

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

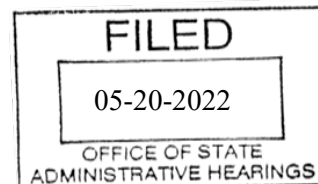
BRAD RAFFENSPERGER,
Petitioner,

v.

PATTY DURAND,
Respondent.

**Docket No.: 2225324
2225324-OSAH-SECSTATE-CE-122-
Barnes**

Agency Reference No.: 2225324



INITIAL DECISION

I. INTRODUCTION

Petitioner Secretary of State Brad Raffensperger challenges Respondent Patty Durand's qualifications to be a candidate in the general primary for District 2 Georgia Public Service Commission ("PSC District 2"). Specifically, Petitioner contends that Respondent does not meet the requirements to be a candidate under the Georgia Constitution and O.C.G.A. § 46-2-1. On May 12, 2022, the undersigned conducted an evidentiary hearing in this matter. Petitioner was represented by Assistant Attorneys General Charlene McGowan, Esq. and Elizabeth Vaughan, Esq. Respondent was represented by Bryan Sells, Esq. The record was held open until May 18, 2022 to allow the parties to make post-hearing submissions. After reviewing the evidence presented at the hearing and submissions by the parties, the Court concludes that Respondent is not qualified to be a candidate for PSC District 2.

II. FINDINGS OF FACT

The Court is "not authorized to resolve constitutional challenges to statutes or rules." Ga. Comp. R. & Regs. R. 616-1-2-.22(3). However, the Court may, at its discretion, take evidence and make findings of fact relating to such challenges. *Id.* The following factual record was established at the hearing:

1. On March 10, 2021, Respondent filed a Declaration of a Notice of Candidacy and Affidavit (“Declaration”) seeking the nomination of the Democratic Party for the office of Georgia Public Service Commissioner, District 2. (Testimony of Respondent; Ex. P-7)

2. The Declaration listed Respondent’s address as 4010 Ryegate Ct. SW, Conyers Georgia 30094. Respondent affirmed that she resided at that address, which is in Rockdale County, Georgia. (Ex. P-7) Respondent established residency in Rockdale County, Georgia, on March 4, 2022. (Tr. at 2:05:57.)¹

3. The Georgia Public Service Commission is a five-member body created under the Georgia Constitution. Ga. const. art. IV, § 1, para. I. The jurisdiction, powers, and duties of the Public Service Commission are prescribed by state law, and they include broad governmental authority to supervise and regulate common carriers, railroads, and public utilities. O.C.G.A. § 46-2-1 et seq.

4. Among many other duties, the Commission regulates the rates that Georgians may be charged by electric, natural gas, and telephone companies. *Id.*

5. Georgia law provides that commissioners are elected statewide for six-year terms. O.C.G.A. § 46-2-1(a). Elections for commissioners are held on a partisan basis. (Ex. P14: Sample Democratic primary ballot.)

6. In 1998, the Georgia General Assembly added a requirement that commissioners must reside within specific districts and must have resided in that district “for at least 12 months prior to election thereto.” O.C.G.A. § 46-2-1(b).

7. Because they are elected statewide, and not by the voters in their district, commissioners represent the entire state. They do not focus on the specific interests of the voters

¹ The statewide general primary in this election is on Tuesday, May 24, 2022; thus, time is of the essence. In the interest of expediency, the Court cites herein to the hearing recording after concluding that the portion cited accurately reflects the undersigned’s recollection of the proceedings.

in their district. (Testimony of Commissioner Echols, Tr. at 38:11; Testimony of Commissioner Pridemore, Tr. at 1:44:10.)

8. Commissioner elections are staggered, and District 2 is up for election in 2022. O.C.G.A. § 46-2-1(d).

9. The incumbent commissioner from District 2 is Tim Echols. (Testimony of Commissioner Echols, Tr. at 35:54.) Commissioner Echols was first elected in 2010, and he was re-elected in 2016. (*Id.* at 36:26.) Commissioner Echols is running for re-election as a Republican in 2022. He launched his re-election campaign on or before November 6, 2021. (*Id.* at 36:32; Ex. R-8: Echols Declaration of Intent.)

