

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JEFF LEWIS,)	
)	
<i>Petitioner,</i>)	
)	CIVIL ACTION NO.
v.)	2022CV364875
)	
BRAD RAFFENSPERGER, in his)	
official capacity as Georgia Secretary)	
of State,)	
)	
<i>Respondent, and</i>)	
)	
CHUCK HUFSTETLER)	
)	
<i>Intervenor-Respondent</i>)	

ORDER ON PETITION FOR JUDICIAL REVIEW

Before the Court is the Petition for Judicial Review filed by Petitioner Jeff Lewis challenging the Secretary of State’s final decision disqualifying Petitioner Lewis as a candidate for State Senate District 52 pursuant to O.C.G.A. § 21-2-5. Having considered the pleadings, argument of counsel, the administrative record below, and applicable authority, the Court affirms the Secretary of State’s final decision for the reasons that follow.

Proceedings Below

This case involves a candidate qualifying challenge filed against Petitioner Lewis by Chuck Hufstetler, an eligible elector who resides in Senate

District 52.¹ Hufstetler initiated the challenge under Code Section 21-2-5(b), which permits any elector who is eligible to vote for a candidate to challenge the qualification of the candidate by filing a written complaint with the Secretary of State, giving the reasons why the elector believes that the candidate is not qualified to seek and hold the office. The Secretary of State is then required to notify the candidate in writing that his qualification has been challenged, provide the reasons for the challenge, and advise the candidate that the challenge is being referred for a hearing by an administrative law judge of the Office of State Administrative Hearings. *Id.* The ALJ is required to hold a hearing and report his or her findings in an initial decision to the Secretary of State. O.C.G.A. § 21-2-5(b). The Secretary of State then “shall determine if the candidate is qualified to seek and hold the public office” sought in a final decision. O.C.G.A. § 21-2-5(c).

The sole issue raised in the candidate challenge against Petitioner Lewis was whether he complied with the requirements of Code Section 21-5-9.1 before qualifying to run for office. That statute provides, “[n]o person who has

¹ Hufstetler is also a candidate for Senate District 52 and was declared the Republican nominee in Senate District 52 pursuant to the certified results of the May 24, 2022, General Primary. *See* Ga. Sec’y of State, May 24, 2022 General Primary/Special Election Official & Complete Results, State Senate Dist. 52 (Rep.), <https://results.enr.clarityelections.com/GA/113667/web.285569/#/detail/45210>.

served or is serving as a member of the General Assembly shall be eligible to qualify to seek election or reelection to the General Assembly until and unless all fines and fees owing to the [Georgia Government Transparency and Campaign Finance Commission] have been paid, all disclosure reports due have been filed, and all outstanding taxes have been paid.” *Id.* An evidentiary hearing was held before ALJ Beaudrot on April 19, 2022, at which Lewis appeared and was the sole witness. As the candidate, Lewis had the burden of proving by a preponderance of the evidence that he is qualified. *Haynes v. Wells*, 273 Ga. 106, 108-09 (2000); Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

On May 12, 2022, the ALJ issued an Initial Decision with findings of fact and conclusions of law. Based upon factual stipulations between the parties, ALJ Beaudrot found that between at time of his qualifying on March 7, 2022, neither Petitioner Lewis nor his campaign committee had filed a Campaign Contribution Disclosure Report with the Georgia Government Transparency and Campaign Finance Commission since 2012. Based on the stipulated facts and testimony presented at the hearing, ALJ Beaudrot concluded in his Initial Decision that “Lewis had not made the requisite filings as of the date of his qualification filing nor had he cured such delinquency by the time of the hearing in this matter and the closing of the record in this matter.” Accordingly, “[b]y the express language of [O.C.G.A. § 21-5-9.1], Lewis was not,

therefore ‘eligible to qualify to seek election’ when he qualified to run for State Senator District 52.”

On May 13, 2022, the Secretary adopted the Findings of Fact and Conclusions of Law by ALJ Beaudrot and issued a Final Decision that Lewis was “not qualified to be candidate for the office of Georgia State Senate District 52.” Lewis petitioned this Court for review of the Secretary’s final decision on May 16, 2022.

Legal Analysis

In considering the Petition for Judicial Review, the Court cannot substitute its judgment for that of the Secretary of State as to the weight of the evidence on questions of fact. O.C.G.A. § 21-2-5(e). The Court’s review is limited to the administrative record. *Id.* The Court may only reverse or modify the 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.

Id. On review, the Court must accept the Secretary’s findings of fact if there is any evidence to support those findings, and the Court then must examine the soundness of the Secretary’s conclusions of law. *Handel v. Powell*, 284 Ga. 550, 552 (2008) (citing *Pruitt Corp. v. Ga. Dept. of Cmty. Health*, 284 Ga. 158, 160 (2008)).

