

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

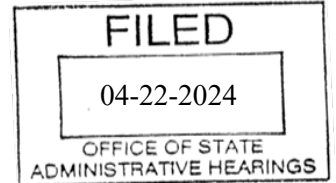
KIM JACKSON,
Petitioner,

v.

TYION FIELDS,
Respondent.

**Docket No.: 2434767
2434767-OSAH-SECSTATE-CE-67-
Howells**

Agency Reference No.: 2434767



INITIAL DECISION

Petitioner Kim Jackson (“Petitioner”) filed a written complaint challenging the qualifications of Respondent Tyion Fields (“Respondent”) to be a candidate for Georgia State Senate District 41. Petitioner contends that Respondent does not actually reside in Senate District 41 and therefore does not meet the constitutional and statutory requirements for the office. The hearing was conducted on April 15, 2024, before the Office of State Administrative Hearings (“OSAH”), a court of administrative law. Petitioner was represented by Jennifer Jordan, Esq. Respondent represented herself. Based on the evidence presented, the undersigned concludes that Respondent is **not** qualified to be a candidate for Senate District 41.

Findings of Fact

1.

Between 2019 and 2020, Respondent lived at 5665 Stone Mountain Hwy., Stone Mountain, Georgia. In, or prior to, 2020, Respondent began renting office space from Regus – an entity that rents workspace. The Regus office space was located at 6295 Jimmy Carter Blvd., Norcross, Georgia. Respondent used the Regus office space address as her business address. She also used that address to register to vote. (Testimony of Respondent.)

2.

In 2021, Respondent lived in hotel accommodations located at 1901 Savoy Dr., Chamblee, Georgia. She voted in the 2021 runoff election; however, despite living in Chamblee, she was still registered to vote at the Regus office space in Norcross. (Testimony of Respondent; Ex. P-1.)

3.

At the hearing, Respondent testified that the Norcross address is her business address and that her mail goes to that address.¹ However, she also testified that she stopped renting the office space in June or July of 2023.

4.

Respondent asserted that she moved to 4140 Kimlie Cove, Decatur, Georgia on March 6, 2023, and that she currently resides at that address. In support of her assertion, she tendered three documents. The first document is PadSplit Membership Agreement (“Agreement”) which bears the 4140 Kimlie Cove, Decatur, Georgia address, a notation stating, “Last Updated: March 6, 2023,” and a notation stating, “Signed by: Tyion Fields [] on January 10, 2024.”² (Testimony of Respondent; Ex. R-3.)

5.

Initially, Respondent referred to the Kimlie Cove property as “a home that I rent.” After questioning, Respondent acknowledged that she rents “a room” at that location, and she and her two children, ages four and five, live in that room. (Testimony of Respondent; Ex. R-3.)

¹ This testimony was in the present tense, as if she was currently using the Norcross address and currently receiving mail at that address.

² Respondent testified that the “Signed by” date is not the date she originally signed the Agreement. Rather, it reflects an annual renewal of the terms of the Agreement.

6.

The Agreement states, in pertinent part, “YOU [the member] AGREE THAT YOU ARE A TEMPORARY OCCUPANT OF YOUR FACILITY BY VIRTUE OF YOUR MEMBERSHIP IN YOUR COMPANY [the legal entity that owns or leases the facility].” The minimum term of the Agreement is 31 days. Thereafter, the membership renews on a weekly basis. (Ex. R-3.)

7.

The second document Respondent tendered in support of her assertion that she has been living at 4140 Kimlie Cove since March 2023, is entitled “Landlord Affidavit of Residence.” It states that the landlord’s name is Pascal Wagner and it bears a typed signature. It is not notarized. (Ex. R-2.)

8.

Respondent testified that Pascal Wagner is the owner of the property. However, when confronted with the tax records which purportedly state that the property is owned by Co-Living Capital, LLC., Respondent stated that entity is Mr. Wagner’s company. (Testimony of Respondent.)

9.

Respondent completed the paperwork to qualify as a candidate on the morning of March 8, 2024. She testified that she updated her voter registration address a few days before; however, on the morning of March 8, 2024, when she went to qualify as a candidate, her voter registration continued to show that her address was 6295 Jimmy Carter Blvd., Norcross, Georgia in Gwinnett County. That afternoon, Respondent contacted the Georgia Secretary of State’s office to ensure that her voter registration address was updated to the Kimlie Cove address. Currently, Respondent

is registered to vote at 4140 Kimlie Cove, Decatur, Georgia. The updated precinct card was the third document Respondent tendered. (Testimony of Respondent; Ex. R-1.)

10.

Other than the precinct card showing that her voter registration has been updated to reflect the 4140 Kimlie Cove address, Respondent did not present evidence of any mail sent to her at that location. Nor did she present any witnesses supporting her assertion that she has been living at that address, since March 2023, or at least as of November 5, 2023. As of the date of the hearing, Respondent had not updated her driver's license. When asked why she has not updated her driver's license, Respondent stated that she has not gotten around to it. Respondent's driver's license continues to show the former Regus office space at 6295 Jimmy Carter Blvd., Norcross, Georgia as her address. Throughout the hearing, Respondent stated that she has other documentation to support her assertions; however, she did not bring any of that purported documentation to the hearing. (Testimony of Respondent.)

