

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

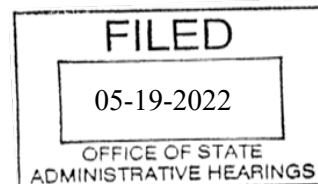
**BRAD RAFFENSPERGER,**  
Petitioner,

v.

**SHEILA EDWARDS,**  
Respondent.

**Docket No.: 2225325  
2225325-OSAH-SECSTATE-CE-33-  
Barnes**

**Agency Reference No.: 2225325**



**INITIAL DECISION**

**I. INTRODUCTION**

Petitioner Secretary of State Brad Raffensperger challenges Respondent Shelia Edwards's qualifications to be a candidate in the general primary for District 3 Georgia Public Service Commission ("PSC District 3"). 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 9, 2022, the Court conducted an evidentiary hearing in this matter. Petitioner was represented by Assistant Attorneys General Lee Stoy, Jr., Esq. and Elizabeth Vaughan, Esq. Respondent was represented by Ann S. Brumbaugh, Esq. Respondent filed a Motion to Dismiss on May 5, 2022. The record was held open until May 11, 2022 to allow Petitioner to file a post-hearing response brief. After reviewing the briefs, the undersigned denies the Motion to Dismiss and makes her decision based on the evidentiary hearing in which both parties participated. Based on the evidence presented, the Court concludes that Respondent is qualified to be a candidate for PSC District 3.

**II. FINDINGS OF FACT**

1. Respondent resides at 6314 Century Park Place SE, Mableton, GA 30126. Her residence is located in Cobb County, Georgia. *Testimony of Respondent*

2. Respondent was qualified to run for PSC District 3 on March 11, 2022 by the Democratic Party of Georgia. *Testimony of Respondent*

3. On March 28, 2022, an elector contacted Petitioner's office to "inquire about the eligibility status of" Respondent to run for PSC District 3. *OSAH Form 1, Attachment 1.*

4. On April 28, 2022, Petitioner referred the matter to the Office of State Administrative Hearings, requesting an expedited hearing. *OSAH Form 1.*

5. Respondent is a candidate to fill the unexpired PSC District 3 term of Chuck Eaton, who was elected in 2018 for the 6-year term that runs from January 1, 2019 through December 31, 2024. As the 6-year term which began on January 1, 2019 ends on December 31, 2024, the term is unexpired. *Testimony of Respondent; OSAH Form 1, Attachments 2-4.*

6. Mr. Eaton vacated his PSC position in July 2021 after being appointed to the Fulton County Superior Court. Upon Mr. Eaton's departure from the PSC District 3 seat, Governor Brian Kemp appointed Fitz Johnson to fill the position. At the time of his appointment to PSC District 3, Mr. Johnson resided in Cobb County, Georgia and resided a few miles away from Respondent. *Testimony of Respondent; <https://wabe.org/kemp-taps-former-cobb-candidate-to-georgia-utility-regulator/>.*

7. The primary election for PSC District 3 is on May 24, 2022, and the general election will take place on November 8, 2022. *Public record; OSAH Form 1, attachments.*

### **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. 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).

4. 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).

5. Prior to March 4, 2022, PSC District 3 included Clayton, DeKalb, Fulton, and Rockdale Counties. However, on March 4, 2022, after a new map was adopted, District 3 was amended to include Clayton, DeKalb, and Fulton Counties. O.C.G.A. § 46-2-1(c). Cobb County was not part of PSC District 3 prior to March 4, 2022 and is not currently part of PSC District 3.

6. In pertinent part, O.C.G.A. § 46-2-1(a) provides:

The Georgia Public Service Commission shall consist of five members to be elected as provided in this Code section. *The members in office on January 1, 2022, and any member appointed or elected to fill a vacancy in such membership prior to the expiration of a term of office shall continue to serve out their respective terms of office. As terms of office expire, new members elected to the commission shall be required to be residents of one of five Public Service Commission Districts as hereafter provided, but each member of the commission shall be elected state wide by the qualified voters of this state who are entitled to vote for members of the* General Assembly.

O.C.G.A. § 46-2-1(a) (emphasis added).

7. Subsection (b) provides the general residency requirements for the PSC:

(b) In 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. A person elected as a member of the commission from a Public Service Commission District by the voters of Georgia shall continue to reside in that district during the person's term of office, or that office shall thereupon become vacant.

O.C.G.A. § 46-2-1(b) (2022).

8. Subsection (d) states in relevant part, “The first members of the commission elected under this Code section [§ 46-2-1] shall be elected thereto on the Tuesday next following the first Monday in November, 2024, from Public Service Commission Districts 3 and 5.” O.C.G.A. § 46-2-1(d) (2022).

9. Respondent contends that, because she seeks to fill an unexpired term that ends on December 31, 2024, the residency requirement would not apply to her. In considering this argument, the Court is guided by case law, facts in the record including precedent, and the statutory provisions regarding the determination of residency for candidates.

