

**IN THE OFFICE OF THE SECRETARY OF STATE  
STATE OF GEORGIA**

<b>RANDOLPH FRAILS,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	<b>Docket Number: 2435210</b>
v.	)	<b>2435210-OSAH-SECSTATE-CE-44-</b>
	)	<b>Howells</b>
<b>JEFFREY DAVIS,</b>	)	
	)	
<b>Respondent.</b>	)	
<hr style="width: 40%; margin-left: 0;"/>		

**FINAL DECISION**

Petitioner RANDOLPH FRAILS (“Petitioner”) is an eligible elector in the election for Judge, Georgia Court of Appeals, who filed this candidate challenge pursuant to O.C.G.A. § 21-2-5(b), contending that Respondent JEFFREY DAVIS (“Respondent”) does not meet the qualifications to be a candidate for Judge, Georgia Court of Appeals, for the May 21, 2024, General Primary and Nonpartisan Election. Specifically, Petitioner alleges that Respondent does not meet the residency requirements for said office under the Georgia Constitution.

A hearing on this challenge was held on April 30, 2024, before an Administrative Law Judge (“ALJ”) of the Office of State Administrative Hearings (“OSAH”). Petitioner was present and represented by counsel. Respondent was present and represented by counsel. The administrative record in this case is voluminous, including several hours of testimony and exhibits proffered at the hearing.

The ALJ issued an Initial Decision on May 6, 2024, concluding that the challenge to Respondent’s qualification for the Georgia Court of Appeals is not ripe. On May 8, 2024, Petitioner filed with the Secretary of State an Application for Agency Review. On May 9, 2024, Petitioner

filed an Amended Application for Agency Review. On May 14, 2024, the Secretary received the administrative record of the case from OSAH, which includes 1778 pages and nearly 8 hours of recorded audio of the hearing.<sup>1</sup>

After review of the Initial Decision and the hearing record, and consideration of the Petitioner's Petition for Agency Review, the Secretary of State determines that the ALJ's Initial Decision misapplies the legal standard for determining residency. While the Secretary of State adopts in part the ALJ's Findings of Fact enumerated in paragraphs 1 through 11, the Initial Decision ignores substantial evidence adduced by Respondent showing that he is a resident of the State of Georgia. The ALJ concluded that, because the operative date for determining residency for the office of Judge of the Georgia Court of Appeals is the date of the election, the challenge was not ripe and denied the challenge on this basis.<sup>2</sup> The Secretary of State concludes that it is not necessary to resolve the issue of ripeness because the Respondent has met his burden of proof, based upon a preponderance of the evidence, that he is qualified for the office of Judge, Georgia Court of Appeals.

In support of this Final Decision, the Secretary of State hereby makes the following Findings of Fact and Conclusions of Law.

---

<sup>1</sup> As of the date of this Final Decision, a written transcript of the hearing was not yet available, despite the request from the Secretary and the parties that the transcript be expedited. In this Final Order, citations to hearing testimony refer to the recorded audio.

<sup>2</sup> The Secretary notes that, despite premising the Initial Decision on the issue of ripeness, the ALJ made factual determinations that should have been superfluous should the matter have been resolved on the issue of ripeness. The Secretary has reviewed the entirety of the record in making his determination on the evidence presented at the hearing, incorporated herein in his Findings of Fact, and applied them as Georgia law requires in his Conclusions of Law.

## FINDINGS OF FACT

1. Petitioner Randolph Frails is an eligible elector in the election for Judge, Georgia Court of Appeals, in the May 21, 2024, General Primary and Non-Partisan Election. (OSAH Form 1.)