11.

Respondent's five-year-old child attends Rowland Elementary. Her four-year-old child attends daycare at A Fun Time-Out in Norcross. (Testimony of Respondent.)

12.

Petitioner Kim Jackson is an elector eligible to vote in Senate District 41. On March 18, 2024, she challenged Respondent's qualifications to run for Senate District 41. (Stipulation of the Parties; OSAH Form 1, attachments.)

13.

The primary election for House District 38 is on May 21, 2024. The general election is on November 5, 2024. (OSAH Form 1, attachments.)³

Conclusions of Law

1.

The Georgia Election Code (the “Code”) mandates that “[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought.” O.C.G.A. § 21-2-5(a).

2.

Both the Secretary of State and the electors of Georgia are granted the authority to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b) and authorize any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

3.

At the time of election, members of the Georgia Senate must have been citizens of this state for at least two years and legal residents of the district in which they are running for at least one year. Ga. Const. Art. III, § II, Para. III(a); *see also* O.C.G.A. § 28-2-2(b) (requiring a member of the Georgia Senate to have been a resident of his or her district for at least one year preceding the election). The Georgia Supreme Court has interpreted a similar provision to mean that the

³ See Ga. Const. Art. III, § II, Para. V (members of the Georgia General Assembly are elected biennially on Tuesday after the first Monday in November.)

candidate must be a resident of the district for at least 12 months prior to the general election. *Cox v. Barber*, 275 Ga. 415, 416 (2002).

4.

The residency requirement for candidates refers to domicile. O.C.G.A. § 21-2-2 (32); *Handel v. Powell*, 284 Ga. 550 (2008). Domicile denotes “a permanent place of abode.” *Handel*, 284 Ga. at 550. To acquire a domicile, an individual must actually reside there with the intention to remain permanently or for an indefinite amount of time. *Kean v. Marshall*, 294 Ga. App. 459, 461 (Ga. App. 2008) (considering domicile for child support purposes) (emphasis added); *Handel*, 284 Ga. at 550 (citing *Avery v. Bower*, 170 Ga. 202 (1930)).

5.

The burden of proof is entirely upon Respondent to establish affirmatively her eligibility for office:

[T]he statutes place the affirmative obligation on [the challenged candidate] to establish his qualifications for office. [The challenger] is not required to disprove anything regarding [the candidate’s] eligibility to run for office, as the entire burden is placed upon [the candidate] to affirmatively establish his eligibility for office.

Haynes v. Wells, 273 Ga. 106, 108-09 (2000). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

6.

Therefore, Respondent must prove that she meets the constitutional and statutory qualifications for State Senate – specifically that she is, and has been, domiciled in Senate District 41 for at least one year, and a citizen of this state for at least two years, prior to the November 5, 2024 general election. Ga. Const. Art. III, § II, Para. III(a); O.C.G.A. § 28-2-2(b); O.C.G.A. § 21-2-2(32).

7.

Georgia Code Section 21-2-217 provides a list of factors to consider when determining the residence (i.e., domicile) of a candidate. Those factors include, among other things, whether after a person moves to another place he intends to make that place his domicile or remain there indefinitely, whether a person leaves his home temporarily with the intention to return, where a person has declared a homestead exemption, where a person receives significant mail, or “any other evidence that indicates where the person resides.” O.C.G.A. § 21-2-217(a)(1)-(15).

8.

Here, Respondent presented insufficient evidence that she was domiciled in Senate District 41, as of November 5, 2023 (i.e., one year preceding the November 5, 2024 general election). Other than her testimony, Respondent tendered three documents to support her claim of residency within Senate District 41. One of the documents reflected the change in her voter registration, which became effective on March 8, 2024. The other two documents were an unnotarized document entitled “Landlord Affidavit of Residence” and a PadSplit Membership Agreement stating that she was a temporary occupant of the room she was renting.

9.

She did not update her voter’s registration until March 8, 2024. Prior to March 8, 2024, Respondent was registered to vote in Gwinnett County at the former Regus workspace she rented in Norcross. Other than the updated precinct card, Respondent presented no evidence of any mail sent to her at the Kimlie Cove address in Decatur. She presented no witnesses to support her assertion that she has been living at the Kimlie Cove address since March 2023, or at least since November 5, 2023. As of the date of the hearing, Respondent had not updated her driver’s license to reflect an address within Senate District 41. Instead it continued to state that her address was in

Norcross and one of her children continues to attend daycare in Norcross. Accordingly, she has failed to prove that she meets the residency qualification to run for Senate District 41.

Decision

IT IS HEREBY ORDERED THAT Respondent is **not** qualified to be a candidate for Senate District 41, and her name should be removed from the ballot.

SO ORDERED, this 22nd day of April, 2024.

Stephanie M. Howells

STEPHANIE M. HOWELLS
Administrative Law Judge