10. When interpreting statutes, courts first apply to words their “ordinary signification”, commonly referred to as “plain meaning.” O.C.G.A. § 1-3-1(b) (2022); *see Gundy v. Balli*, 362 Ga. App. 304, 307 (2022) (“[W]e must afford the statutory text its plain and ordinary meaning, we must view the statutory text in the context in which it appears, and we must read the statutory text in its most natural and reasonable way, as an ordinary speaker of the English language would.”). “[W]here the statutory text is clear and unambiguous, we attribute to the statute its plain meaning, and our search for statutory meaning ends.” *Id.* at 307-08; *see also Deal v. Coleman*, 294 Ga. 170, 173 (2013).

11. In the present case, the plain meaning of O.C.G.A. § 46-2-1 indicates that the residency requirement would not apply to fill the current unexpired PSC District 3 term. “The members in office on January 1, 2022, and any member *appointed* or *elected* to fill a vacancy . . .

*prior to the expiration of a term* of office shall continue to serve out their respective terms of office.” O.C.G.A. 46-2-1(a) (emphasis added). Subsection (a) also states that new members elected to the PSC shall be required to be residents of their particular district once the term of office as of January 1, 2022 expires. *Id.* (“*As terms of office expire*, new members elected to the commission shall be required to be residents of one of five Public Service Commission Districts, as hereafter provided. . . .”). Here, Respondent would be an elected candidate to fill a term that expires on December 31, 2024—an unexpired term—and thus, the residency requirement does not apply to her.

12. In further exploring the application of § 46-2-1(a) to Respondent, the Court observes that the drafters included the language, “any member *appointed or elected* to fill a vacancy.” (emphasis added). Individuals that are elected to fill an unexpired PSC term receive similar treatment as those appointed to fill an unexpired term. The undisputed evidence presented in this matter indicates that Mr. Johnson, the member appointed under § 46-2-4 to fill the vacancy created by Mr. Eaton’s departure, was a resident of Cobb County at the time of his appointment. At that time, Cobb County was not part of PSC District 3; thus Mr. Johnson was not a resident of PSC District 3. This indicates that, when filling an unexpired PSC term, the residency of the appointee or elected official is not a deciding factor.<sup>1</sup>

13. As shown above, subsection (d), by its plain meaning, states that O.C.G.A. § 46-2-1 will not apply to PSC District 3 until the November 2024 general election. The general residency requirement contained in § 46-2-1(b) does not apply to PSC District 3 until the November 2024 election; thus, it does not apply to Respondent in the May 2022 primary or the November 2022

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<sup>1</sup> In fact, Respondent testified that she relied on the treatment of fellow Cobb County resident Mr. Johnson when deciding to seek the PSC District 3 seat. She believed she could fill the unexpired term because he was a Cobb County resident who was allowed to do so.

general election.

14. Lastly, the Court turns to O.C.G.A. § 45-2-1(7), which provides: “A person who has not been a bona fide citizen of the county in which that person shall be elected or appointed at least 12 months prior to that person’s election or appointment and who is not a qualified voter entitled to vote” is “ineligible to hold any civil office.” Respondent is qualified to vote for the PSC District 3 seat, as it is a statewide position. 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.

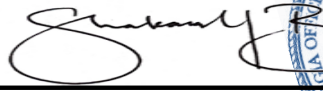
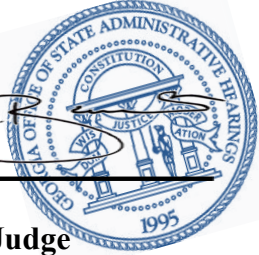
275 Ga. 415, 416 (2002). The Court recognizes and appreciates the importance state interest of residency requirements. However, as discussed above, the residency requirements do not apply to the unexpired term for PSC District 3. The eligibility of Respondent for PSC District 3 does not conflict with the rationale for the residency requirements set forth in *Cox*. *Cox* showed that it is important for members of a community to know candidates who seek to represent them. Additionally, it is important for candidates to be familiar with the needs, concerns, and members of the community they seek to represent. Notably, members of the Georgia PSC represent the *entire state* and are elected *statewide*. Thus, in Georgia—a state with 159 counties represented by 5 PSC members—each candidate’s name appears on each ballot in the State in the general election.

At any given time, at least 154 counties will have no local resident serving on the PSC. The undersigned thus finds that the above application of O.C.G.A. § 46-2-1 to the facts of this matter does not conflict with O.C.G.A. § 45-2-1 or the *Cox* rationale.

**IV. DECISION**

Accordingly, based upon the above Findings of Fact and Conclusions of Law, Respondent is qualified to be a candidate for Public Service Commission District 3.

**SO ORDERED**, this 19th day of May, 2022.

  
  
**Shakara M. Barnes**  
**Administrative Law Judge**