IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

ROBERT WITTENSTEIN and JILL VOGIN, Petitioners, v. CORNEL WEST, Respondent.	CIVIL ACTION FILE NO. 24CV011079 REVIEWING COURT CASE NO. 2502867-OSAH-SECSTATE-CE-60-Malihi

FINAL ORDER

Before the Court is Petitioners' appeal, filed September 3, 2024, from a final decision of the Secretary of State finding Respondent Dr. Cornel West, an independent candidate for President of the United States, qualified to access Georgia's 2024 general election ballot. Recognizing the importance of the matter and the shortness of time available to resolve it, the Court expedited briefing and hearing to provide the Secretary of State adequate time to implement its decision. Having considered the entire record, moving and briefing papers, legal authority cited therein, and oral argument of counsel, the Court finds as follows:

I. Background

Petitioners Robert Wittenstein and Jill Vogin, registered Georgia voters, timely filed a written complaint pursuant to O.C.G.A. § 21-2-5(b) challenging the qualifications of Respondent Cornel West ("Respondent") to be an independent candidate for President of the United States. Petitioners offered two grounds for their challenge. First, they contended that Respondent is not an "independent" candidate within the meaning of Georgia law. Second, they contended on information and belief, subject to an opportunity to review Respondent's just-filed nomination petition under applicable law, was insufficient because it did not contain enough valid signature entries to support a nomination petition compliant with O.C.G.A. § 21-2-170, rendering him not

qualified. Pursuant to § 21-2-5, the Secretary of State forwarded the complaint to the Office of State Administrative Hearings for an evidentiary hearing and notified Respondent of the challenge.

Counsel for Respondent appeared, opposed Petitioners' challenge, and noticed his intention to affirmatively demonstrate Respondent's qualifications under Georgia law for the office he seeks. Each of the parties filed briefs by order of the ALJ. The parties stipulated to certain facts, while reserving the right to tender additional documents to the Court at the hearing. The Stipulated Facts including the following: "Of the signatures submitted by Dr. Cornel West on his nomination petition, the Secretary of State verified and accepted 8,075 signatures from Georgia electors in the Secretary's initial review of the petition." The parties reserved the right to submit additional evidence at the hearing.

An evidentiary hearing was conducted on August 22, 2024, before an administrative law judge at the Office of State Administrative Hearings ("ALJ"). Counsel for the parties appeared and advocated for their respective interests at the administrative hearing. Both parties presented evidence; Petitioners swore and examined a witness; Respondent cross-examined the witness. The ALJ admitted several exhibits, including exhibits of relevance here:

- P-3 and R-1 (blank uniform petition sheets used by Respondent's campaign),
- P-20 (resume of Petitioners' witness, Benjamin Messner),
- P-21 (Affidavit of Benjamin Messner),
- P-22 (Data supporting Affidavit of Benjamin Messner), and
- P-26 (PDF copies of the petition sheets submitted by Respondent to the Secretary of State and reproduced by the Secretary to Petitioners pursuant to the ALJ's stipulated protective order).

Petitioners presented testimonial evidence from Benjamin Messner, a supervisor of a team that analyzed Respondent's petition sheets and data derived from them. Respondent, in addition to contesting Petitioners' arguments, sought to affirmatively prove his qualifications for office. The ALJ closed the record at the end of the hearing.

On August 26, 2024, the ALJ issued an Initial Decision with findings of fact and conclusions of law, finding Respondent qualified. On August 27, 2024, Petitioners filed a motion

for reconsideration, asserting that certain findings of fact and conclusions of law drawn from those findings had no evidence in the record and others were clearly erroneous. On August 29, 2024, the Secretary of State adopted those findings in his Final Decision while the motion for reconsideration was still pending, thus depriving the ALJ of jurisdiction and mooting the motion for reconsideration.

Petitioners appealed from the Final Decision on September 3, 2024. Respondent and the Secretary of State acknowledged service. This Court, upon receiving assignment of this action, received briefs and proposed orders from all parties to the appeal. The Court received oral argument from counsel for Petitioners and for Respondent on September 10, 2024.

