IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CRAIG PIGG, CATHERINE SMITH, & MARY LOU WAYMER, Petitioners, v. BRADFORD J. RAFFENSPERGER, GEORGIA SECRETARY OF STATE, RANDOLPH CLAPP, BEZALEEL JUPITER, CHARLIE KOCH, CHRISTOPHER HENDRIX, CLAUDIA ANDRADE, JACOB DALLAS-MAIN, GERALD GREEN II, JESSICA INGRAM, NUR JAHAN, JUAN GARCIA JR., MONICA JOHNSON, SATYA VATTI, NATALIE VILLASANA, MILES WETHERINGTON, LINDA WINTER, JOSS OLSON, and GEORGIA REPUBLICAN PARTY, INC., Respondents.	Civil Action No. 24CV011040 Reviewing Court Case No. 2502266-OSAH-SECSTATE-CE-60-Malihi

FINAL ORDER REVERSING DECISION OF SECRETARY OF STATE

This matter comes before the Court on Petitioners' Petition for Judicial Review of a Final Decision of the Secretary of State holding that Respondents—who, aside from the Secretary of State and the Georgia Republican Party, are candidates for presidential elector on behalf of Claudia De la Cruz, an independent candidate for President (hereinafter "the Elector Respondents")—are qualified for office. For the reasons discussed herein, the Court reverses the decision of the Secretary of State, finding that substantial rights of the Petitioners have been prejudiced because the Secretary's decision is affected by errors of law. Neither the Elector Respondents nor Ms. De la Cruz have satisfied the requirements necessary to access the ballot, and therefore they may not appear on the General Election ballot.

BACKGROUND

I. The Administrative Proceeding

Petitioners Craig Pigg, Catherine Smith, and Mary Lou Waymer brought a challenge under O.C.G.A. § 21-2-5(b) to the qualifications of the Elector Respondents to serve as presidential electors on behalf of Ms. De la Cruz, an independent candidate for President of the United States.[1] Petitioners argued that no Respondent submitted a nomination petition in his or her own name, as required by Georgia law, and that the nomination petition submitted in the name of Ms. De la Cruz—even assuming a petition in her name were sufficient under Georgia law—failed to contain at least 7,500 valid signatures.[2] A hearing was held on Plaintiffs' challenge on August 19, 2024 (the "Hearing"), at which the parties presented evidence and arguments.[3]

II. The Administrative Law Judge's Initial Decision

On August 26, 2024, the Chief Administrative Law Judge ("ALJ") issued his initial decision finding that none of the Elector Respondents qualified as candidates for the office of presidential elector.[4] The ALJ found that "[n]one of the Respondents… submitted a nomination petition in his or her own name."[5] The ALJ held that because none of the Elector Respondents submitted a nomination petition in his or her own name as required by Georgia law, they failed to qualify for the office of presidential elector.[6] Because the ALJ found that Elector Respondents

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[1] Initial Decision of Chief Judge Michael Malihi, Office of State Administrative Hearings, at 1-2.

[2] *Id.* at 2.

[3] *Id.*

[4] *Id.* at 2.

[5] *Id.*

[6] *Id*. Because the Initial Decision held that the Respondents failed to qualify by virtue of not submitting nomination petitions in their own names, it did not make any finding as to whether the nomination petition submitted in De la Cruz's name contained at least 7,500 valid signatures. *Id.* at 5-6.

were not qualified for this reason, he did not address, and made no factual findings regarding, whether a nomination petition containing at least 7,500 valid signatures was submitted by the Elector Respondents.[7]

III. The Secretary of State's Final Decision

The Secretary of State issued a Final Decision on August 29, 2024, in which the Secretary "adopt[ed] the Findings of Fact in the ALJ's Initial Decision."[8] However, the Secretary overruled the Initial Decision, reasoning that the decision in *Green Party v. Kemp*, 171 F. Supp. 3d 1340 (N.D. Ga. 2016), prohibits the Secretary of State from following the requirement under Georgia law that candidates for the office of presidential elector must submit nomination petitions in their own names to qualify for that office and to obtain ballot access for their candidate for President. Therefore, the Secretary found the Elector Respondents qualified to be candidates for the office of presidential elector, based upon the nomination petition filed in the name of Claudia De la Cruz .[9] The Secretary's Final Decision makes the following findings of fact:

1) none of the Elector Respondents submitted a nomination petition in her or her own name; and
2) instead, a nomination petition was submitted in the name of Claudia De la Cruz.[10]

Like the Administrative Law Judge, the Secretary made no finding of fact in this action as to whether the petition submitted in Ms. De la Cruz's name contained 7,500 valid signatures and did not address Petitioners' arguments on that issue. *Id.* at 2-3.

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[7] *Id.* at 5-6.

[8] Final Decision at 2.

