

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

MARIA PALACIOS,

Petitioner-Appellant,

v.

**BRIAN P. KEMP, in his official capacity as
the Secretary of State of Georgia,**

Respondent-Appellee.

Civil Action File

No. _____

(Administrative Docket Number: 1835339-
OSAH-SECSTATE-CE-6-Beaudrot)

**PETITIONER MARIA PALACIOS’S EMERGENCY MOTION FOR STAY OF
SECRETARY OF STATE’S FINAL DECISION**

Petitioner Maria Palacios, a United States citizen since 2017 who has called Georgia her home since 2009, is a candidate for the uncontested Democratic Party nomination for Georgia State House District 29. On May 18, 2018, the Secretary of State issued a final decision disqualifying her candidacy because she allegedly did not satisfy the Georgia Constitution’s requirement that a candidate for the state House of Representatives be a “citizen[] of the state for at least two years” “[a]t the time of their election” (here, November 6, 2018), since she did not become a United States citizen until 2017. Ga. Const. Art. I, § 1, ¶ 7. On May 20, Ms. Palacios filed a Petition to Reverse the Secretary of State’s Final Decision in the instant action, setting forth the bases for reversing the Secretary of State’s decision.

However, May 22 is Election Day for the general primary. Thus, out of an abundance of caution, Ms. Palacios files this emergency motion seeking an immediate stay of the Secretary of State’s final decision through the May 22 election and pending the outcome of this case. *See* O.C.G.A. § 21-2-5(e) (“the reviewing court may order a stay [of the Secretary of State’s decision] upon appropriate terms for good cause shown”). Because votes have already been cast

for Ms. Palacios during the early voting period,¹ and because the Democratic primary is uncontested and no write-in candidates are allowed, O.C.G.A. § 21-2-133(c), there will be no harm in issuing a stay and in allowing her to presumptively secure the Democratic nomination while the outcome of this case remains pending. Thus, if Ms. Palacios ultimately prevails, she will remain the Democratic nominee in this November's elections for Georgia State House District 29. If Ms. Palacios ultimately does not prevail, then there will be no Democratic nominee Georgia State House District 29 in this November's elections.

Petitioner acknowledges one scenario in which a stay would not be necessary. If a stay is not issued, and all votes cast for Ms. Palacios on May 22 are null or invalid pursuant to the Secretary of State's May 18 decision, Ms. Palacios could conceivably still secure the Democratic nomination since early votes have already been cast for Ms. Palacios during the time in which her candidacy was still valid. Even if only those early votes are counted, Ms. Palacios would still secure the Democratic nomination since she has no other opponent. However, counsel for Petitioner was not able to find any cases confirming the possibility of such a scenario. But if the Secretary of State's Office confirms or stipulates that should Ms. Palacios ultimately prevail in court before November 6, 2018, she will be placed on the November 6, 2018 general election ballot as the Democratic nominee for Georgia State House District 29, Petitioner will withdraw the instant motion.

ARGUMENT

Candidate qualifications disputes should generally be resolved prior to the election at issue. *See, e.g., Handel v. Powell*, 670 S.E.2d 62, 64 (Ga. 2008) (expediting appellate review and

¹ Petitioner has not yet secured documentary proof of this but can represent that she herself has already cast a vote for herself during the early voting period. Only one vote is needed to secure the nomination if there are no other candidates (including write-in candidates) on the ballot.

issuing decision on candidate qualifications days prior to election at issue); *Cox v. Barber*, 568 S.E.2d 478, 480 (Ga. 2002) (“Because the primary will be held next week, we agreed to give expedited review of this appeal”). In this case, ample “good cause” exists for a stay of the May 18, 2018 final decision while the outcome of this case remains pending. O.C.G.A. § 21-2-5(e). *See generally R.D. Brown Contractors, Inc. v. Bd. of Educ. Of Columbia Cnty.*, 626 S.E.2d 471, 474 (Ga. 2006) (“a trial court may grant an interlocutory injunction to maintain the status quo until a final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction. In establishing an equitable balance between the opposing parties, the likelihood of the applicant’s ultimate success is not the determinative factor.” (internal alterations, citations, and quotations omitted)).

First, Petitioner Maria Palacios could suffer irreparable harm if a stay is not issued, even if she ultimately prevails in court after the May 22 primary. If no stay is issued, she will be disqualified as a candidate during Election Day on May 22. Thus, if Petitioner prevails in court after the May 22 primary, and a court ultimately finds that she is qualified as a candidate, the Secretary of State’s Office could nonetheless rule that she should not be placed on the November 6, 2018 general election ballot as the Democratic nominee since part of the May primary (the part where she was disqualified) was already tainted, even though early votes have already been validly cast in her favor. (In suggesting this possibility, Petitioner does not concede that such action by the Secretary of State would be appropriate or legal, and reserves the right to immediately challenge or preclude such a decision were this scenario to transpire.) Admittedly, counsel for Petitioner has thus far been unable to find a case where a candidate was disqualified in an uncontested primary after early votes were already cast but before the final election day of the primary, and where the candidate ultimately prevailed after election day. But the possibility

of this scenario is sufficient to enter a stay out of an abundance of caution, especially when a stay harms no one, as discussed below.

Second, issuing a stay and allowing voters to cast ballots in the Democratic primary on May 22 for Georgia State House District 29 will not harm anyone and can minimize confusion by maintaining the status quo until this matter is resolved. It will not harm Ms. Palacios's Democratic opponents, because there are none. (No write-in candidates are allowed in general primaries. O.C.G.A. § 21-2-133(c).) It will not harm any of Ms. Palacios's potential opponents in the general elections, since the stay will have no effect on the Republican or non-partisan primary elections, as it only affects the Democratic primary. It will not harm the voters participating in the Democratic primary, and indeed will help them by allowing them to express support or non-support of Ms. Palacios's candidacy, even if her nomination is guaranteed. It will not harm the Secretary of State's Office, because once all the ballots have been cast in the Democratic primary, whether Ms. Palacios will be placed on the general election ballot will simply depend on how the courts resolve this issue well in advance of November. If Ms. Palacios ultimately prevails, she will remain the Democratic nominee in this November's elections for Georgia State House District 29. If Ms. Palacios ultimately does not prevail, then there will be no Democratic nominee Georgia State House District 29 in this November's elections. There will be little to no administrative burden on the Secretary of State's Office or elections officials under this scenario.

Third, Petitioner is likely to succeed on the merits for the reasons set forth in the Petition. Without repeating the arguments here, as the Petition sets out, courts around the country for centuries have interpreted "citizen of a state" to mean someone who is a resident or domiciliary of the state, without a United States citizenship requirement, and Ms. Palacios undisputedly

satisfies that criteria. The Secretary of State's final decision provides no reasons for departing from this traditional understanding and relies without discussion on a single Attorney General's opinion from 1984 that is not binding on this Court and is illogical on its face.

CONCLUSION

Given the considerable risk of irreparable harm to Petitioner Maria Palacios and the lack of any harm to the Secretary of State or third parties in preserving the status quo, Ms. Palacios urgently requests that this Court order, as soon as possible before May 22, an emergency stay of the Secretary of State's May 18, 2018 final decision disqualifying Ms. Palacios from the race for Georgia State House District 29 pending the resolution of this matter.

Should the Secretary of State's Office represent or stipulate that Ms. Palacios will be placed on the November 6, 2018 general election ballot should she ultimately prevail in court prior to that date, Petitioner will withdraw the instant motion.

This 20th day of May, 2018.

Respectfully submitted,

/s/ Sean J. Young

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