II. Analysis.

During the hearing on September 10, 2024, the Court heard argument regarding two specific challenges to Dr. Cornel West being present on the ballot. First was the above styled case, second was Civil Action Number 24CV011035 which challenged the legitimacy of the Presidential Electors for Dr. Cornel West. 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. Rather, individuals seeking the office of presidential elector qualify to have their candidate for President or Vice President placed on the ballot. 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).

After a review of all the evidence regarding the Presidential Electors for Dr. Cornel West, this Court ruled that the Electors failed to properly qualify pursuant to Georgia Law, thus rendering Dr. Cornel West ineligible to run for the Office of the President of the United States. (Order attached as Exhibit 1).

Because the Court has already entered a ruling on the eligibility of Dr. Cornel West appearing on the ballot, this Court considers the remaining issues before it moot and shall not address them.

III. Conclusion

For the reasons discussed herein, the Secretary's Final Decision is Reversed. Neither Dr. West nor Respondents are qualified to appear on the General Election ballot. The Court further heard argument during the hearing that at this point it would be extremely difficult to reprint ballot

and remove Dr. West as an option before the election. It was even described as inviting chaos and catastrophe. Fortunately, the Court is given a proper measure of recourse through O.C.G.A. § 21-2-5(c) which states that, "If there is insufficient time to strike the candidate's name or reprint the ballots, a prominent notice shall be placed at each affected polling place advising voters of the disqualification of the candidate and all votes cast for such candidate shall be void and shall not be counted." The deadline to send for ballots for overseas and military voters is days away. 52 U.S.C. § 20302(a)(8). Given the importance of the 2024 presidential election, the critical importance of voter confidence in elections, and the importance of consistency in ballots, this Court finds that there is "insufficient time to strike the candidate's name or reprint the ballots," O.C.G.A. § 21-2-5(c), and requires only that notices be posted regarding the ineligibility of Dr. West. Thus, this Court ORDERS the Secretary of State to post notices complying with the language of this Order and O.C.G.A. § 21-2-5(c) at every polling location to alert all Georgia Voters that Dr. Cornel West is not a valid candidate for the Office of the President of the United States.

SO ORDERED this 11th day of September, 2024.

THOMAS A. COX, JR., JUDGE
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

Exhibit 1

SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CRAIG PIGG, CATHERINE SMITH, & MARY LOU WAYMER, Petitioners, v. BRADFORD J. RAFFENSPERGER, GEORGIA SECRETARY OF STATE, HASAN AL BARI, MIRANDA BAUMANN, BRYAN SHEPARD, FATIMA MUSTAFAA, JOSEPH ROGERS, COURTNEY CAAMANO, DONETTA WASHINGTON, JOSHUA ROBERTS, SHERRY TANNER, BARTHOLOMEW SCOTT, DARA ASHWORTH, JEROME BELL, and ADAM INYANG Respondents.	Civil Action No. 24CV011035 Reviewing Court Case No. 2502870-OSAH-SECSTATE-CE-33-Malihi

ORDER

This matter comes before the Court on Petitioners' Petition for Judicial Review of a Final Decision of the Secretary of State holding that Respondents—candidates for presidential elector on behalf of Dr. Cornel West, an independent candidate for President—are qualified for office. For the reasons discussed herein, the Secretary erred in reaching that decision and it must be reversed.

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 Respondents to serve as presidential electors on

behalf of Dr. West, an independent candidate for President of the United States.[1] Petitioners argued that Dr. West failed to file his slate of candidates for the office of presidential elector by the statutory deadline, that no Respondent submitted a nomination petition in their own name as required by Georgia law, and that the petition submitted in the name of Dr. West—even assuming a petition in his 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 22, 2024 (the "Hearing"), at which the parties presented evidence and arguments.[3]

Michael McCorkle—legal counsel for the West for President campaign supporting ballot access efforts—testified at the Hearing.[4] He was responsible for preparing the Georgia slate of proposed presidential electors for Dr. West, and submitting that to the Secretary of State.[5] He did so via FedEx.[6] Mr. McCorkle identified the FedEx receipt associated with his mailing of Dr. West's slate of proposed electors, which identified the address for the Elections Division of the Secretary of State as the delivery address he intended to send the slate of electors.[7] He also identified a FedEx tracking confirmation document that stated the mailing was delivered to Atlanta on June 20, 2024, but it did not identify the address to which the mailing was delivered.[8] Mr. McCorkle testified he did not know where his FedEx mailing was delivered on June 20, 2024, and had no evidence to offer as to where it was delivered on that date.[9] Dr. West's slate of proposed electors was not received by, or filed with, the Secretary of State until June 24, 2024.[10]

---

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

[2] *Id.* at 2.

