

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

**ROBERT WITTENSTEIN & JILL
VOGIN,**

Petitioners,

v.

**ROBERT F. KENNEDY, JR.,
Respondent.**

**Docket No.: 2502869
2502869-OSAH-SECSTATE-CE-60-
Malihi**

INITIAL DECISION

Counsel for Petitioners:

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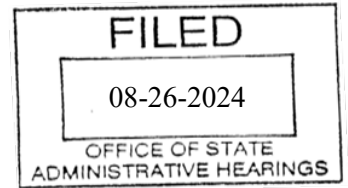
Counsel for Respondent:

Randall Duncan
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Lawrence M. Otter
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Judge:

Michael Malihi



I. INTRODUCTION

Robert Wittenstein and Jill Vogin (“the Petitioners”) filed this action pursuant to O.C.G.A. § 21-2-5(b) against Robert F. Kennedy, Jr. (“the Respondent”), challenging his qualifications to run as an independent candidate for the office of President of the United States.¹

¹ The Georgia Republican Party, through counsel, submitted a motion to intervene and accompanying brief on Monday, August 19, 2024. This motion was filed on the day of the hearing, after this matter had been pending for approximately one month and both parties had briefed their arguments at length. Given the timing of this motion, as well as the expedited timeframe for issuing the initial decision, granting a motion to intervene at this stage would unduly delay and prejudice adjudication of the rights of the existing parties. O.C.G.A. § 50-13-14. Moreover, the Court is not persuaded that the movant’s interests are not adequately represented. *See id.* Therefore, having read and considered the motion to intervene, it is **DENIED**.

The Petitioners contend that (1) the Respondent’s claimed address is “willfully inaccurate,” rendering his nomination petitions invalid, and (2) Respondent is not an “independent” candidate within the meaning of Georgia law.

An administrative hearing was held on August 19, 2024. Based on the evidence and arguments presented, and for the reasons stated below, the Court concludes that the Respondent has not met the qualifications to seek and hold the office for which he is offering.^{2,3}

II. FINDINGS OF FACT

1. The Petitioners are, and at all times material to this action have been, registered voters and eligible electors domiciled in DeKalb County, Georgia. *Stipulation of the Parties.*

2. The Respondent listed 84 Croton Lake Road, Katonah, New York (hereinafter “Katonah Address”) as his residence address on nomination petitions filed with the Georgia Office of the Secretary of State. (Exs. P-6, P-12.)

3. The Respondent’s address of residence was the subject of an election law proceeding before the Albany County Supreme Court in the State of New York. (Ex. P-2.)⁴ In that proceeding, the Respondent testified that he slept at the Katonah Address “only once,” approximately three weeks to one month prior to trial and, further, that he

- Holds falconry and fishing licenses in the State of New York. (Ex. P-2, pp. 12-13.)
- Listed a California address when he filed paperwork with the Federal Election Commission. (Ex. P-2, p. 10.)
- Has a Jeep registered in New York at his accountant’s address (not the Katonah Address). (Ex. P-2, pp. 10-11.)
- Pays income taxes in New York and California. (Ex. P-2, p. 14.)

² The Court is aware of the recently announced suspension of the Respondent’s campaign in some states. However, the parties have not filed a formal request to withdraw with this Court.

³ On Friday, August 16, 2024, the Respondent filed a motion to dismiss, arguing that the Petitioners’ challenge was untimely filed. The Petitioners responded to the motion that same day. The Court concludes that the Petitioners’ challenge was timely filed under the Georgia Administrative Procedure Act. O.C.G.A. § 50-13-23. Therefore, the Respondent’s motion is **DENIED**.

⁴ *Cartwright v. Kennedy*, No. 906349-24, 2024 N.Y. Misc. LEXIS 3768 (Sup. Ct. Aug. 13, 2024).

- Is licensed to practice law in the State of New York. (Ex. P-2, p. 11.)
- Owns real property in California and Massachusetts, but not New York. (Ex. P-2, p. 11.)
- Sold property located in Bedford, New York in November 2012 and moved to California in 2014 to live with his wife. (Ex. P-2, p. 11.)
- Purchased and sold various properties in the State of California. (Ex. P-2, p. 11.)
- Is of counsel to the firm Howard & Street in California. (Ex. P-2, p. 11.)
- Pays utility bills, taxes, and the mortgage related to a home he owns with his wife in Los Angeles, California. (Ex. P-2, p. 11.)
- Listed a California address on a document transferring title of a Hyannis Port, Massachusetts property to him, as well as on a power of attorney, both of which were executed in 2022. (Ex. P-2, pp. 11-12.)
- Planned to return to Bedford, New York and that it was “possible” he would return to the Katonah Address. (Ex. P-2, pp. 13-14.)