[9] Final Decision at 5.

[10] *Id.* at 2-3.

DISCUSSION

I. Relevant Legal Framework

a. The Candidate's Burden to Prove Qualifications

Every candidate for 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). A candidate seeking to qualify for office bears the burden of proof to establish their eligibility for office. *See e.g., Haynes v. Wells*, 273 Ga. 106, 108-09 (2000) ("[T]he statute[] place[s] 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.")

b. Presidential Elector Qualifying

i. *The candidate for presidential elector must qualify for office.*

Under Georgia law, independent candidates for the office of President and Vice President of the United States of America do not themselves qualify for the ballot. *See* O.C.G.A. § 21-2-132.1. Rather, an independent candidate for the office of President or Vice President of the United States files a slate of candidate(s)[11] for the office of presidential elector which such independent candidate has certified as being the presidential electors for such independent candidate. *See* O.C.G.A. § 21-2-132.1 (a).[12] These candidates for presidential electors then qualify for such office in accordance with O.C.G.A. § 21-2-132, and thereby qualify to have their candidate for President or Vice President placed on the ballot. *See* O.C.G.A. § 21-2-132.1 (b)

[11] An independent candidate for the office of President or Vice President of the United States may certify between one and sixteen candidates for office of presidential elector. O.C.G.A. § 21-2-132.1 (c).

[12] O.C.G.A. § 21-2-132.1 was first enacted in 2019.

This is clear from the Georgia Code, which states: "[e]ach **elector** for President or Vice President of the United States… desiring to have the names of his or her candidates for President and Vice President placed on the election ballot shall file a notice of his or her candidacy…" O.C.G.A. § 21-2-132(d)(1)(emphasis supplied). The Court notes that this Code section, O.C.G.A. § 21-2-132(d)(1), was amended by the Georgia General Assembly in 2017 by replacing "[e]ach candidate for federal or state office" with "[e]ach elector for President or Vice President of the United States," -- further clarifying that it is a candidate for the office of presidential *elector* who qualifies for office and not the actual candidate for President. *See* H.B. 268 (2017).[13] Under existing Georgia law, there is no provision that allows a candidate for President or Vice President to directly qualify for the ballot.

ii. *A nomination petition that complies with Georgia law must also be timely submitted.*

A candidate for presidential elector must also file a timely nomination petition. *See* O.C.G.A. §§ 21-2-132(e), 21-2-170. Georgia Code Section 21-2-132(e) mandates that "[e]ach candidate required to file a notice of candidacy by this Code section" shall also "file . . . a nomination petition in the form prescribed in Code Section 21-2-170." *Id.*; *see also* O.C.G.A. § 21-2-170(c) ("[e]ach petition shall support the candidacy of only a single candidate").

The candidate required to file a notice of candidacy under O.C.G.A § 21-2-132 is "[e]ach elector for President or Vice President of the United States," not the candidate for the office of President or Vice President. *See* O.C.G.A. § 21-2-132(d)(1). As such, the candidate who is required to file a nomination petition also is the elector for President or Vice President, not the

[13] The amendment also added a new subsection (d)(2) for candidates for United States Senate and House of Representatives. O.C.G.A. § 21-2-132(d)(2). This subsection covers the remaining federal offices for which a candidate may qualify under Georgia law. Subsections (d)(1) and (d)(2) are the only subsections of O.C.G.A. § 21-2-132(d) that relate to qualifying for federal office.

candidate for the office of President or Vice President. *See also* O.C.G.A. § 21-2-170(c) (stating that a political body's "candidates for the offices of presidential electors" shall be the names listed on the petition).

O.C.G.A. § 21-2-170(b) requires "[a] nomination petition of a candidate seeking an office which is voted upon state wide [to] be signed by a number of voters equal to 1 percent of the total number of registered voters eligible to vote in the last election for the filling of the office the candidate is seeking." Because candidate eligibility requirements implicate basic constitutional rights of voters under the First and Fourteenth Amendments of the United States Constitution, the constitutionality of this requirement was challenged in *Green Party of Georgia v. Kemp*. 171 F. Supp. 3d 1340 (N.D. Ga. 2016)(hereafter "*Green Party*").

After analyzing the various interests of voters and candidates, as well as the burden on ballot access,[14] the Court in *Green Party* declared the one percent signature requirement of O.C.G.A. § 21-2-170(b) unconstitutional and permanently enjoined the State "from enforcing that provision against presidential candidates." *Id.* at 1372. In this 2016 decision, the Court in *Green Party* held that "a candidate for President may access the ballot by submitting 7,500 signatures on a petition **that otherwise complies with Georgia law.**" *Id.* at 1374 (emphasis supplied). Therefore, a petition seeking access to the ballot for President must contain at least 7,500 valid signatures.