[3] *Id.*

[4] Hearing Transcript at 8:10-17, 9:21-10:12.

[5] *Id.* at 8:18-21, 9:21-10:12; Hearing Exhibit R-5 at 2-3.

[6] Hearing Transcript at 10:13-15.

[7] *Id.* at 10:25-11:3, 11:15-12:3, 15:16-19; Hearing Exhibit R-21.

[8] Hearing Transcript at 12:4-16, 13:2-13, 16:6-19; Hearing Exhibit R-2.

[9] Hearing Transcript at 16:20-17:4.

[10] *Id.* at 14:12-15:12; Hearing Exhibit R-5 at 2-3.

II. The Administrative Law Judge's Initial Decision

On August 26, 2024, the Chief Administrative Law Judge issued his initial decision finding that none of the Respondents qualified as candidates for the office of presidential elector.[11] That decision found that Dr. West timely filed his slate of candidates for presidential elector and that Respondents timely filed their notices of candidacy and candidate affidavits.[12] But because none of the Respondents submitted a nomination petition in his or her own name as required by Georgia law, the Initial Decision held they failed to qualify for the office of presidential elector.[13]

III. The Secretary of State's Final Decision

The Secretary of State issued a Final Decision on August 29, 2024, overruling the Initial Decision and finding Respondents qualified to be candidates for the office of presidential elector.[14] The Secretary's Final Decision makes the following findings of fact:

1) Dr. West timely filed his slate of candidates for presidential elector;
2) those candidates (Respondents) timely filed their notices of candidacy and candidate affidavits;
3) none of the Respondents submitted a nomination petition in her or her own name; and
4) instead, a nomination petition was submitted in the name of Cornel West.[15]

The Secretary overruled the Initial Decision, reasoning that the decision in *Green Party v. Kemp* (discussed below) nullified the requirement of Georgia law that a presidential elector must submit a nomination petition in their own name to qualify for office.[16]

---

[11] Initial Decision at 2.

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

[13] *Id.* at 3. 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 Dr. West's name contained at least 7,500 valid signatures. *Id.* at 6.

[14] Final Decision at 5.

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

[16] Like the Administrative Law Judge, the Secretary made no finding of fact in this action as to whether the petition submitted in Dr. West's name contained 7,500 valid signatures. *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. Rather, individuals seeking the office of presidential elector qualify to have their candidate for President or Vice President placed on the ballot. 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). The 2017 Amendment to O.C.G.A. § 21-2-132(d)(1), by replacing "[e]ach candidate for federal or state office" with "[e]ach elector for President or Vice President of the United States," further clarified that it is a candidate for the office of presidential elector that qualifies for office and not the candidate for President. H.B. 268 (2017).[17]

---

[17] 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. There is no provision in Georgia law that allows a candidate for President or Vice President to directly qualify for the ballot.

ii. *A slate of electors and notice of candidacy must be timely filed.*

Individuals seeking to qualify for the ballot in Georgia for the office of presidential elector as independent candidates must satisfy certain requirements. First, the presidential candidate they seek to represent must timely file with the Secretary of State a certified slate of presidential electors. O.C.G.A. § 21-2-132.1(a). This year the deadline to do so was June 21, 2024. *Id.* Second, those candidates for presidential elector certified by the independent presidential candidate must qualify for the ballot by timely filing their notices of candidacy and candidate affidavit. O.C.G.A. §§ 21-2-132.1(b), 21-2-132(d).

