

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

GABRIEL STERLING,  
Petitioner,

v.

JOSHUA IVAN MCLAURIN,  
Respondent.

Docket No.: 1835352  
1835352-OSAH-SECSTATE-CE-60-  
Schroer

Agency Reference No.: 1835352



FILED  
OSAH

APR 30 2018

A handwritten signature in cursive script, appearing to read "Kevin Westray", is written over a horizontal line.

Kevin Westray, Legal Assistant

INITIAL DECISION

**I. INTRODUCTION**

Petitioner Gabriel Sterling challenges Respondent Joshua Ivan McLaurin's qualification to be a candidate for the Georgia House of Representatives in District 51. Specifically, Petitioner contends that Respondent does not meet the residency or citizenship requirements to be a candidate under the Georgia Constitution and O.C.G.A. § 28-2-1(b). On April 20, 2018, the Court conducted an evidentiary hearing in this matter. Petitioner was not present, but was represented by counsel, Vincent R. Russo, Esq. and David B. Dove, Esq. Respondent was present and represented by counsel, M. Scott Holcomb, Esq. and Marvin Lim, Esq. Based on the evidence presented, Petitioner's challenge is hereby **DENIED**.

**II. FINDINGS OF FACT**

1.

In March 2018, Respondent declared his candidacy for Georgia State House Representative in District 51. In his Declaration of Candidacy and Affidavit, Respondent

identified his residence as 91 Spalding Trail NE, Atlanta, Georgia 30328 (“91 Spalding Trail”). (Ex. P-5.)

2.

The 91 Spalding Trail address is an apartment unit in the Spalding Bridge apartment complex in Sandy Springs, Georgia, and is located within House District 51. Respondent moved into the apartment at 91 Spalding Trail on September 8, 2017.<sup>1</sup> After signing a one-year lease and moving into apartment 91, Respondent set about doing the things a new resident often does, including turning on the utilities and buying furniture. He began receiving mail and deliveries at the 91 Spalding Trail address as early as September 19, 2017. In addition, in October 2017, Respondent obtained a Georgia driver’s license with the 91 Spalding Trail address and registered to vote in House District 51. On November 7, 2017, Respondent voted in the Georgia General Election using the 91 Spalding Trail address. (Testimony of Respondent; Exs. R-3, R-4, R-14, R-15, R-16, R-17, R-18; Exs. P-3, P-6.)

3.

Prior to moving to the Spalding Bridge apartment complex in September 2017, Respondent resided with his parents in Roswell, Georgia and in a short-term apartment in Alpharetta, Georgia. Specifically, the preponderance of the evidence proved that Respondent made a decision in the summer of 2016 to move from New York City, where he had lived and worked for approximately one year, back home to Georgia, where he

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<sup>1</sup> Approximately one week prior to moving into the 91 Spalding Trail apartment, Respondent moved into a different unit – apartment 139 – within the same apartment complex. However, because there was a lingering smoky odor in apartment 139, Respondent requested, and his landlord found, an alternate unit for Respondent to lease – apartment 91. Respondent signed a new lease for apartment 91 and moved in on September 8, 2017. (Testimony of Respondent; Exs. R-3, R-14.)

had grown up and attended college. In October 2016, after notifying his New York City landlord<sup>2</sup> and his employer<sup>3</sup> that he would be moving, Respondent left New York and returned to Georgia. Initially, he resided with his parents at their home at 12175 Brookfield Club Drive, Roswell, Georgia. During the month of October 2016, Respondent changed his mailing address from New York to his parents' address in Roswell and registered to vote using the Roswell address.<sup>4</sup> The next month, on November 8, 2016, Respondent voted in the Georgia General Election. (Testimony of Respondent; Exs. R-1, R-7, R-8, R-9, R-10, R-11, R-16; Ex. P-3.)

4.

In January 2017, Respondent signed a six-month lease for an apartment in Alpharetta, Georgia, where he resided from January 2017 until the end of June 2017. In July 2017, Respondent moved back in with his parents at the 12175 Brookfield Club Drive address in Roswell, where he resided until he moved into the Spalding Bridge apartment complex in early September 2017. (Testimony of Respondent; Ex. R-13.)

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<sup>2</sup> Respondent's lease for his New York apartment expired on October 14, 2016, and he notified his landlord on September 8, 2016 that he would not be renewing the lease. (Testimony of Respondent; Exs. R-7, R-8, R-9.)

<sup>3</sup> Before notifying his landlord of his departure, Respondent notified his employer that he would be moving to Georgia in October 2016. His employer arranged for him to transfer to the employer's Atlanta office for a short period of time to finish up his work. Respondent began working in the Atlanta office on October 25, 2016 and worked there full-time until November 18, 2016. (Testimony of Respondent; Ex. R-1.)

<sup>4</sup> In March 2016, Respondent registered to vote in New York and voted in New York's presidential primary in April 2016. The preponderance of the evidence in the record in this case proved that Respondent re-registered to vote in Georgia in October 2016, after moving back to the state with the intention of residing here permanently. Respondent admitted that he has not taken any affirmative steps to cancel his New York voter registration, other than moving to Georgia and registering to vote here. (Testimony of Respondent; Exs. P-1, P-2; Ex. R-16.)

5.

Respondent filed a partial-year Georgia tax return for 2016, in which he indicated that he had resided in Georgia from October 15, 2016 through December 31, 2016. Respondent filed a 2017 Georgia tax return, indicating that he was a full-year resident of Georgia from January 1, 2017 through December 31, 2017. (Testimony of Respondent; Exs. R-2, R-5.)

6.

This year, the Georgia general election for House District 51 will take place on November 6, 2018. (Stipulation of parties.)

