

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

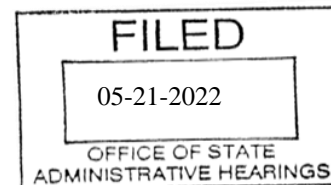
BRAD RAFFENSPERGER,
Petitioner,

v.

DIANE VANN,
Respondent.

Docket No.: 2226345
2226345-OSAH-SECSTATE-CE-11-
Boggs

Agency Reference No.: 2226345



INITIAL DECISION

I. INTRODUCTION

Petitioner Brad Raffensperger, Georgia Secretary of State (“Petitioner” or “Secretary of State”), challenges the qualifications of Respondent Diane Vann (“Respondent”) to be a candidate for Georgia Senate District 18. The undersigned held a hearing in this matter on May 19, 2022, in Atlanta, Georgia. Representing the Petitioner was Assistant Attorney General Lee M. Stoy, Jr. The Respondent appeared and represented herself.¹

For the reasons indicated below, the undersigned Administrative Law Judge finds the Respondent is **not qualified** to be a candidate for Georgia Senate District 18.

II. FINDINGS OF FACT

1.

The Respondent currently resides at 547 Commanche Drive in Macon, Georgia (hereinafter “547 Commanche Drive”). (Testimony of Respondent; Respondent’s Ex. 3.)

¹ Prior to going on the record, the undersigned confirmed with the parties that they had no objections to the media request addressed in the Order issued May 16, 2022.

2.

On March 8, 2022, the Respondent went to the State Capitol to file a “Declaration of Candidacy and Affidavit,” seeking the Republican nomination for the Georgia Senate seat in District 18. In the affidavit, she listed her residential address as 547 Commanche Drive. She also attested in the affidavit that she has been “a legal resident of [her] district for 37 consecutive years.” (Testimony of Respondent; Respondent’s Exhibit 3.)

3.

The Respondent testified that, while at the State Capitol on March 8, 2022, a worker checked her driver’s license against computer records before allowing her to proceed with submitting the “Declaration of Candidacy and Affidavit.” She also paid a \$400 fee to the Georgia Republican Party. On that day, the Petitioner did not receive any indication, either verbally or in writing, that the Georgia Senate district she listed in her qualification paperwork—District 18—was in question. (Testimony of Respondent; Respondent’s Ex. 7.²)

4.

On May 7, 2022, the Respondent went to the Bibb County Board of Elections for early voting. Instead of seeing her name listed as a candidate for Georgia Senate District 18, her ballot listed candidates for Georgia Senate District 25. She spoke with a poll worker, who confirmed she had the correct ballot, and she also spoke with the interim election supervisor. The Respondent ultimately left that day without voting. (Testimony of Respondent.)

² Respondent’s Exhibit 7 consists of six pages, the first of which is a copy of a personal check the Respondent wrote out to the Georgia Republican Party. As stated during the hearing, given the sensitive nature of that information, it is **HEREBY ORDERED** that the first page of Respondent’s Exhibit 7 shall be **PLACED UNDER SEAL**. The remaining pages of the exhibit will not be under seal.

5.

The Respondent proceeded to research the matter of her assigned Senate district, which included searching for maps on the internet, seeking information from the Georgia Republican Party, and contacting a Republican candidate in another race. She also texted an acquaintance, Brad Emerton, who had access to the redistricting map. He texted the Respondent that, as best as he could tell from the map, the Respondent's residence at 547 Commanche Drive was in Georgia Senate District 25. (Testimony of Respondent; Respondent's Exs. 1, 4³, 5.)

6.

Voter-registration records, proffered by the Respondent during the hearing, place her in Georgia Senate District 25. According to these records, a "Redistricting" change was made on February 11, 2022. (Testimony of Respondent; Respondent's Ex. 5.)

7.

During the hearing, counsel for the Secretary of State presented a copy of a portion of a map showing the State Senate districts adopted by the General Assembly for use beginning in the 2022 election cycle. This map, which was certified by the Elections Director with the Secretary of State, shows that 547 Commanche Drive is located in Senate District 25. (Petitioner's Ex. P-2.)

8.