iii. *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. O.C.G.A. §§ 21-2-132(e), 21-2-170. Section 21-2-132(e) requires "[e]ach candidate required to file a notice of candidacy by this Code section" to 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 by Section 21-2-132 is "[e]ach elector for President or Vice President of the United States," not the candidate for President or Vice President. O.C.G.A. § 21-2-132(d)(1). Thus, the candidate required to file a nomination petition is also the elector for President or Vice President, not the candidate for 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." The constitutionality of this requirement was challenged in *Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340, 1344 (N.D. Ga. 2016), because candidate eligibility requirements implicate basic constitutional rights of voters under the First and Fourteenth Amendments of the United States Constitution. *Id.* at 1351, 1352 (citing *Anderson v. Celebrezze*, 460 U.S. 780, 786, 787 (1983)). But those rights "do[] not grant… candidates unfettered access to ballots." *Id.* at 1353 (citing *Anderson*, 460 U.S. at 788). And 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.*

After analyzing these various interests and the burden on ballot access, the court in *Kemp* declared the one percent signature requirement of Section 21-2-170(b) unconstitutional and permanently enjoined the State "from enforcing that provision against presidential candidates." *Id.* at 1372. The Court 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. Therefore, a petition seeking access to the ballot for President must contain at least 7,500 valid signatures.

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 judgement 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").[18]

II. Dr. West timely filed a slate of presidential electors with the Secretary of State.

Georgia law requires candidates running as independent candidates for President of the United States to follow three primary steps: (1) file a list of names (a slate) of candidates for the office of presidential elector, O.C.G.A. § 21-2-132.1(a); (2) have the individuals identified as candidates for the office of presidential elector qualify within the statutory timeline, O.C.G.A. § 21-2-132.1(b); and (3) file a nominating petition containing at least 7,500 valid signatures. O.C.G.A. § 21-2-170, *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1373 (N.D. Ga. 2016)

For 2024, the deadline for submission of a slate of electors was June 21, 2024. O.C.G.A. § 21-2-132.1(a). All parties agreed that the date stamp on the slate of electors for Dr. West from the Secretary's office was June 24, 2024. But Respondents presented evidence at the administrative hearing, on which the Secretary relied, that the slate of electors was delivered to the Secretary prior to June 21, 2024. See Final Decision at 2–3.

Having reviewed the record, the Court first determines that there is evidence in the record to support this finding. *Handel*, 284 Ga. at 552. The testimony at the administrative hearing demonstrated that counsel for Dr. West's campaign sent the slate of electors through FedEx, a commercial overnight delivery vendor, tendering the package on June 17, 2024 to FedEx for overnight delivery to the address of the Georgia Secretary of State's Elections Division as noted on the Secretary's website.[19] Mr. McCorkle followed up with FedEx and, according to their package tracking information, the documents were delivered on June 20, 2024.[20] These facts support the finding that the slate of electors was timely filed.[21] Further, the Secretary found these facts were sufficient and this Court cannot substitute its judgment for the weight of the evidence on this question of fact. O.C.G.A. § 21-2-5(e).

The Court next "examine[s] the soundness of the conclusions of law drawn from the findings of fact supported by any evidence." *Handel*, 284 Ga. at 552. The Secretary's conclusion

---

[18] *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.

[19] Ex. R-21; Hearing Tr. 11:15–12:3.

[20] Ex. R-2; Hearing Tr. 12:4–13:19.

[21] Final Decision at 2–3.

of law was that the slate was timely submitted.[22] This conclusion is sound. While there is a presumption that "the entry of filing by the clerk is correct," *Forsyth v. Hale*, 166 Ga. App. 340, 341 (1983), "this presumption is rebuttable by evidence showing another date of delivery." *Dannenfelser v. Squires*, 365 Ga. App. 819, 822 (2022).

The ALJ relied on the receipt of the document for its filing and this Court finds that "[it] is the date of delivery to the clerk's office that constitutes the date of filing, even if the clerk erroneously stamps a later date as the filing date." *Reese v. City of Atlanta*, 247 Ga. App. 701, 701 (2001). And a FedEx receipt of delivery is sufficient to show the date of delivery, even if a document is stamped with a later date by the clerk. *Id.* at 702.

Although an analogy to a court filing process is imperfect, the Court finds the Secretary's legal conclusion about when he received a document at his own office is sound. A contrary conclusion would invite any employee of the Secretary's office to hold documents and stamp them with a later date to possibly disadvantage candidates. The primary focus must be on the date of delivery to determine the date of filing, which Respondents have demonstrated was timely in this case. See *Reese*, 247 Ga. App. at 701. The substantial rights of the Petitioners are not prejudiced as a result of the Secretary's decision about the submission of the slate of electors.

