

**IN THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA**

RYAN SAWYER,

Petitioner,

v.

MARIA PALACIOS,

Respondent.

Docket Number:

**1835339-OSAH-SECSTATE-CE-6-
Beaudrot**

FINAL DECISION

The Georgia Constitution requires that candidates for the State House of Representatives “shall have been citizens of this state for at least two years.” Ga. Const. Art. III, § 2, Para. 3(b). This challenge raises the question of whether a candidate must be a United States citizen (hereinafter “U.S. citizen”) in order to be a “citizen of this state.” Pursuant to O.C.G.A. § 21-2-5, the Secretary of State makes the following findings and determination with regard to the above-captioned matter:

I. Summary of Proceedings

1.

On March 8, 2018, Respondent qualified to be a candidate for the Democratic Party nomination for the Georgia House of Representatives District 29 (hereinafter “HD 29”). (Ex. 3: Certified Copy of Maria Palacios Declaration of Candidacy and Affidavit).

2.

On March 14, 2018, Petitioner filed a written challenge with the Secretary of State giving reasons why Petitioner believed Respondent is not qualified to seek and hold the public office for HD 29. Specifically, Petitioner contends that Respondent became a U.S. citizen in 2017, and thus,

Respondent does not meet the legal requirement of being a citizen of the state for at least two years. (Ex. 1: OSAH Form 1 and attachments).

3.

Petitioner's individual voter report from the Georgia Voter Registration System indicates that Petitioner is eligible to vote in HD 29 and, therefore, Petitioner has standing to bring this challenge. (Ex. 2: Certified Copy of Ryan Sawyer Individual Voter Report).

4.

On or about March 29, 2018, the Elections Division of the Secretary of State's Office (hereinafter "Elections Division") sent a notification letter to Petitioner and Respondent by certified mail to notify both parties of its receipt of the Complaint and referral of such matter to the Office of Administrative Hearings (hereinafter "OSAH") for review by an administrative law judge. A returned certified mail receipt indicates Respondent received the notification letter. Although a certified mail receipt was not returned from Petitioner, the tracking number assigned to such mailing indicated that Petitioner received the notification letter on April 23, 2018. (Ex. 4: Copy of Notification Letter and Certified Mailing to Ryan Sawyer; Ex. 5 Copy of Notification Letter and Certified Mailing to Maria Palacios).

5.

Judge Beaudrot held an administrative hearing at OSAH in this matter on May 2, 2018. Both Petitioner and Respondent failed to appear. Judge Beaudrot then entered an Initial Decision finding that Respondent failed to meet her burden of proof and recommending that she be disqualified as a candidate for HD 29. (Ex. 6: OSAH Initial Decision).

6.

Subsequent to the OSAH Initial Decision, Attorneys for both Respondent and Petitioner filed memorandums with the Secretary of State in support of their respective positions. Respondent

argues that it is not necessary to be a U.S. citizen in order to be “citizen of this state.” Petitioner asserts that U.S. citizenship is necessary to be a Georgia citizen. (Ex. 7: Copy of Respondent’s Memorandum in Opposition to Candidate Qualifications Challenge; Ex. 8: Copy of Petitioner’s Memorandum in Response to Respondent’s Memorandum; Ex. 9: Copy of Respondent’s Reply Memorandum).

II. Findings of Fact

The relevant fact is not in dispute. Respondent obtained status as a U.S. citizen in 2017. *See* Respondent’s Memorandum in Opposition to Candidate Qualifications Challenge, p. 1.

III. Conclusions of Law

1.

Every candidate for state office must meet the constitutional and statutory qualifications for holding the office being sought. O.C.G.A. § 21-2-5(a).

2.

The Georgia Constitution requires:

At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2, Para. 3(b) (emphasis added).

3.

The burden of proof is on the candidate to establish his or her eligibility for public office. Haynes v. Wells, 273 Ga. 106 (2000) (clarifying that the Georgia Election Code places the burden on the candidate to establish his or her eligibility to run for office).

4.

With regard to citizenship, the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The Georgia Constitution provides, “[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state....” Ga. Const. Art. I, § 1, Para. 7.

5.

In 1984, the Secretary of State requested an official opinion from the Georgia Attorney General as to “whether a person must be a naturalized citizen of the United States in order to be a citizen of the State of Georgia or of a county within the State of Georgia.” 1984 Op. Atty Gen. Ga 122. Relying on the same state and federal constitutional provisions quoted above, the Attorney General concluded as follows:

Based upon the foregoing, it is my official opinion that a person must be a citizen, either natural born or naturalized, of the United States and must reside within this State in order to be a citizen of the State of Georgia and that, since a county is only a subdivision of the state and is not a sovereign, citizenship of a county means only domicile or residence within the county.

Id. While not binding on courts, Attorney General opinions are considered persuasive authority. Moore v. Ray, 269 Ga. 457, 459 (1998) (quoting C.W. Matthews Contracting Co. v. Collins, 214 Ga. App. 532, 533 (1994)).

IV. Decision

In keeping with the Attorney General opinion, I find that it is necessary to be a U.S. citizen in order to be a “citizen of this state.” Therefore, Respondent does not meet the requirement of Art. III, § 2, Para. 3(b) of the Georgia Constitution that she be a “citizen of this state” for at least two years prior to her election. **IT IS HEREBY DECIDED** that Respondent, MARIA PALACIOS, is **NOT QUALIFIED** to be a candidate for the office of Georgia State House District

29. A prominent notice shall be placed at each affected polling place advising voters of the disqualification and all votes cast for the candidate shall be void and shall not be counted pursuant to O.C.G.A. § 21-2-5(c).

SO DECIDED this 18th day of May, 2018.



BRIAN P. KEMP
Secretary of State