[14] The Court in *Green Party* acknowledged that the First and Fourteenth Amendments of the United States Constitution "do[] not grant… candidates unfettered access to ballots." *Id.* at 1353 (citing (citing *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). The Court also held that a state's ballot-access restrictions are "generally permissible in light of the state's important regulatory interests, so long as they are reasonable and non-discriminatory." *Id.*

c. Standard of Review

"[T]he standard of review a superior court is to employ when reviewing a decision by the Secretary of State on a challenge to a candidate's qualifications" is set out in O.C.G.A. § 21-2-5(e). *Handel v. Powell*, 284 Ga. 550, 552 (2008).

> The Court shall not substitute its judgment for that of the Secretary of State as to the weight of the evidence on questions of fact. The court may affirm the decision or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, conclusions, or decisions of the Secretary of State are: (1) In violation of the Constitution or laws of this state; … (4) affected by other error or law; [or] (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.

O.C.G.A. § 21-2-5(e). Petitioners, as Georgia voters, have a substantial interest in ensuring public offices are only held by legally qualified persons, and a decision to place an unqualified candidate on the ballot prejudices those substantial rights. *See Camp v. Williams*, 314 Ga. 699, 707-08 (2022) (holding legally erroneous decision to allow candidate to remain on the ballot prejudiced voter's substantial right).

Therefore, this Court's review is a two-step process: (1) "the [C]ourt must first determine if there is evidence to support the factual findings;" and (2) "the court then is statutorily required to examine the soundness of the conclusions of law drawn from the findings of fact supported by any evidence." *Handel*, 284 Ga. at 552 (cleaned up) (citing cases applying same standard of review in other contexts). When the Secretary of State's decision is based on a clearly erroneous factual finding or the Secretary commits an error of law, it authorizes reversal of the Secretary's decision. *See, id.* at 554 (affirming Superior Court's reversal of Secretary's decision based upon

error of law); *Wexler v. Thompson*, 372 Ga. App. 63, 65-66 (2024) (reversing decision because findings "were clearly erroneous").[15]

II. No Respondent filed a nomination petition in his or her name as required by Georgia law.

As detailed above, the plain text of the Georgia Election Code requires a candidate for the office of presidential elector to file a nomination petition -- not the actual candidate for President. *See* O.C.G.A. §§ 21-2-132.1., 21-2-132(d)(1), 22-2-132(e), and 21-2-170.

"[I]f the statutory text is clear and unambiguous, we attribute to the statute its plain meaning and our search for statutory meaning is at an end." *Premier Health Care Invs. v. UHS of Anchor*, 310 Ga. 32, 39 (2020). Further, "all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it." *Gray v. State*, 310 Ga. 259, 262 (2020).

In the instant case, relying upon these canons, the ALJ correctly concluded:

> [W]hen the legislature enacted Code Section 21-2-132.1 in 201[9], which required "candidates for presidential electors" to "qualify for election to such office in accordance with Code Section 21-2-132," the legislature did so with full knowledge of the existing condition of Code Section 21-2-132, including the requirements that those "candidates for presidential electors" would be required to file a notice of *his or her candidacy* under Code Section 21-2-132(d)(1), and a nomination petition under Code Section 21-2-132(e). Thus, it is clear from the plain text of the statute, as amended, that the "candidates" who must meet the qualification requirements are the "candidates for presidential electors." O.C.G.A. § 21-2-132.1(b).

[15] *Wexler* involved a review of an administrative decision under the standard set forth in O.C.G.A. § 50-13-19(h), 372 Ga. App. at 63, which the Supreme Court described as "virtually identical" to the standard in O.C.G.A. § 21-2-5(b). *Handel*, 284 Ga. at 552.

Initial Decision at 5.[16] And because "there is no dispute that none of the Respondents submitted a nomination petition in his or her own name in the form prescribed in Code Section 21-2-170…none of the Respondents qualified as candidates for the office of presidential elector." *Id.*

The Secretary's Final Decision does not contradict the ALJ's conclusion that the plain text of the Georgia Election Code requires a candidate for presidential elector to submit a nomination petition in his or her own name. Rather, the Secretary reversed the Initial Decision "because it is contrary to a federal court order permanently enjoining the Secretary from requiring more than a total of 7,500 signatures on a nomination petition for a candidate to obtain ballot access for the office of President of the United States." Final Decision at 2 (citing *Green Party*, 171 F. Supp. 3d at 1340).

This Court finds that the Secretary erred in reaching this conclusion. *Green Party* does not prohibit the application of any statutory provision other than the one it permanently enjoined (that required a nomination petition with signatures from one percent of eligible electors) and that it replaced with a requirement for 7500 signatures on a nomination petition. Notably, *Green Party* requires a nomination petition to otherwise comply with Georgia law. 171 F. Supp. 3d at 1374.