10. Tricia Pridemore is the Chair of the Public Service Commission and is the incumbent commissioner from District 5. (Testimony of Commissioner Pridemore, Tr. at 1:10:00.) Commissioner Pridemore is a longtime Republican activist who has run for chair of the state party and has supported dozens of Republican candidates. (*Id.* at 1:10:56, 1:45:20)

11. Respondent has been a Georgia resident for more than 26 years. (Testimony of Patty Durand, Tr. at 2:20:22.)

12. From January 2011 until February 2021, Respondent was the executive director of the Smart Grid Consumer Collaborative, a nonprofit organization working to promote the benefits of creating a next-generation energy infrastructure in the United States. (*Id.* at 2:20:54.) Respondent is well known in the national and statewide energy industry. (*Id.* at 2:23:00.)

13. As part of her work, Respondent often interacted with commissioners and their staff. (*Id.* at 2:20:08.) Respondent had a contentious meeting with Commissioner Echols in February 2020 concerning Commissioner Echols' recent vote to raise utility rates. (*Id.* at 2:23:30.)

14. After researching Commissioner Echols' record further, Respondent stepped down from her position in February 2021 to become a Democratic candidate for Public Service Commissioner in District 2. (*Id.* at 2:20:46; *id.* at 2:28:46.)

15. Respondent moved to Gwinnett County, which was in District 2 at the time, in June 2021. (*Id.* at 2:31:40; Ex. R-12: PSC 2012 districts map packet.)

16. Respondent formally launched her campaign for Public Service Commissioner in July 2021. (Tr. at 2:06:21; *id.* at 2:31:55; Ex. R-10: Durand Declaration of Intent; Ex. R-21: Durand campaign announcement.) She issued a media advisory announcing her candidacy, which was reported in at least five news media outlets across Georgia, including the Atlanta Journal Constitution's online political newsletter, "The Jolt." (Ex. R-21; Tr. at 2:34:38.) She posted her candidacy on many social media platforms including Twitter, LinkedIn, Facebook, and Instagram. (*Id.* at 2:32:11.)

17. Respondent also engaged in other typical campaign activities: soliciting donations; writing blogs, newsletters and social media posts about Georgia's energy situation and her hopes and plans as a commissioner; speaking on podcasts about her energy background for this office and vision for Georgia if elected; hiring campaign staff; and attending Democratic party events, for example. (*Id.* at 2:32:11.)

18. Respondent set an initial fundraising goal of \$100,000 by the end of the year. (*Id.* at 2:36:56.) In January 2022, Respondent filed a campaign-finance report showing that she had raised more than \$110,000 for her campaign. (*Id.* at 2:42:27; Ex. R-11: Durand fundraising report.) This exceeded the amounts other recent Democratic candidates for Public Service Commissioner had reported in their end-of-year fundraising reports. (Tr. at 2:42:07.) Candidates

and politicians regularly look at campaign fundraising reports to gauge the seriousness of a candidate or campaign. Respondent's total was reported in the media. (*Id.* at 2:44:01.)

19. At that time, Respondent was Commissioner Echols' only challenger. (*Id.* at 2:45:52.)

20. The Georgia General Assembly has amended the PSC districts every decennial census since 2000. Following the 2000 census, the Georgia General Assembly amended O.C.G.A. § 46-2-1 to change the boundaries of the PSC districts, effective April 2002. 2002 Ga. Laws 360.

21. Ten years later, following the next census, the PSC districts were revised again, effective May 1, 2012. 2012 Ga. Laws Act 641 (S.B. 382). Following the effective date of the 2012 amendment, PSC District 2 consisted of 29 counties, including Gwinnett County. *Id.*

22. On January 26, 2022, Commissioner Pridemore texted Commissioner Echols a photo of a map she had drawn that reconfigured the PSC's residency districts. (Ex. P-3: Echols-Pridemore text exchange; Ex. P-4: Screenshot of text between Pridemore and Echols.)

23. Commissioner Pridemore's January 26 map kept Gwinnett County in District 2. (Ex. P-4; Testimony of Commissioner Pridemore, Tr. at 1:17:08.)

24. Then, just after texting the map, Commissioner Pridemore texted Commissioner Echols "Don't forget to get her home address and send it to me please." (Ex. P-4.) She was referring to Respondent. (Tr. at 1:12:48.)

25. Commissioner Pridemore asked for Respondent's home address for use in connection with her map-drawing. (Tr. at 1:13:06.)

