

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



CURT THOMPSON,
Petitioner/Challenger,

v.

MICHEL POWELL,
Respondent/Candidate.

Docket No.: 2221988
2221988-OSAH-SECSTATE-CE-60-
Beaudrot

INITIAL DECISION

I. INTRODUCTION

Petitioner Curt Thompson challenges Respondent Michell Powell's qualification to be a candidate in the general primary for the Georgia State Senate 5. Specifically, Petitioner contends that Respondent does not meet the residency requirements to be a candidate under the Georgia Constitution and O.C.G.A. § 28-2-2(b).

On April 7, 2022, this matter was called for hearing at the scheduled time. Petitioner Curt Thompson, Esq. appeared. Respondent failed to appear for the hearing. Although the Court could have properly entered a default,¹ in the interest of developing a complete record, the Court conducted an evidentiary hearing in this matter. Petitioner and Ilene Kapustin Johnson testified. Documentary evidence tendered by Petitioner was admitted. Based on the evidence presented, the Court concludes that Respondent is not qualified to be a candidate for Georgia State Senate District 5.

¹ See Ga. Comp. R. & Regs. 616-1-2-.30.

II. FINDINGS OF FACT

1.

In March 2022, Respondent declared her candidacy for the Georgia State Senate District 5 (“Senate District 5”). Senate District 5 is located in Gwinnett County. In her filings with the Secretary of State’s office, Respondent listed her address as 41 Marietta Street, NW, Apartment 2218, Atlanta, GA 30301. The listed address is not located in Gwinnett County and is not located in Senate District 5. (Testimony of Petitioner; Exhibit A).

2.

On March 16, 2022, Ms. Johnson contacted Respondent seeking to confirm her address and that she was running for the Senate District 5 seat. In email correspondence with Ms. Johnson, Respondent indicated that: (i) the address Respondent filed with the Office of the Secretary of State as her residence address was her mailing address, not her residence address; (ii) Respondent lived “further up towards midtown” in Atlanta “on pine street that’s district 5”; and (iii) Respondent intended to run for Congress in the 5th U.S. Congressional District. No part of the City of Atlanta lies within Gwinnett County or Senate District 5. (Testimony of Ms. Johnson; Exhibit B).

3.

From court records, it appears Respondent lives at 3562 Clubhouse Circle/East, Apartment D, Decatur, Georgia, 30032. This address is in DeKalb County and is not located within Gwinnett County or in Senate District 5. (Testimony of Ms. Johnson; Exhibit D).

4.

On March 17, 2022, Petitioner, a registered voter and eligible elector in Senate District 5, filed a challenge to Respondent's qualifications with the Secretary of State. The primary election for Senate District 5 is on May 24, 2022, and the general election will take place on November 8, 2022. (Testimony of Petitioner; OSAH Form 1, attachments.)²

III. CONCLUSIONS OF LAW

1.

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

2.

Pursuant to Code Section 21-2-5(b), either the Secretary of State or a qualified elector residing in a state legislative district may challenge a candidate's qualifications to hold office. In the present case, Petitioner, an elector from Senate District 5, challenges Respondent's qualifications and contends that Respondent does not meet the constitutional and statutory residency requirements.

3.

It is Respondent who has the burden of proving that she is qualified to be a candidate for Senate District 5. See Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The burden of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

² See also Ga. Const. Art. III, § II, Para. V (members of the Georgia General Assembly are elected biennially on Tuesday after the first Monday in November).

4.

Candidates for the Georgia Senate must be legal residents of the district from which elected for at least one year. Ga. Const. Art. III, Sec. II, Para. III(a); O.C.G.A. § 28-2-2(b). The Georgia Supreme Court has interpreted a one-year residency provision as requiring a candidate “to be a resident of the territory within the district for 12 months prior to the general election.” See Cox v. Barber, 275 Ga. 415, 416 (2002) (durational residency requirement for election to the Georgia Public Service Commission under O.C.G.A. § 46-2-1 held constitutional). Accordingly, in order to be to qualify as a candidate in this case for Senate District 5, Respondent must prove that she has been a resident of Senate District 5 since November 8, 2021.

5.

In Cox v. Barber, the Georgia Supreme Court discussed the “important state interest” of residency requirements:

Residency requirements for candidates serve the important state interest of supporting our representative form of government. Requiring candidates to live in a district for a reasonable period of time before the election encourages them to become familiar with the problems, needs, and concerns of the people they seek to represent; it also exposes voters to the character, experience, and views of the individuals who seek to represent them. In addition, it ensures voters that their elected representatives will have at least a minimum amount of ties to the community. Arrayed against the state’s legitimate interest in having informed voters and candidates is the individual voter’s interest in having a choice at the ballot and the candidate’s interest in the continued availability of political opportunity.

275 Ga. at 418 (citations omitted).

6.


Given Respondent’s failure to appear for the hearing in this matter and the evidence submitted by Petitioner, it is patently obvious that Respondent does not meet the

constitutional and statutory requirements for holding the office for which she registered to run. O.C.G.A. § 21-2-5(a). Respondent has failed completely to meet her burden. Indeed, it appears that Respondent made an erroneous filing and intended to run for the position of Representative from the 5th District of the United States Congress. Be that as it may, is crystal clear that she does not meet the meet the constitutional and statutory requirements to serve in the Georgia Senate as Senator from the Fifth District.

IV. DECISION

Accordingly, based upon the above Findings of Facts and Conclusions of Law, Respondent is not qualified to be a candidate for Senate District 5.

SO ORDERED this 8th day of April, 2022.


Charles R. Beaudrot, Jr.
Administrative Law Judge