III. 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 presidential elector to file a nomination petition, not the candidate for President. "[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). Relying upon these canons, the ALJ correctly concluded:

> that when the legislature enacted Code Section 21-2-132.1 in 2017, 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,

---

[22] Final Decision at 3.

> 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).

Initial Decision at 5. 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 *Kemp*, 171 F. Supp. 3d at 1340). The Secretary erred in reaching this conclusion, because the Election Code does not require more than a total of 7,500 signatures on a nomination petition for a candidate to obtain ballot access for President. Thus, *Kemp* 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). However, *Kemp* does require a nomination petition to otherwise comply with Georgia law. 171 F. Supp. 3d at 1374.

The Secretary's Final Decision does not properly apply the plain text of the Election Code. 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 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 Code Section 21-2-132, the independent candidate for President 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 in their 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 *Kemp*.

The constitutional concern in *Kemp* 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 *Kemp* decision lowered that burden from submitting a nomination petition signed by one percent of eligible voters,

to submitting a nomination petition with 7,500 valid signatures. *Id.* at 1374. Following that decision, the General Assembly amended O.C.G.A. § 21-2-132(d) to make clear that a candidate for presidential elector must submit a nomination petition in their own name. H.B. 268 (2017). But that amendment did nothing to increase the 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 that complies with the requirements of Georgia law, including the submission of a nomination petition with 7,500 valid signatures.

Dr. West chose to certify a slate of 16 presidential electors.[23] However, of those 16, only 13 filed a Notice of Candidacy and Affidavit.[24] That three of Dr. West's candidates for presidential elector did not file a Notice of Candidacy and Affidavit, while preventing them from serving as a presidential elector for Dr. West, did not imperil Dr. West's ability to access the ballot, as he had 13 other potential candidates. Of the 13 that filed a Notice of Candidacy, only one needed to file a nomination petition with 7,500 valid signatures; 12 of the 13 could fail to do so without imperiling Dr. West's access to the ballot. And while each of those 13 candidates for presidential elector affirmatively acknowledged in their Notice of Candidacy and Affidavit that "I am required to file the above Notice followed by a nomination petition containing at least 7,500 valid signatures due July 9, 2024,"[25] not one filed a nomination petition in their own name. Thus, while Dr. West only needed a single presidential elector to properly qualify to provide him with ballot access, none of his candidates satisfied the requirements to do so.

Because the plain 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 consistent with *Kemp*, that decision poses no barrier to applying the Code as written. And because a contrary conclusion was the sole basis on which the Secretary overruled the Initial Decision on this issue, it must be reversed.

CONCLUSION

For the reasons discussed herein, the Secretary's Final Decision is Reversed. Neither Dr. West nor Respondents are qualified to appear on the General Election ballot. The Court further

---

[23] Hearing Exhibit R-5 at 2-3.

[24] *Id.* at 4-6, 10-33.

[25] *Id.*

heard argument during the hearing that at this point it would be extremely difficult to reprint ballot and remove Dr. West as an option before the election. It was even described as inviting chaos and catastrophe. Fortunately, the Court is given a proper measure of recourse through O.C.G.A. § 21-2-5(c) which states that, "If there is insufficient time to strike the candidate's name or reprint the ballots, a prominent notice shall be placed at each affected polling place advising voters of the disqualification of the candidate and all votes cast for such candidate shall be void and shall not be counted." The deadline to send for ballots for overseas and military voters is days away. 52 U.S.C. § 20302(a)(8). Given the importance of the 2024 presidential election, the critical importance of voter confidence in elections, and the importance of consistency in ballots, this Court finds that there is "insufficient time to strike the candidate's name or reprint the ballots," O.C.G.A. § 21-2-5(c), and requires only that notices be posted regarding the ineligibility of Dr. West. Thus, this Court ORDERS the Secretary of State to post notices complying with the language of this Order and O.C.G.A. § 21-2-5(c) at every polling location to alert all Georgia Voters that Dr. Cornel West is not a valid candidate for the Office of the President of the United States.

SO ORDERED this 11th day of September, 2024.

JUDGE THOMAS A. COX, JR.
SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT