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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STEVE CARR, HUGH ESCO, AYMAN
FADEL, BASSEM FAKHOURY,
SHAMSADEEN HAKEEM, AL
HERMAN, ANIBAL IBARRA, JOSHUA
IBARRA, CHRISTI INGLIS, MICHAEL
INGLIS, DANIEL JAEGER,
CONSTANCE JOHNSON, IDA
LAWRENCE, ALBERT NEWSON,
DENICE TRAINA, & KRISTIN
ZEBROWSKI,

Petitioners/Appellants,

v.

CRAIG PIGG, CATHERINE SMITH, &
MARY LOU WAYMER,

Respondents/Appellees.

CIVIL ACTION FILE
NO. 24CV011213

JUDGE KRAUSE

ORDER

This case is before the Court on a Petition for Administrative Appeal (Dkt. 2), appealing the Secretary of State's Final Decision and the Initial Decision of the Administrative Law Judge that the Petitioner electors for the Green Party of Georgia are not qualified to appear on Georgia's presidential ballot. Petitioners (Respondents below) are electors for the Georgia Green Party who seek to appear on the upcoming presidential ballot. To that end, the Georgia Green Party held nominating conventions in February and May of 2024 and timely submitted notices of candidacy, supporting affidavits, and its slate of electors including the

convention minutes, to the Secretary of State. The Georgia Green Party seeks to qualify electors in support of Jill Stein for President and Rudolph Ware for Vice-President.¹

Factual and Procedural Background

Upon enactment of SB189 in May 2024 (codified at O.C.G.A. § 21-2-172(g)), the Secretary of State issued a “Notice Regarding Ballot Access for Presidential Electors under SB 189.” The Notice advised that those seeking ballot access under O.C.G.A. § 21-2-172(g) as a political body must be lawfully registered with the Secretary of State and must submit a “Presidential Elector Nomination Affidavit (no later than August 23, 2024), accompanied by documentation from each of the listed states certifying that the ... political body will be on the General election ballot in that State.”

Respondents in this case (Petitioners below) challenged Petitioner electors’ qualification to appear on the upcoming presidential election ballot because the Georgia Green Party 1) had not satisfied the statutory requirements for political bodies to gain ballot access; and 2) had not obtained ballot access in at least 20

¹ The Petition also seeks to appeal an announcement by the Secretary of State that the Unified Green Party of Georgia has obtained ballot access for their slate of presidential electors - also supporting Jill Stein for President and Rudolph Ware for Vice-President. However, as acknowledged by Petitioners at the hearing, such a request is premature and ignores the procedural requirements of O.C.G.A. § 21-5-2. And, notably, both the Initial Decision and the Final Decision distinguish the separate consideration of a ballot application by electors for the Unified Green Party of Georgia from the ballot application at issue in this case.

states or territories. An Administrative Law Judge held an evidentiary hearing on August 22, 2024.

During the hearing, Hugh Esco, one of the founders of the Georgia Green Party testified that, at the time of the hearing, the national Green Party had secured ballot access in 6 states and was attempting to access the ballot in 24 states in order to satisfy the requirements of O.C.G.A. § 21-2-172(g). Mr. Esco testified that other states' ballot access deadlines were after Georgia's, making it impossible for Petitioner electors to prove ballot access in other states by Georgia's deadline. During the hearing, Mr. Esco also testified that the Georgia Green Party was no longer an authorized affiliate of the Green Party of the United States because of a policy dispute in 2021.

After the hearing, the ALJ concluded that although "the Georgia Green Party was a 'political body' within the meaning of the Georgia Election Code," and had properly registered, Petitioner electors could not qualify to access the ballot because they had not established that "the Georgia Green Party ha[d] obtained ballot access in twenty (20) states or territories." Petitioner electors appealed to the Secretary of State. On appeal, the Secretary of State adopted the decision of the ALJ. The Secretary of State additionally relied on the fact that the Georgia Green Party is not affiliated with the Green Party of the United States, the entity which (along with its authorized affiliates) has secured ballot access in other states. As a result, the Secretary determined the Georgia Green Party had not secured

ballot access in any state and, therefore, its electors (Petitioners here) are not qualified to be presidential electors of the political body.