2. Respondent Jeffrey Davis is a candidate for Judge, Georgia Court of Appeals. On March 4, 2024, Respondent filed Declaration of Candidacy and Affidavit for the May 21, 2024, General Primary and Non-Partisan Election. (Ex. P-1.) On the qualifying paperwork, Respondent stated that he has been a resident of the State of Georgia for thirty-six (36) years and a resident of Fulton County, Georgia for one (1) year.<sup>3</sup> (*Id.*) Respondent listed his residential address as 290 Martin Luther King, Jr., Drive SE, Unit [REDACTED] Atlanta, Georgia. (*Id.*)

3. On March 22, 2024, Petitioner filed a candidate challenge against Respondent with the Secretary of State pursuant to O.C.G.A. § 21-2-5(b), contending that Respondent does not meet the requirements for the office because he is not a resident of the State of Georgia. (OSAH Form 1.)<sup>4</sup>

4. Respondent is registered to vote in the State of Georgia. (Testimony of Respondent at 47:15-40.) From October 31, 2023, to April 9, 2024, Respondent's residential address on his voter registration was 290 Martin Luther King, Jr., Drive SE, Unit [REDACTED] Atlanta, Georgia in Fulton

---

<sup>3</sup> The qualifying form does not permit candidates to list months. Respondent testified that he indicated that he was a resident of Fulton County for 1 year based upon the estimation that he lived at the MLK address for approximately 8 months, and therefore rounded up to 1 year rather than listing 0. (Testimony of Respondent at 1:18:00-45.)

<sup>4</sup> At the hearing, Respondent argued that the challenge should be dismissed because it was not timely filed under O.C.G.A. § 21-2-5(b). The ALJ concluded in the Initial Decision that the challenged was timely filed. (Initial Decision at 9 n. 10.) Because the Secretary concludes that Respondent is a qualified candidate, it is not necessary to resolve this issue.

County. (Ex. R-1; Ex. P-1.) On April 9, 2024, Respondent updated the address on his voter registration to ■■■ W. Schmitt Rd., Rossville, Georgia in Walker County. (Ex. R-1.; Ex. P-2; Ex. P-3.) Previously, Respondent was registered at 1889 Powder Springs Circle, Flintstone, Georgia, in Walker County. (*Id.*)

5. Respondent has continuously maintained an active voter registration in Georgia from at least 1994 to the present and has voted in elections in Georgia between November 8, 1994, and March 12, 2024. (Testimony of Respondent at 47:40-49:30; Ex. P-1; Ex. R-1.) Respondent has never been registered to vote in any state other than Georgia. (Testimony of Respondent at 47:40-49:30.)

6. Respondent has a valid Georgia driver's license. (Ex. R-2; Ex. R-3; Ex. R-4.) There is no evidence in the record that Respondent surrendered his Georgia driver's license or has ever obtained a driver's license in another state. (Testimony of Respondent at 49:30-51:30.) Respondent's vehicle is registered in the State of Georgia. (Ex. R-11.)

7. Respondent paid Georgia income taxes for the 2022 and 2023 tax years. (Ex. R-14; Ex. R-15.) Respondent's residence status on his Georgia tax returns is full-year resident. (*Id.*)

8. Respondent is admitted to practice law in Georgia. Respondent was employed as the Executive Director of the State of Georgia Bar from 2014 to 2020 and worked as an investigating attorney as an independent contractor for the Judicial Qualifications Commission in 2022 and 2023. In 2021 he was appointed as special counsel for the JQC. His employment records list a Georgia address. Respondent is not licensed to practice law in any other state. (Testimony of Respondent at 1:14:50-16:30.)

9. In October 2022, Respondent purchased a house at 1889 Powder Springs Circle in Flintstone, Georgia. Flintstone is in the Chattanooga Valley area located in north Georgia near the border of Tennessee. He testified that this house was his primary residence and lived there several days per month. However, he spent much of his time staying with his sister in Chattanooga, Tennessee, to provide support and care for her following the sudden death of her husband. Respondent testified that when not caring for his sister, he lived in the Powder Springs Circle house and made renovations to the property. He occasionally rented the house out when he was not staying there for the rental income. During the time he was temporarily staying with his sister in Chattanooga, Respondent did not intend to leave Georgia as his state of residency. (Testimony of Respondent at 51:30-57:30.)