Under a plain reading of the current Election Code, an independent candidate for the officer of President of the United States may obtain access to the ballot if one of her qualified electors files a nomination petition with at least 7,500 signatures. First, an independent candidate for President "may certify a number of candidates for the office of presidential elector that is equal to or less than the number of presidential electors who may be elected from the State of

[16] The Initial Decision incorrectly states that O.C.G.A. § 21-2-132.1 was enacted in 2017. It was enacted in 2019. H.B. 316 (2019). That difference does not affect the analysis herein.

Georgia." O.C.G.A. § 21-2-132.1(c). Therefore, an independent candidate for President could certify a single candidate for the office of presidential elector. *Id.* Second, if that single candidate for presidential elector qualified for that office in accordance with O.C.G.A. § 21-2-132, the independent candidate for President that that elector represents would gain ballot access. In other words, a single nomination petition with 7,500 valid signatures submitted by a single candidate for presidential elector (and in the elector's own name) is sufficient for an independent candidate for President to access the ballot. Therefore, applying the plain text of the Election Code as the ALJ did in the Initial Decision does not create any conflict with the holding in *Green Party.*

The constitutional concern in *Green Party* related to the burden on an independent or third-party candidate for President to gain access to the ballot. 171 F. Supp. 3d at 1361-63. The *Green Party* decision lowered that burden from requiring a nomination petition that is signed by one percent of eligible voters to requiring a nomination petition with 7,500 valid signatures. *Id.* at 1374. The next year after the decision in *Green Party*, the General Assembly took action and amended O.C.G.A. § 21-2-132(d) to make clear that a candidate for presidential elector must submit a nomination petition in the elector's own name. *See* H.B. 268 (2017). However, that amendment did nothing to increase the threshold burden for a presidential candidate to gain ballot access. As discussed above, an independent candidate for president can gain ballot access through a single candidate for presidential elector who complies with the requirements of Georgia law, including the submission of a nomination petition by that single elector with 7,500 valid signatures. The 7,500-signature threshold for an independent presidential candidate to simply get on the ballot has not changed.[17]

[17] Respondent argued before this Court that any presidential candidate would want to have all sixteen of his or her electors fully qualified, and thus each of the sixteen candidates for presidential elector would have to submit a nomination petition with at least 7500 signatures, which would be an unfair burden. The constitutional issue in *Green Party*, however, concerned access to the ballot. As outlined above, adherence to the Georgia Election Code

Ms. De la Cruz chose to certify a slate of sixteen (16) presidential electors.[18] All sixteen filed a Notice of Candidacy and Affidavit.[19] Only one of these electors needed to file a nomination petition with 7,500 valid signatures; fifteen of the sixteen could fail to do so without imperiling Ms. De la Cruz's access to the ballot. Thus, while Ms. De la Cruz only needed a single presidential elector to properly qualify to provide her with ballot access, none of her candidates satisfied the requirements to do so.

Because the clear and unambiguous language of the Election Code requiring that a nomination petition be in the name of a candidate for presidential elector, not a candidate for President, can be applied consistently with *Green Party*, that decision poses no barrier to applying the Code as written. The Secretary overruled the ALJ's Initial Decision based on an erroneous application of the law, and therefore it must be reversed.

CONCLUSION

For the reasons discussed herein, the Court REVERSES the Final Decision of the Secretary of State. Pursuant to O.C.G.A. § 21-2-5 (c), the Court directs the Secretary to withhold the name of Claudia De la Cruz from the ballot or strike Ms. De la Cruz's name from the ballot if the ballots have been printed. If there is insufficient time to strike Ms. De la Cruz's name or reprint the ballots, the Secretary shall ensure that a prominent notice is placed at each affected polling place advising voters of the disqualification of Ms. De la Cruz and that all votes cast for Ms. De la Cruz shall be void and shall not be counted.

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does not mandate more than 7500 signatures and therefore does not diminish a presidential candidate's ability to access the ballot.

[18] Hearing Exhibit J-1.

[19] Hearing Exhibit J-2

To the extent Ms. De la Cruz's name has already been included on any printed ballots and those ballots *can* be reprinted and still meet applicable deadlines for mailing ballots, the Secretary must take all steps to ensure that is done, including directing counties to do so.

To the extent Ms. De la Cruz's name has already been included on any printed ballot and those ballots *cannot* be reprinted, the Secretary must take all steps to ensure that a prominent printed notice advising voters that Ms. De la Cruz is disqualified and that all votes cast for Ms. De la Cruz shall be void and shall not be counted is included with such printed ballots, including directing counties to include such notice with their mailing of the ballots.

SO ORDERED this 11th day of September, 2024.

Emily K. Richardson

JUDGE EMILY K. RICHARDSON
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

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Proposed order revised by the Court.