In her testimony, the Respondent stated that, per the redistricting map, she recognizes she is no longer in District 18. However, she stated she found it "discouraging" that she was allowed

³ Respondent's Exhibit 4 consists of four pages. Only the last two pages (showing a chain of emails) were admitted into evidence during the hearing.

to qualify for District 18 in the first place.⁴ The Respondent asserted that she never received any prior notice that her Senate district had changed. She also presented testimony from several witnesses who recounted their frustrations with either failing to receive notice of a district change or not being able to vote for the Respondent as their candidate of choice. (Testimony of Respondent, Maryann Chevalley, Janet Carter, and Kathy Williams.)

9.

Lastly, the Respondent contended that she has already spent \$9,812.52 on behalf of her campaign, which includes her qualifying fee, costs for flyers, and the purchase of a campaign “walking map.” She stated that, if she cannot be “redistricted,” she asks that she be reimbursed for her campaign expenses. (Testimony of Respondent; Respondent’s Ex. 7.)

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 Georgia 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, the Secretary of State has raised the challenge and contends that the Respondent does not meet the constitutional and statutory residency requirements.

⁴ In particular, the Respondent took issue with an email from a Georgia Republican Party official, in which the official stated that during qualification, “[w]e also encouraged everyone to go online to the SOS website and make sure their information was correct when they left.” The Respondent asserted this was not true. (Testimony of Respondent; Respondent’s Ex. 3.)

3.

The Respondent has the burden of proving that she is qualified to be a candidate for Georgia Senate District 18. 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.

A member of the Georgia Senate must be a resident of the district she represents. O.C.G.A. § 28-2-2(b). Georgia senators also “shall have been legal residents of the territory embraced within the district from which elected for at least one year.” GA. CONST. ART. III, SEC. II, PARA. III(a); see also O.C.G.A. § 28-2-1(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). Accordingly, the Respondent must prove that she is a resident of District 18, and that she will be a resident of District 18 for 12 months prior to the general election in November 2022.⁵

5.

“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); see also O.C.G.A. § 21-2-2(32) (defining “residence” as “domicile”).

6.

Here, the parties do not dispute that the Respondent resides at 547 Commanche Drive. The evidence before this Court also shows that 547 Commanche Drive is within Georgia Senate District 25. The Respondent herself concedes that she is no longer in District 18. Hence, she is residing outside of the district for which she is seeking a Senate seat. Correspondingly, the

⁵ The general election for Georgia legislators is held “on the Tuesday next following the first Monday in November in each even-numbered year.” O.C.G.A. §§ 21-2-9(a), 21-2-2(15).

Respondent has not proven that she will have resided within District 18 during the 12 months prior to the general election in November 2022. Rather, the evidence shows that, for the 2022 election cycle and certainly by the time of this hearing, she no longer was a resident of District 18 and is a resident of District 25.

7.

Undoubtedly, the Respondent acted in good faith in filing her “Declaration of Candidacy and Affidavit” for the District 18 Senate seat on March 8, 2022. The Court also acknowledges the Respondent’s frustration with proceeding as far as she has in her campaign before learning of her placement in District 25.

8.

However, the scope of this Court’s inquiry is limited to whether the candidate has met the constitutional and statutory qualifications for the office in question. See O.C.G.A. § 21-2-5(b).⁶ The evidence here shows the Respondent has not met the residency qualification for the Georgia Senate seat in District 18. While the Court is sympathetic to the Respondent’s circumstances, it has no authority under the law to grant a “redistricting” or to order a reimbursement of campaign expenses. Id. § 21-2-5.

⁶ This provision states, in relevant part:

Upon his or her own motion . . . , the Secretary of State shall notify the candidate in writing that his or her *qualifications* are being challenged and the reasons therefor 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 The administrative law judge shall report his or her findings to the Secretary of State.

O.C.G.A. § 21-2-5(b) (emphasis added). Upon receipt of the administrative law judge’s report, the Secretary of State renders the final decision on whether the candidate is qualified. Id. §§ 21-2-5(b), (c). That decision may be appealed to Fulton County Superior Court, pursuant to O.C.G.A. § 21-2-5(e).

IV. DECISION

Based on the foregoing, the Court hereby concludes the Respondent is **not qualified** to be a candidate for the Georgia Senate seat in District 18.

SO ORDERED, this 21st day of May, 2022.

Lisa Boggs

Lisa Boggs
Administrative Law Judge