During his testimony at the New York trial, the Respondent acknowledged that he did not “have a lot of physical attachment” to the Katonah Address, that he did not maintain a “physical presence” there, and that he lived in California. (Ex. P-2, p. 15.)⁵

4. In a written decision issued August 13, 2024, the Albany County Supreme Court concluded that the Katonah Address was not the Respondent’s “bona fide residence,” finding as follows:

The overwhelming credible evidence introduced at trial established that [the Respondent’s] connections with the [Katonah Address] existed only on paper and were maintained for the sole purpose of maintaining his voter registration and political standing in the State of New York. . . . [D]uring the 15 months that [the Respondent] claimed to be a tenant at the [Katonah Address], he only slept there on one occasion . . . [which] did not occur until June 25, 2024, one month *after* [he] filed the nominating petition naming that address as his place of residence and two weeks after this proceeding.⁶

(Ex. P-2, p. 26.) The Albany County Supreme Court further concluded that the Katonah Address was “a ‘sham’ address that [the Respondent] assumed for the purpose of maintaining his voter

⁵ At the hearing, the parties agreed to the admission of their exhibits, including the trial transcript in the New York case. *Hr’g Tr.* 6: 4-7.

⁶ Notably, in the New York proceeding, the challengers bore the burden of proving by clear and convincing evidence that the Katonah Address was not Respondent’s bona fide residence. (Ex. P-2).

registration and furthering his own political aspirations in [New York].” (*Id.* at 30.)

5. The Respondent did not testify at the hearing of this matter. He introduced twenty-three (23) pages of documentary evidence pertaining to his residence, including absentee ballot applications, voter registration forms, and DMV records. (Ex. R-A.) According to these records, the Respondent reported different addresses in the State of New York to be his residence address at various times between 2012 and 2024. (*Id.*) With respect to the Katonah Address, it is identified as the Respondent’s residence address on the following:

- A voting history report generated by the Westchester County Board of Elections on July 22, 2024. (Ex. R-A, p. 1);
- A DMV record showing a change of address from 1 Twin Lakes Drive to the Katonah Address effective July 3, 2024. (Ex. R-A, p. 5);
- New York State Voter Registration Forms dated June 26, 2023, and February 23, 2024. (Ex. R-A, pp. 6, 10); and
- A New York State Absentee Ballot Application dated April 10, 2024.⁷ (Ex. R-A, p. 7).

6. The Respondent is the founder of the We The People Party. He has sought access to ballots in several different states through various political entities, including the Alliance Party, the American Independent Party, his own We The People Party, and the Natural Law Party. (Exs. P-2, P-16, P-17, P-18, P-19, P-20, P-21, P-22, P-23.)

III. CONCLUSIONS OF LAW

1. In Georgia, independent candidates desiring to appear on the ballot must meet the requirements expressed in Code Section 21-2-132. One such requirement is that the candidate file a notice of candidacy accompanied by an affidavit. O.C.G.A. § 21-2-132(f). This affidavit must state the candidate’s “residence, with street and number, if any” and that “he or she is an elector

⁷ On this form, the applicant requests delivery of the ballot to an address in Los Angeles, California. (Exhibit R-A, p. 7.) This address was identified as the Respondent’s home address in California in the New York proceeding. (Ex. P-2.)

of the county or municipality of his or her residence.” O.C.G.A. § 21-2-132(f)(2), (5). Candidates must also file a nomination petition “in the form prescribed in Code Section 21-2-170.” O.C.G.A. § 21-2-132(e). According to subsection (d) of Code Section 21-2-170, each nomination petition sheet must bear the candidate’s “place of residence with street and number” O.C.G.A. § 21-2-170(d).

