical leave the following week. The undersigned continued the case until April 15, 2016, and at Respondent's request, the undersigned continued the case a second time, until April 19, 2016. At the hearing Respondent objected to the length of the continuance, stating "we basically go forward in these proceedings under protest"; however, he offered no specific basis as to why the continuance granted had been inadequate. (T-20).

<sup>7</sup> The Administrative Law Judge reports his or her findings to the Secretary of State, and the Secretary of State "shall determine if the candidate is qualified to seek and hold the public office for which such candidate is offering."

## B. Redistricting

8.

The Georgia General Assembly reviews the apportionment of Georgia's state legislative and congressional districts decennially. (T-155, 167, 247).<sup>8</sup> In 2011 the General Assembly redistricted Georgia's legislative districts. (T-132-33; Exhibit P-2). The proposed legislative districts were pre-cleared by the United States Attorney General for use beginning in the 2012 election cycle. (T-252-255; Exhibits P-1; P-2). The General Assembly has not redistricted District 151 or District 154 since 2011. (T-133).<sup>9</sup>

9.

Following a redistricting, county boards of registrars are responsible for assigning voters to the appropriate legislative district. (T-167).<sup>10</sup> They also must send voters notice regarding their assigned district. (T-170, 265).<sup>11</sup> County boards of registrars cannot change the boundaries of a district drawn by the General Assembly—they only assign voters to a voting district. (T-132-33).

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O.C.G.A. § 21-2-5(b), (c). See also O.C.G.A. § 21-2-5(e) (referring to the Secretary of State making the "final decision" on the candidate meeting his qualifications).

<sup>8</sup> Ga. Const., art. III, § II, par. II provides that "[t]he General Assembly shall apportion the Senate and House districts. Such districts shall be composed of contiguous territory. The apportionment of the Senate and of the House of Representatives shall be changed by the General Assembly as necessary after each United States decennial census."

<sup>9</sup> See H.B. 1EX, 151st Gen. Assem., 1st Spec. Sess. (Ga. 2011) ("Act 1EX"). The General Assembly has amended Act 1 EX twice. See H.B. 829, 151st Gen. Assem., Reg. Sess. (Ga. 2012) and H.B. 566, 154th Gen. Assem., Reg. Sess. (Ga. 2015). Neither of these amendments affected District 151 or District 154. (T-251).

<sup>10</sup> "[T]he county board of registrars shall have the duty of determining and placing the elector in the proper congressional district; state Senate district; [and] state House district . . ." O.C.G.A. § 21-2-226(b).

<sup>11</sup> Under O.C.G.A. § 21-2-226(e), "In the event that an elector's precinct, polling place, or voting district or districts change, a new card shall be issued to the elector reflecting such changes." See also Ga. Comp. R. & Regs. 183-1-7-.01 ("When the boundary lines of a precinct are altered, all affected electors shall be notified of the change at least thirty (30) days before the next primary or election. Such notice shall be in writing and mailed to the last known address of the elector by the Registrar or the Election Board.")

### **C. Board of Registrars**

10.

Respondent testified that he resides at 112 Shady Glen Lane in Albany, Georgia. (T-233). On July 31, 2012, Respondent voted in the Democratic Party Primary and Nonpartisan General Election. (T-217-18; Exhibit R-I). Respondent later voted in the General Election held on November 6, 2012. Respondent voted in District 151. (T-101, 118, 218; Exhibit R-J).

11.

On May 20, 2014, Respondent voted in the Democratic Party Primary and Nonpartisan General Election. (T-219-20; Exhibit R-K). Respondent also voted in the General Election held on November 4, 2014. Respondent voted in District 151. (T-219-20; Exhibit R-P).

12.

On March 7, 2016, the day Respondent submitted his Declaration, he was assigned to District 151. (T-66). He has campaigned for his election in District 151 and accepted donations to fund his campaign. (T-232).

13.

In determining that he was a resident of District 151, Respondent relied on the voter registration card issued by the Dougherty County Joint County-Municipal Board of Elections, Albany-Dougherty County ("Board").<sup>12</sup> (T-232). He also reviewed the Secretary of State's website to confirm that he was assigned to District 151. (T-216, 238).