Petitioner Lewis contends that the Secretary of State’s decision is in violation of the Constitution or laws of this state. Specifically, Petitioner Lewis argues that the General Assembly did not possess the authority under the Georgia Constitution to enact Code Section 21-5-9.1; that Code Section 21-5-9.1 is an unconstitutional bill of attainder in violation of the U.S. Constitution and Georgia Constitution; and that Code Section 21-5-9.1 must be “construed narrowly” under the doctrine of constitutional avoidance. As the party challenging the constitutionality of a statute, Petitioner bears the burden of proof, and “all presumptions are in favor of the constitutionality” of Code Section 21-5-9.1. *Dev. Auth. of DeKalb Cty. v. State of Georgia*, 286 Ga. 36, 38 (2009).

The Georgia Constitution vests the legislative power of the state in the General Assembly, and the lawmaking power of the General Assembly is “plenary.” *Bryan v. Georgia Public Service Comm’n*, 238 Ga. 572, 573 (1977). The General Assembly is “absolutely unrestricted in the power to legislate,” so

long as it does not enact measures prohibited by the Georgia or U.S. Constitutions. *Sears v. State of Georgia*, 232 Ga. 547, 553-54 (1974). Therefore, before a statute can be declared unconstitutional, “the conflict between it and the fundamental law must be clear and palpable,” and the Court must be “clearly satisfied of its unconstitutionality.” *Dev. Auth. of DeKalb Cty.*, 286 Ga. at 38; *see also McInerney v. McInerney*, 313 Ga. 462, 467 (2022).

Based upon the administrative record and the applicable legal authority, the Court concludes that Petitioner Lewis failed to overcome the strong presumption of the constitutionality of Code Section 21-5-9.1 because he has failed to demonstrate a “clear and palpable” conflict between the statute and the Georgia Constitution. Likewise, Petitioner Lewis has failed to carry his burden of demonstrating that Code Section 21-5-9.1 amounts to a bill of attainder under the U.S. or Georgia Constitutions because Code Section 21-5-9.1 does not legislatively determine guilt and inflict punishment without the provision of judicial trial. *See Cook v. Smith.*, 288 Ga. 409, 413 (2010) (quoting *United States v. Lovett*, 328 U.S. 303, 315 (1946)). Indeed, Petitioner Lewis has obtained the benefit of trial, as evidenced by the review of this challenge by the Office of State Administrative Hearings, the Secretary, and now this Court. It was through this process—not legislative act alone—that Petitioner Lewis was determined to be ineligible to seek election. Moreover, Petitioner Lewis, like

any current or former member of the General Assembly who is out of compliance with Code Section 21-5-9.1's terms, can rectify those issues prior to seeking election or re-election to the General Assembly, and so long as persons "can escape regulation merely by altering the course of their own present activities, there can be no complaint of an attainder." *Communist Party of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 88 (1961).² Accordingly, Petitioner Lewis cannot show that he has been substantially prejudiced because the Secretary's final decision is "in violation of the Constitution or laws of this state." O.C.G.A. § 21-2-5(e).

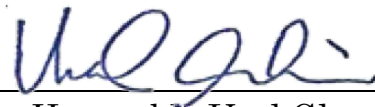
Finally, because the Court finds that the General Assembly was authorized to enact Code Section 21-5-9.1 and that the Code Section does not amount to a Bill of Attainder, the Court need not address Lewis's additional argument that the provisions of Code Section 21-5-9.1 must be interpreted to apply at a later point in time, rather than at the time of filing, under the

² Lewis asserts that Code Section 21-5-9.1 is a Bill of Attainder under both Article I, Section 9, Clause 3 of the United States Constitution and Article I, Section 1, Paragraph 10 of the Georgia Constitution. It is unclear whether the provision of the United States Constitution relied upon by Lewis is applicable to the State as opposed to Congress. *Compare* U.S. Const. Art. I Sec. 10, cl. 1 (prohibiting State action). Nonetheless, the Georgia Supreme Court has applied precedent under the United States Constitution to Bill of Attainder claims brought under the Georgia Constitution and the Court does so here as well. *See Fulton v. Baker*, 261 Ga. 710, 711–712 (1991).

doctrine of constitutional avoidance. However, even if the Court did reach this argument, there remains no evidence in the record of Petitioner's compliance with the provisions of Code Section 21-5-9.1, nor has Petitioner advanced any argument of his compliance before this Court.

It is undisputed in the record that Petitioner Lewis had not filed the requisite campaign disclosures as of the date of his qualification filing as required by Code Section 21-5-9.1. Consequently, this Court finds that the Secretary's findings are supported by the record evidence and that Mr. Lewis was therefore not "eligible to qualify to seek election or reelection to the General Assembly." O.C.G.A. § 21-5-9.1. The Court therefore AFFIRMS the decision of the Secretary.

SO ORDERED, this 27th day of June, 2022.



The Honorable Ural Glanville
Judge, Superior Court of Fulton County

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