26. Commissioner Echols then responded with Respondent's home address. (Ex. P-3; Ex. P-4.)

27. Commissioner Pridemore, acting as the PSC’s liaison to the General Assembly, thereafter revised her map with the assistance of Gina Wright, executive director of Georgia’s Legislative and Congressional Reapportionment Office. (Tr. at 1:40:30.)

28. The resulting map, which became the basis for Senate Bill 472 (“SB 472”), removes Gwinnett County from District 2. SB 472 removes the following counties from the 2012 District 2: Baldwin, Bibb, Bleckley, Gwinnett, Houston, Johnson, Jones, Laurens, Treutlen, Twiggs, and Wilkinson. (Compare Ex. R-14: SB 472 map packet with Ex. R-12.) The total population of those counties, according to 2020 Census data, is 1,444,834. (Ex. R-15: 2020 population county by county name; Ex. R-19: demonstrative SB 472 calculations.)

29. The total population of Gwinnett County, according to 2020 Census data, is 957,062. (Ex. R-15.)

30. The new districts thus remove approximately 66 percent of the former District 2’s population, including all of Gwinnett County—which alone comprised approximately 44 percent of the former District 2’s population. (Ex. R-19.)

31. According to 2020 Census data, the total population deviation of the residency districts in SB 472 is 1.55 percent. (Ex. R-14.)

32. Republican Senator John F. Kennedy introduced SB 472 in the Senate on February 7, 2022. (Ex. R-6: SB 472 Bill History.)

33. The Senate Reapportionment and Redistricting Committee, chaired by Senator Kennedy, held a hearing on SB 472 on February 16, 2022. (Ex. R2: Transcript of Senate Committee Hearing on SB 472 at 3-23.)

34. Commissioner Pridemore presented the bill to the committee. (*Id.* at 7:1-8:3.)

35. Senator Kennedy and Commissioner Pridemore told the committee that the old districts had to be redrawn because of population changes reflected in the 2020 Census. (*Id.* at 4:21-5:1; 7:4-8.) The committee recommended passage of the bill by a vote of 8 to 3. (*Id.* at 22:15-22.)

36. Eight days later, Senator Kennedy presented SB 472 on the floor of the Senate. (Ex. R3: Transcript of Senate Floor Debate on SB 472 at 4:10-8:10.)

37. Senator Kennedy again told his colleagues that the changes were necessary because of population shifts. (*Id.* at 4:22-5:6; 9:6-10:13; 22:22-23:2.)

38. After debate, the bill passed on a party-line vote. (*Id.* at 45:24-46:5.)

39. On March 2, 2022, the House Legislative and Congressional Reapportionment Committee held a hearing on SB 472. (Ex. R-4: Transcript of House Committee Hearing on SB 472 at 3-34.)

40. Senator Kennedy, accompanied by Commissioner Pridemore, presented the bill. (*Id.* at 3:19-8:8.) Senator Kennedy and Commissioner Pridemore presented the new districts as legally necessary to address population changes. (*Id.* at 4:18-22; 7:4-6; 7:19-24; 12:20-13:5; 14:5-9; 14-24-15:2).

41. At the hearing, Democratic Representative Kim Alexander offered an alternative map for the residency districts in SB 472. (*Id.* at 16:4-12; Ex. R-16: GHDC alternative map packet.)

42. The alternative map removed the following counties from the 2012 PSC District 2: Bleckley, Clarke, Emanuel, Greene, Hancock, Jefferson, Jenkins, Laurens, Oconee, Screven, and Treutlen. (Ex. R-17: GHDC map overlay.) The total population of those counties, according to 2020 Census data, is 327,897. (Ex. R-15; Ex. R-20: demonstrative GHDC calculations.) The

GHDC alternative thus would have removed approximately 15 percent of the old District 2's population. (Ex. R-20.) According to 2020 Census data, the total population deviation of the residency districts in the substitute map is 1.26 percent. (Ex. R-16.)

43. House Minority Leader James Beverly presented the alternative map to the committee. (Ex. R4 at 16:25-21:2.) She stated that there was no legal need to redraw the residency districts because the one-person-one-vote principle does not apply to residency districts. (Ex. R-4 at 18:3-16.) She additionally contended that, even if the one-person-one-vote principle did apply, the existing districts were already within constitutional limits after the 2020 Census. (*Id.* at 18:17-21.) Beverly also presented data from the Legislative and Congressional Reapportionment Office showing that the overall population deviations among the districts in the existing map were below 10 percent. (Ex. R-4 at 19:5-10; Ex. R-13: PSC 2012 with 2020 Census Data.)