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<sup>12</sup> The Dougherty County Joint Municipal Board of Elections, Albany-Dougherty County has all the powers and duties of a board of registrars. (Exhibit R-H at p. 4082).

14.

Ricardo Sisney resides in District 151. (T-210). He intends to vote for Respondent both in the primary and general election. (T-212).

15.

Kameika Harvey has been an administrative assistant for the Board for one year. (T-63, 100). Her duties include inputting voter registration cards and making changes to voter records. (T-64). The voter registration cards issued by the Board list “combos,” numbers that assign a voter to state House and Senate districts, as well as Congressional districts. (T-90-91, 265).

16.

In order to make a change to a voter’s assigned districts, the Board must access a software program called redistricting (“redistricting software”). (T-131-32, 143). Redistricting software allows “the county to basically link a voter to a street and then link a street to a district.” (T-146). The Board cannot change a voter’s assignment without utilizing the redistricting software. (T-85, 130).

17.

On March 16, 2016, Ms. Harvey received an email from Leanne Livingston. (Exhibit R-C). Ms. Livingston is a liaison in the State Elections Division to Dougherty County under Secretary of State Kemp. (T-139-41; Exhibit R-C). The email’s subject was “redistricting,” and the body of the email specified “a candidate who is qualified to run for HD154 lives on a street segment that isn’t properly districted. 112 Shady Glen Lane, Albany needs to be in 154, I opened redistricting today for you, so you should be able to make this change tomorrow.” (Exhibit R-C).

18.

The Board also received a call from the Secretary of State's office indicating that the Board had erred in assigning Respondent to District 151. (T-75, 89, 141). The Board was instructed to correct the mistake "immediately." (T-112, 115).

19.

After receiving the call and email, Ms. Harvey testified that Board employees "checked the map, we pulled the files from 2012, and we looked in and made sure that we was making the proper change." (T-90). The Board determined that a former Board employee had made a mistake in assigning Respondent to District 151. (T-81, 91, 122, 133).

20.

House District 151 contains one and a half precincts in Dougherty County and is considered a "split" precinct. (T-126, 134). A split precinct is divided between two or more districts to try and balance populations. (T-252). Errors in assignments typically involve split precincts. (T-134).

21.

Although the Board is the only entity authorized to update voter records at the local level it does not have direct access to the redistricting software; the Secretary of State must open the program. (T-90, 114, 135-36). On March 18, 2016, after the Secretary of State's office granted the Board access to the redistricting software, Ms. Harvey reassigned Respondent from District 151 to 154. (T-85, 90-91, 122, 130).

22.

Following the Board's reassignment, it sent Respondent notification that his state House district had been changed from 151 to 154.<sup>13</sup> (T-67, 73, 111, 216). There were 76 other voters assigned to 151 who should have been assigned to 154; these voters also were sent notice of the reassignment because the "whole area was wrong." (T-92-93).

**D. Office of Legislative and Congressional Reapportionment**

23.

Gina Wright is executive director of the Office of Legislative and Congressional Reapportionment for the Georgia General Assembly ("OLCR"). (T-246). The OLCR works with the Georgia General Assembly to draw legislative and congressional districts. (T-247).

24.

Ms. Wright knows Petitioner because he is a member of the General Assembly and she works for the General Assembly. (T-259). Petitioner approached Ms. Wright and asked her to verify Respondent's voting district. (T-259).

25.

The OLCR uses a software program, "Maptitude," to draw maps of legislative and congressional districts. In order to determine Respondent's voting district, Ms. Wright plotted Respondent's address, 112 Shady Glen Lane in Albany, Georgia, using Maptitude. Based on the map generated, Ms. Wright determined that Respondent's address falls within House District

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<sup>13</sup> Respondent testified that he did not receive either notice or an opportunity to be heard before the Board reassigned him to District 154. (T-216).



154. (T-247-249; Exhibit P-1).<sup>14</sup> Ms. Wright confirmed her original determination by using a second online mapping program. (T-250; Exhibits P-1, P-2).<sup>15</sup>

### III. CONCLUSIONS OF LAW

1.

Every candidate for state office must meet all of the constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

2.