Standard of Review

Challenged electors may seek appellate review of the ALJ and Secretary's decision in the Superior Court. O.C.G.A. § 21-2-5(e). The Court's review is confined to the record and the reviewing "court shall not substitute its judgment for that of the Secretary of State as to the weight of the evidence on questions of fact." *Id.* On review, the Court may reverse the Secretary's decision if it violates the Constitution, exceeds his statutory authority, is based on unlawful procedures or other errors of law, is clearly erroneous in view of the record, or is arbitrary and capricious. *Id.* In other words, this Court must "first determine if there is evidence to support the factual findings," then, the Court "is statutorily required to examine the soundness of the conclusions of law drawn from the findings of fact supported by any evidence." *Handel v. Powell*, 284 Ga. 550, 552 (2008).

Discussion

On appeal to this Court, Petitioner electors assert that the Secretary's promulgated rules for ballot access under SB189 unfairly injected requirements for ballot access that do not appear in the text of the O.C.G.A. § 21-2-172(g). That provision allows a "political body which has obtained ballot access in no fewer than 20 states or territories for the office of presidential elector ... to qualify candidates for presidential elector and receive access to the general election ballot for the

purpose of election of the office of presidential elector.” In applying this provision, the ALJ found that the Georgia Green Party had conceded it could not demonstrate ballot access in the required 20 or more states. The Secretary went a step further – reasoning that because it was not affiliated with the Green Party of the United States, the Georgia Green Party could not prove access to any other states’ ballots, much less the required 20.

Petitioner electors first argue that the Secretary’s requirements are unreasonable limitations on ballot access. But the cases on which Petitioner electors rely not only do not support their position, they provide support for the Secretary’s procedures and timing. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 800 (1983) (“[s]eventy-five days appears to be a reasonable time for processing the documents submitted by candidates and preparing the ballot”). Even Petitioner electors concede the necessity for a reasonable administrative period that allows time to finalize and prepare ballots in advance of an election and mailing of absentee ballots to certain members of the military and other voters.

Petitioner electors next argue that there is no affiliation requirement in subsection 172(g) and, even if there is, the affiliation can be informal. To support this informal affiliation argument, Petitioner electors point out that the ballot access sought in other states is in support of the same candidates sought in Georgia – Jill Stein and Rudolph Ware. But the plain language of subsection 172(g) undercuts this claim. Notably, subsection 172(g) does not provide that a *candidate* who has obtained

ballot access in 20 or more states may qualify his or her presidential electors. Rather, it uses the term “political body,” defined by Georgia’s Election Code as a “political organization,” which “means an affiliation of electors organized for the purpose of influencing or controlling the policies and conduct of government through the nomination of candidates for public office and, if possible, the election of its candidates to public office.” O.C.G.A. §§ 21-2-2(23) and (24). Though undefined in the Election Code, “candidate” is defined elsewhere as “an individual who seeks nomination for election or election to a public office.” O.C.G.A. § 21-5-3(4). And, the General Assembly refers to candidates throughout the Election Code, including in § 21-2-172.² “Where the legislature uses different terms in the same statute, we generally assume that different meanings were intended for those terms.” *Crowe v. Scissom*, 365 Ga. App. 124, 133 (2022) (declining to equate “home loan” with “consumer credit”); *see also Weyer v. State*, 333 Ga. App. 706, 711 (2015).

Therefore, Petitioner electors’ reliance on the candidates’ – Stein and Ware – ballot access in multiple states is misplaced. Subsection 172(g)’s requirement that a “political body” obtain access (rather than a candidate) means just what it says and necessarily implies (or assumes) an affiliation of political bodies across multiple states. The Georgia Green Party’s concession that it is not an authorized

² The Secretary’s Notice understood this distinction, noting that O.C.G.A. 21-2-172(g) did not apply to independent candidates because “[a]s drafted, the provision only applies to ‘political party’ or ‘political body’ candidates as those terms are defined in the Georgia Elections Code.”

affiliate of the Green Party of the United States is fatal to its effort to satisfy subsection 172(g). As a result, the ALJ and Secretary's decisions that Petitioner electors have not satisfied the requirements to qualify for ballot access under O.C.G.A. § 21-2-172(g) are supported by record evidence and are not clearly erroneous. The decisions below are hereby AFFIRMED.

IT IS SO ORDERED, this 16th day of September, 2024.



The Honorable Rachel Krause
Fulton County Superior Court
Atlanta Judicial Circuit

Filed and served via eFileGA.