44. According to 2020 Census data, the total deviation of the residency districts in the 2012 map was 9.94%. (Ex. R13: PSC 2012 districts with 2020 data.) Leader Beverly also stated that population equalizing among the districts could be achieved without substantial reconfiguration of the districts. (Ex. R4 at 20:13-20.)

45. The Democratic alternative map had a lower population deviation than the districts in SB 472. (*Id.*) It left Gwinnett County in District 2. (*Id.*; Ex. R-16; Ex. R-17.)

46. The committee rejected the Democratic substitute on a party-line vote and then recommended passage of SB 472 on a party-line vote. (Ex. R-4 at 26:5-27:25; 32:25-33:18.)

47. On Friday, March 4, SB 472 was considered on the House floor. (Ex. R-5: Transcript of House Floor Debate on SB 472 at 3-25.) Representative Bonnie Rich presented the bill. (*Id.* at 3:15-4:19.)

48. Representative Rich told her colleagues that SB 472 was necessary because of population shifts since the 2010 Census. (*Id.* at 4:12-16.)

49. After debate, the bill passed on a party line vote. (*Id.* at 22:12-25:9.)

50. The Governor signed the bill on the same day, which was the last business day before the beginning of Georgia's candidate qualification period on Monday, March 7. (Ex. R6.) O.C.G.A. § 21-2-153(c)(1)(A).

51. At the time, Respondent remained Commissioner Echols' only announced challenger. (Tr. at 2:46:17.)

52. Based on the testimony at the hearing and the exhibits, in particular the text exchange exhibit, the undersigned finds that, at the very least, the SB 472 redistricting map was drawn with Respondent's specific address in mind. (Ex. P-3, P-4)

53. Rockdale County is in the new District 2. (Ex. R-7: SB 472 text.)

54. On March 10, 2022, Respondent filed new paperwork to qualify as a candidate for Public Service Commissioner in District 2. (Ex. P-7: Durand Declaration)

55. Respondent recruited another candidate, Russell Edwards, to enter the Democratic primary as a placeholder candidate so that Commissioner Echols would have at least a nominal opponent if she were disqualified. When it appeared that Respondent's qualifications would not be challenged, Edwards suspended his campaign and endorsed Respondent. (Tr. at 2:46:54.)

56. On April 28, the Secretary of State initiated this challenge to Respondent's qualifications to be a candidate for District 2 based on the durational residency requirement set forth in O.C.G.A. § 46-2-1(b). (OSAH Form 1.)

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 who is eligible to vote for a candidate may challenge a candidate's qualifications to hold office. In the present case, the office of the Secretary of State Brad Raffensperger received a communication from a qualified elector contending that Respondent does not meet the constitutional and statutory residency requirements.

3. 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).²

4. Respondent has the burden of proving that she is qualified to be a candidate for PSC District 3. *See Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The burden of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

5. The Public Service Commission is divided into five districts and each member is elected state-wide. O.C.G.A. § 46-2-1(a) (2022).

² The Administrative Law Judge reports 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.

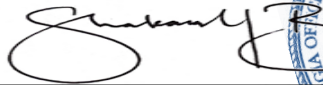

Preserved in the record are Respondent's claims that the application of the residency requirement to her candidacy under the circumstances of this case unconstitutionally burdens her rights under: (1) the Equal Protection Clause of the United States Constitution, (2) the First Amendment to the United States Constitution, (3) the Fourteenth Amendment to the United States Constitution, and (4) the corresponding protections of the Georgia Constitution.

6. Georgia law requires that “[i]n order to be elected as a member of the commission from a Public Service Commission District, a person shall have resided in that district for at least 12 months prior to election thereto.” O.C.G.A. § 46-2-1(b). The evidence shows that Respondent will not have resided within one of the counties in PSC District 2 as described in O.C.G.A. § 46-2-1(c) for at least 12 months by the time of the general election on November 8, 2022. Respondent thus does not meet the durational residency requirement for PSC District 2.

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 Public Service Commission District 2.

SO ORDERED, this 20th day of May, 2022.



Shakara M. Barnes
Administrative Law Judge