10. On August 14, 2023, Respondent sold the Powder Springs Circle house. (Ex. R-5; Testimony of Respondent at 57:00-30.)

11. Following the sale of the Powder Springs Circle house, Respondent moved into an apartment in Atlanta, Georgia located at 290 Martin Luther King, Jr., Drive SE, Unit [REDACTED]. Respondent had previously leased the apartment on March 3, 2023. (Ex. R-6; Testimony of Respondent at 57:30-59:00.) Respondent's adult sons also resided in the apartment. Respondent was listed as a tenant on the lease, paid rent for the apartment, and maintained rental insurance for the property. (Ex. R-6; Ex. R-7; Ex. R-8.) He slept in a bedroom when he stayed there. (Testimony of Respondent at 1:00:00.)

12. In the spring of 2023, Respondent became engaged to his girlfriend, Mary Elizabeth Conklin. After they became engaged, Respondent moved some of his clothes to Ms. Conklin's home located in Chattanooga, Tennessee. Respondent testified that he spent "a lot" of time there. (Testimony of Respondent at 2:55:30-59:00.) Respondent and Ms. Conklin were married on

November 1, 2023, in Atlanta, Georgia, and the couple have a Georgia marriage license. (Ex. R-12; Ex. R-13.) They had a separate wedding celebration in Chattanooga, Tennessee. (Testimony of Respondent at 1:12:20-13:00.)

13. From late 2023 and early 2024, Respondent searched for a house to purchase in the north Georgia area. (Testimony of Respondent at 1:01:00-03:00.) On March 13, 2024, Respondent entered into a Purchase and Sale Agreement for a house located at ■■■ W. Schmitt Road, Rossville, Georgia. (Ex. R-9.) He closed on the property on April 8, 2024. The previous owner used the property as a rental property. The Purchase and Sale Agreement included a special stipulation that Respondent honor rental bookings made before his purchase of the property for dates that would occur after the purchase. Respondent testified that there were initially four reservations, but two of the reservations backed out. He honored the first reservation in April and has one more to honor for May. He testified that he started moving into the property on April 8, 2024, and has stayed at the house numerous times since. Respondent does not intend to rent the house after the May reservation, and he intends to reside there permanently. (Ex. R-9; Testimony of Respondent at 1:04:00-1:07:00.)

14. Respondent's spouse owns property in the Chattanooga, Tennessee area, but Respondent is not on the deed and does not pay for utilities. (Ex. R-16; Testimony of Respondent at 1:11:00-12:20.) Respondent has not received income in Tennessee, does not have a Tennessee driver's license, is not registered to vote in Tennessee, and does not have a registered vehicle, bank account, pay utilities, or own property in Tennessee. (Testimony of Respondent at 1:18:50-20:10.)

15. Respondent testified that he has no intention to move to another state and that he intends to remain a Georgia resident as he has been since 1988. (Testimony of Respondent at 1:20:10-20.)

## CONCLUSIONS OF LAW

1. Every candidate for state office “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). Any eligible elector may challenge the qualifications of a candidate by filing a written complaint with the Secretary of State. O.C.G.A. § 21-2-5(b).

2. The burden of proof is entirely upon Respondent to establish affirmatively his 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).

3. The Georgia Constitution provides the eligibility requirements for judges, and states, “All judges shall reside in the geographical area in which they are selected to serve.” GA. CONST. art. VI, § VII, para. II(d).<sup>5</sup> There is no durational residency requirement for the Georgia Court of Appeals in the Georgia Constitution or laws of the state. Because judges on the Georgia Court of Appeals are elected statewide, the relevant inquiry for this candidate challenge is whether Respondent is a resident of Georgia. *See* O.C.G.A. § 15-3-4 (Court of Appeals Judges elected “in the same manner” as Georgia Supreme Court Justices); O.C.G.A. § 15-2-1 (Justices elected from “one supreme judicial district,” which is the entire state).