2. Here, the Court concludes that the Katonah Address was not the Respondent’s residence. *See* O.C.G.A. § 21-2-217(a)(1) (“residence” is “that place in which such person’s habitation is fixed, without any present intention of removing therefrom”); *Handel v. Powell*, 284 Ga. 550, 550 (2008) (“While ‘domicile’ and ‘residence’ have different meanings, with ‘domicile’ denoting a permanent place of abode and ‘residence’ not necessarily being permanent, the residency requirement for a candidate for, or holder of, public office refers to domicile.”). The facts presented to the court concerning the Respondent’s domicile overwhelmingly indicate that the Katonah Address is not, and never was, the Respondent’s bona fide residence. The evidence submitted by the Respondent does not support an alternative conclusion.⁸ Therefore, the Court concludes the Respondent failed to abide by the statutory prerequisites for nomination petitions. O.C.G.A. § 21-2-170(d).⁹ Consequently, he is not qualified to appear on the ballot. O.C.G.A. § 21-2-171(a)(1).

⁸ At most, the documentary evidence submitted by the Respondent indicates that the Respondent *reported* various addresses in New York to be his residence address, not that he ever actually resided at the Katonah Address. Evidence pertaining to addresses other than the Katonah Address is irrelevant, as the issue for this Court to decide is whether the address listed on the nomination petitions submitted by the Respondent—i.e., the Katonah Address—was the Respondent’s residence address. The mere fact that the Respondent himself identified the Katonah Address on various submissions—voter registration forms, absentee ballot applications, DMV records, etc.—is of very little evidentiary value in determining whether the Katonah Address was “the place in which [his] habitation [was] fixed” O.C.G.A. § 21-2-217(a)(1) Such evidence is substantially outweighed by the Respondent’s admission that he did not maintain a physical presence at the Katonah Address and, indeed, spent only one night there.

⁹ In a prehearing filing, Petitioners alleged that the Respondent also included the Katonah Address on his notice of candidacy and affidavit filed with the Secretary of State’s office pursuant to Code Section 21-2-132(f). At the hearing, Petitioners indicated that Respondent “did not submit” a notice of candidacy and affidavit. *Hr’g. Tr.* 16: 20-24. The Court is unable to confirm this from the documentary evidence submitted by the parties.

3. The Court concludes that the Respondent is an “independent” as that term is used in the Georgia Election Code. In context, it is clear that this term is used to differentiate a candidate from a “political party” or “political body” candidate in Georgia. *See* O.C.G.A. § 21-2-2(10), (23), (24), (25); *see also McCrary v. Poythress*, 638 F.2d 1308, 1310-11 (5th Cir. 1981). It is not a separate requirement that a candidate have no association with or relationship to any political entity at any time in any jurisdiction. The legislature meticulously prescribed the prerequisites for independent candidates in the Georgia Election Code, particularly in Code Section 21-2-132.¹⁰ If the legislature intended to impose a separate qualification based on the “independence” of a candidate, it would have done so expressly. *See, e.g., Fulton Cnty. Sch. Dist. v. Jenkins*, 347 Ga. App. 448, 453 (2018) (noting that, if the legislature intended to accomplish a particular outcome, it knew how to do so and, consequently, courts must presume that its “failure to do so was a matter of considered choice”); *Kemp v. Kemp*, 337 Ga. App. 627, 636 (2016).

IV. DECISION

Based on the foregoing findings of fact and conclusions of law, the Court concludes that, although the Respondent is an “independent” within the meaning of the Georgia Election Code, he failed to include his residence address on nomination petitions submitted to the Office of the Secretary of State pursuant to Code Section 21-2-170(d). Accordingly, the Respondent is **NOT QUALIFIED** to appear on the ballot in Georgia for the office of President of the United States.¹¹

¹⁰ Indeed, the legislature appears to have added some express safeguards against the overlap of political party and independent or political body candidates in Code Section 21-2-137:

No person shall file a notice of candidacy as an independent or political body candidate for any public office when such person has qualified for the same office to be filled at the same election with any political party; nor shall any person qualify with any political party when such person has filed a notice of candidacy as an independent or political body candidate for the same office to be filled at the same election.

¹¹ The Respondent raised constitutional challenges to the Georgia Election Code at the hearing and in prehearing filings. The Court has no jurisdiction to resolve constitutional challenges to statutes and declines to address them in

SO ORDERED this 26th day of August, 2024.



Michael Malihi, Judge



this Decision. Ga. Comp. R. & Regs. 616-1-2-.22(3). However, the Petitioner's challenges are acknowledged and preserved for review.