### **III. CONCLUSIONS OF LAW**

1.

A candidate for State office must meet all constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

2.

Pursuant to Code Section 21-2-5(b), either the Secretary of State or a qualified elector residing in a state legislative district may challenge a candidate's qualifications to hold office. In the present case, Petitioner, an alleged elector and eligible voter from District 51,<sup>5</sup> challenges Respondent's qualifications and contends that Respondent does not meet the constitutional and statutory residency or state citizenship requirements.

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<sup>5</sup> Petitioner did not appear at the hearing and there is no probative evidence in the record that proves that Petitioner is, in fact, an elector eligible to vote in District 51. However, as Respondent did not contest Petitioner's standing to challenge his qualifications, the Court concludes that Respondent waived any argument that Petitioner was not authorized to initiate this challenge.

3.

Respondent has the burden of proving that he is qualified to be a candidate for House District 76. See Haynes v. Wells, 273 Ga. 106, 108–09 (2000). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

4.

Candidates for the Georgia House of Representatives must be legal residents of the district from which elected for at least one year and must be citizens of Georgia for at least two years. Ga. Const. Art. III, § II, Para. III(b); O.C.G.A. § 28-2-1(b). The Georgia Supreme Court has interpreted a one-year residency provision as requiring a candidate to be a resident of the territory within the district for 12 months prior to the general election. See Cox v. Barber, 275 Ga. 415, 416 (2002) (durational residency requirement for election to the Georgia Public Service Commission under O.C.G.A. § 46-2-1 held constitutional). At the administrative hearing in this case, the parties stipulated that in order for Respondent to qualify as a candidate for House District 51, he must prove that he has been a resident of District 51 since November 6, 2017, and a Georgia citizen since November 6, 2016.

5.

In Cox v. Barber, the Georgia Supreme Court discussed the “important state interest” of residency requirements:

Residency requirements for candidates serve the important state interest of supporting our representative form of government. Requiring candidates to live in a district for a reasonable period of time before the election encourages them to become familiar with the problems, needs, and concerns of the people they seek to represent; it also exposes voters to the character, experience, and views of the individuals who seek to represent them. In addition, it ensures voters that their elected representatives will have at least a minimum amount of ties to the community. Arrayed

against the state's legitimate interest in having informed voters and candidates is the individual voter's interest in having a choice at the ballot and the candidate's interest in the continued availability of political opportunity.

275 Ga. at 418 (2002) (citations omitted).

6.

As an initial matter, “[w]herever a form of ‘the word “reside” occurs either in the statutes or in the constitution of Georgia with respect to voting, it should be construed to mean domicile.” Dozier v. Baker, 283 Ga. 543, 543–44 (2008) (citations omitted); see also Handel v. Powell, 284 Ga. 550 (2008); O.C.G.A. § 21-2-2(32). Although a person may have several residences, he or she may have only one place of domicile. Kean v. Marshall, 294 Ga. App. 459, 461 (Ga. App. 2008) (considering domicile for child support purposes). “To acquire a domicile in a particular jurisdiction, one must actually reside there with the intention of remaining permanently or for an indefinite time, and a domicile once established continues until a new domicile is acquired. One cannot acquire a new domicile simply by a change of residence; it must instead be with the intention of abandoning the old residence and of remaining for an indefinite time in the new.” Id. (citations omitted).

7.

In addition to these general principles regarding residency and domicile, the Georgia Legislature has established a series of rules for determining residency for purposes of registering to vote or qualifying for elective office. See O.C.G.A. § 21-2-217. The Georgia Supreme Court, in interpreting this Code section, has held that no one rule is determinative of the issue of residency; rather, this Court must take into account

all the rules “so far as they are applicable.” See Handel, 284 Ga. at 550 (citing O.C.G.A. § 21-2-217(a)).

8.

Having considered the statutory rules and the applicable case law, the Court concludes that Respondent has met his burden of proving that he has been a legal resident of District 51 since before November 6, 2017. Specifically, the evidence in the record proved that prior to November 6, 2017, Respondent signed a one-year lease and performed other acts that indicated his desire to change his residence to the 91 Spalding Trace address, including, but not limited to, registering to vote in District 51 in October 2017. See Smiley v. Davenport, 139 Ga. App. 753, 758 (1976) (decided under former Code 1933, §34-103) (finding voter registration as “[p]articularly persuasive” to the establishment of domicile). Considering all the applicable rules in O.C.G.A. § 21-2-217(a), the Court concludes that Respondent moved into District 51 in September 2017 with the intention of remaining there as a legal resident permanently or for an indefinite period of time.

9.

In addition, considering the evidence in the Findings of Fact above, the Court concludes that although Respondent became a citizen of New York in or around September 2015, the preponderance of the evidence in the record proved that Respondent left New York and returned to Georgia in September 2016 with the intention of remaining in this state and making it his permanent place of residence. Respondent convincingly testified at the administrative hearing that he decided to move back to Georgia in the summer of 2016 and made all necessary arrangements to permanently do

so by the end of October 2016, including notifying his employer and his landlord, moving all his belongings to Georgia, changing his mailing address, transferring to and working in the Atlanta office of his employer, and registering to vote in Georgia. Having weighed all the evidence in the record, the Court concludes that Respondent has proven that he was a citizen of Georgia on or before November 6, 2016.

**IV. DECISION**

Based upon the above Findings of Facts and Conclusions of Law, Respondent meets the residency requirements and is qualified to be a candidate for State House District 51.

**SO ORDERED THIS 30<sup>th</sup> day of April, 2018.**



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**KIMBERLY W. SCHROER**  
Administrative Law Judge