At the time of their election, members of the Georgia House of Representatives “shall have been legal residents of the territory embraced within the district from which elected for at least one year.” Ga. Const., art. III, § II, par. III(b); see also O.C.G.A. § 28-2-1(b) (“A member of the House of Representatives shall be a resident of the district which such member represents and at the time of such member’s election shall have been a resident of the territory embraced within such district for at least one year preceding such time.”)

3.

“Within two weeks after the deadline for qualifying, any elector who is eligible to vote for a candidate may challenge the qualifications of the candidate . . . .” O.C.G.A. § 21-2-5(b). Petitioner challenges Respondent’s qualifications, maintaining that he will not have lived in District 151 for one year prior to the election. The case has been sent to OSAH for hearing.

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<sup>14</sup> P-1 depicts District boundaries for District 151, 153 and 154. Respondent maintained that P-1 was not an accurate map, in part because the label “Darton College” did not reflect the college’s precise geographic location. (T-240). However, as used on P-1, “Darton College” designates a voting precinct, rather than the location of the college itself. (T-261). The undersigned finds P-1 to be an accurate representation of voting Districts 151, 153 and 154.

<sup>15</sup> The state legislative district maps approved following the 2010 U.S. Census are available from the OLCR. See <http://www.legis.ga.gov/Joint/reapportionment/en-US/default.aspx>.

4.

OSAH's scope is limited to whether the candidate has met the constitutional and statutory qualifications for the office. See O.C.G.A. § 21-2-5(b) (“[T]he Secretary of State shall notify the candidate in writing that his or her qualifications are being challenged, . . . and shall advise the candidate that he or she is requesting a hearing *on the matter* before an administrative law judge of the Office of State Administrative Hearings . . . .”) (emphasis added).<sup>16</sup> The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

5.

Under Haynes v. Wells, 273 Ga. 106 (2000), the burden of proof is on Respondent to affirmatively establish eligibility for office:

[T]he statutes place the affirmative obligation on Haynes [the challenged candidate] to establish his qualification for office. Wells [the challenger] is not required to disprove anything regarding Haynes's eligibility to run for office, as

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<sup>16</sup> The Administrative Law Judge reports his or her findings to the Secretary of State, and the Secretary of State “shall determine if the candidate is qualified to seek and hold the public office for which such candidate is offering.” O.C.G.A. § 21-2-5(b), (c). Per O.C.G.A. § 21-2-5(e), the Secretary of State's decision as to whether a candidate is qualified for office may be reviewed in Fulton County Superior Court, with this review “confined to the record.” Also pursuant to O.C.G.A. § 21-2-5(e), the Fulton County Superior Court may reverse or modify the Secretary of State's decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the Secretary of State are:

- (1) In violation of the Constitution or laws of this state;
- (2) In excess of the statutory authority of the Secretary of State;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

Preserved in the record are Respondent's claims that: (1) Respondent was denied due process of law when his District was changed without notice or an opportunity to be heard; (2) Respondent was denied his constitutional and statutory right to appeal the decision of the Board to the Superior Court of Dougherty County; (3) the Georgia Secretary of State's Office and Board were estopped from removing Respondent/Candidate from District 151 because Respondent relied on their representations that he lived in District 151 and because the presumption of continuity mandates he remain a resident of District 151; and (4) the Georgia Secretary of State's Office unlawfully instructed the Board to change Respondent's District from 151 to 154.

the entire burden is placed upon Haynes to affirmatively establish his eligibility for office.

Haynes, 273 Ga. at 108-109.

6.

Citing to Allen v. Yost, 281 Ga. 102 (2006), Lilly v. Heard, 295 Ga. 399, 402 (2014), and Cook v. Bd. of Registrars, 320 Ga. App. 447 (2013), Respondent maintains that because his name has been placed on the ballot there is a presumption that he meets the qualifications for office and it is Petitioner/Challenger who must prove that he is not a qualified candidate.<sup>17</sup> None of the cases relied upon by Respondent explicitly nor implicitly modify the burden of proof as articulated in Haynes, and the undersigned rejects Respondent's argument. Moreover, even if the burden of proof was upon the Petitioner, he provided substantial evidence that Respondent does not reside in District 151, as multiple witnesses testified that Respondent's residence falls within District 154.

7.