---

<sup>5</sup> The Georgia Constitution also requires that appellate judges “shall have been admitted to practice law for seven years.” GA. CONST. art. VI, § VII, para. II(a). That qualification is not challenged here, and in any event, it is undisputed that Respondent meets this qualification. (Testimony of Respondent at 46:35-45.)

4. “Residence” is defined as “domicile.” O.C.G.A. § 21-2-2(32). Domicile denotes “a permanent place of abode.” *Handel v. Powell*, 284 Ga. 550, 550 (2008).

5. A person’s residence is “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). The Georgia Elections Code provides a list of factors to consider when determining the residence of a person desiring to qualify to run for elective office, including, *inter alia*, 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, and whether a person goes into another state and exercises the right to vote in that state. O.C.G.A. § 21-2-217(a)(1) - (15).

6. Respondent presented documentation of his legal residency in Georgia, including his active Georgia voter registration and continuous history of voting in Georgia—and no other state—since at least 1994. Respondent holds a valid Georgia driver’s license and has not held a driver’s license in Tennessee or any other state. Respondent has a history of continuous employment in Georgia and paid Georgia income taxes for 2022 and 2023. He has owned or leased residential property in Georgia for the past several years, and recently purchased the W. Schmitt Rd. house where he intends to permanently reside. This evidence is sufficient for Respondent to carry his burden of proving by a preponderance of the evidence that he is a resident of Georgia. *See Dozier v. Baker*, 283 Ga. 543, 544 (2008) (considering similar factors and finding voter registration and actual voting “particularly persuasive” in establishing residency in a jurisdiction).

7. The ALJ’s Initial Decision focuses on whether Respondent was residing full-time at the MLK address at the time of qualifying. (Initial Decision at 10 ¶ 13.) However, that is not the relevant inquiry—the relevant issue to be determined in this challenge is whether Respondent is a




resident of Georgia such that he is qualified to hold statewide office on the Georgia Court of Appeals.

8. Respondent's evidence of Georgia residency is not refuted by the testimony that he temporarily spent time between 2022 and April 2024 staying in Chattanooga, Tennessee, either with his sister or now-wife. A person "shall not be considered to have lost such person's residence who leaves such person's home and goes into another state...for temporary purposes only, with the intention of returning, unless such person shall register to vote or perform other acts indicating a desire to change such person's citizenship or residence." O.C.G.A. § 21-2-217(a)(2). *See also Dozier*, 283 Ga. at 545. Moreover, "[n]either the domicile nor the residence of one spouse is presumed to be that of the other spouse." *Dozier*, 283 Ga. at 545 (quoting *Lance v. Safwat*, 170 Ga. App. 694, 695 (1984)). The record does not show that Respondent registered to vote in Tennessee or any other state, voted in Tennessee or any other state, or performed other acts indicating that he permanently intended to change his residence away from Georgia, although he may have temporarily left the state for periods of time.

9. The ALJ's Initial Decision concluded that the candidate challenge was not ripe because the relevant date in determining the residency qualifications for a candidate for Georgia Court of Appeals Judge is the date of the election, rather than the date the candidate qualified to run for office. (Initial Decision at 10 ¶ 14.) The Petitioner asks the Secretary to reconsider the ALJ's conclusion and conclude that the relevant date is the time of qualifying. (*See Application for Agency Review.*) Because the Secretary concludes that Respondent satisfied his burden of proof, by a preponderance of the evidence, that he is a Georgia resident and was at the time of qualifying, there is no need to resolve this issue.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY DECIDED that Respondent JEFFREY DAVIS is QUALIFIED to be a candidate for the office of Judge, Georgia Court of Appeals, for the May 21, 2024, General Primary and Non-Partisan Election.

SO DECIDED this 16th day of May, 2024.

  
Brad Raffensperger, Secretary of State