Respondent also argues Petitioner may not challenge his qualifications because Petitioner is not an elector eligible to vote in the primary for the candidate being challenged, as defined by O.C.G.A. § 21-2-5(b). Even if Respondent is correct in assuming that a primary would fall within the scope of O.C.G.A. § 21-2-5(b), he wrongly concludes that it would foreclose Petitioner's challenge. Pursuant to O.C.G.A. § 21-2-224, each elector found eligible by the board of registrars "shall be entitled to vote in any primary or election." O.C.G.A. § 21-2-224(d). However, "an elector, voting in the primary or primaries held by a single party for the nomination of candidates to seek public offices to be filled in an election, shall not vote in a

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<sup>17</sup> Notwithstanding that this case arises under O.C.G.A. § 21-2-5(b), Respondent's Proposed Findings of Fact and Conclusions of Law refers to O.C.G.A. § 21-2-6 suggesting that it "clearly places the burden of proof on the individual who is making the challenge." Respondent's Proposed Findings of Fact and Conclusions of Law at p. 27.

primary held by any other party for the nomination of candidates to seek public offices to be filled in the same such election.” Id. Respondent reasons that because Petitioner is the Republican candidate for State Representative he will vote in the Republican primary, rather than in the Democratic primary. If Petitioner votes in the Republican primary he will be ineligible to vote in the Democratic primary; thus, Respondent concludes that he is not an eligible elector.

8.

Respondent’s argument is unavailing. Petitioner’s position as a Republican candidate for House District 151 does not render him ineligible to vote for Respondent. Petitioner is eligible to vote in either the Republican or Democratic primary, so long as he does not vote in more than one party’s primary. See O.C.G.A. § 21-2-224(d). Consequently, Petitioner may challenge Respondent’s qualifications under O.C.G.A. § 21-2-5(b).

9.

“The residence of any person shall be held to be in that place in which such person’s habitation is fixed, without any present intention of removing therefrom[.]” O.C.G.A. § 21-2-217(a)(1). The parties do not dispute that Respondent resides at 112 Shady Glen Lane, Albany, Georgia 31721.

10.

Although Respondent suggests that the Secretary of State ordered that he be “redistricted” to District 154 only after he qualified to run in District 151, the evidence demonstrates that beginning in the 2012 election cycle, 112 Shady Glen Lane, Albany, Georgia 31721, was located within the boundaries of District 154. Under O.C.G.A. § 21-2-226(b), it is the Board that has the “duty of determining and placing the elector in the proper . . . state House district . . . .” The Board incorrectly assigned Respondent’s District, placing him in District 151

rather than 154. Due to the Board's error, Respondent voted in District 151 on numerous occasions and, after checking the Secretary of State's website, had valid reason to conclude that he was eligible to run as a candidate in District 151. Undoubtedly, he acted in good faith in filing his Declaration. Nonetheless, the evidence at the hearing demonstrates that Respondent will not have been a resident of District 151 for one year prior to the election to be held on November 8, 2016; thus, he has not met the constitutional and statutory requirements for office. See Ga. Const., art. III, § II, par. III(b); O.C.G.A. § 28-2-1(b).

#### IV. DECISION

Every candidate for state office must meet the "constitutional and statutory qualifications" for holding the office being sought. O.C.G.A. § 21-2-5(a). Based upon the above Findings of Fact and Conclusions of Law, Respondent **is not qualified** to be a candidate for Georgia House of Representatives District 151.

**SO ORDERED THIS** 18<sup>th</sup> day of May, 2016.

  
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**RONIT WALKER, ALJ**

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

GERALD GREENE,	:	
Challenger,	:	
v.	:	
	:	Docket No.: OSAH-SECSTATE-CE-1638940-
JAMES RICARDO WILLIAMS,	:	47-Walker
Candidate.	:	

**NOTICE OF INITIAL DECISION**

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

**FILING A MOTION WITH THE JUDGE AT OSAH**

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1.

Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk  
Office of State Administrative Hearings  
Attn.: Kevin Westray, [kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov)  
225 Peachtree Street, NE, South Tower, Suite 400  
Atlanta, Georgia 30303-1534

**APPLICATION FOR AGENCY REVIEW**

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Office of Secretary of State  
Attn: Elections Division  
1104 West Tower  
2 Martin Luther King Jr. Drive  
Atlanta, Georgia 30334

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).