

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

SHEIKH RAHMAN,
Challenger/Petitioner,

v.

PERRY GREEN,
Candidate/Respondent.

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Docket No.:
OSAH-SECSTATE-CE-1639581-67-Miller

INITIAL DECISION

For Challenger/Petitioner:
Sheikh Rahman, *Pro Se*

For Candidate/Respondent:
Christina L. Gill, Esq.



FILED
OSAH

MAY 3 2016

Kevin Westray, Legal Assistant

I. Summary of Proceedings

The Petitioner, Sheikh Rahman, brought this action challenging the qualifications of the Respondent, Perry Green, to be a candidate for Georgia House of Representatives District 105. More specifically, the Petitioner contends that the Respondent does not meet the constitutional and statutory residency requirements for House candidates because the Respondent will not have been a legal resident of House District 105 for at least one year immediately preceding the date of the election, as required by Article III, Section II, Paragraph III(b) of the Georgia Constitution and O.C.G.A. § 28-2-1(b).

The hearing took place on April 15, 2016, before the undersigned administrative law judge of the Office of State Administrative Hearings. The record closed on April 25, 2016, following the filing of documentation of the Respondent's voter registration,¹ as well as the written closing argument of the Respondent.²

¹ The submitted voter registration information shall hereinafter be referred to as Exhibit R-10.

² The Petitioner did not file a written closing argument.

After consideration of the evidence and the arguments of the parties, and for the reasons set forth below, the Court concludes that the Respondent has met the residency requirements established by Georgia law and is qualified to be a candidate for House District 105.

II. Findings of Fact

1.

The Respondent is a candidate for the Democratic nomination for the Georgia House of Representatives District 105. On March 23, 2016, the Petitioner, a registered voter and eligible elector in House District 105, filed a challenge with the Secretary of State as to the Respondent's residency qualifications for the House seat. (Testimony of Perry Green; OSAH Form 1 and attachments.)

2.

In 2011, the Respondent moved from Fulton County to DeKalb County, where he lived for three years. (Testimony of Mr. Green.)

3.

In April 2014, the Respondent married Jocelyn Lewis. Although the couple lived in Brookhaven in DeKalb County at the time, they intended to look for a permanent residence in Gwinnett County because Ms. Lewis's family lived there and they considered the Gwinnett school system to be excellent for the family they planned to raise. (Testimony of Mr. Green and Jocelyn Lewis.)

4.

On July 23, 2014, the Respondent and his wife, Ms. Lewis, signed a lease for a single-family home at the following address in Gwinnett County: 822 Heritage Post Lane, Grayson, GA 30017 ("822 Heritage house"). This address is located in House District 105. The lease for

the 822 Heritage house was for one year starting on September 1, 2014, and ending on August 31, 2015. The lease listed John and Kim McTiernan as the landlords, with Peggy Slappey Properties serving as the third-party property manager. Per the lease's terms, monthly rent in the amount of \$2,900.00 was to be made payable to Peggy Slappey Properties. (Testimony of Mr. Green and Ms. Lewis; Exhibits R-1, R-5, R-10.)

5.

At the time the Respondent and Ms. Lewis agreed to lease the 822 Heritage house in July 2014, they discussed with the McTiernans the possibility of eventually purchasing the property. (Testimony of Mr. Green and Ms. Lewis.)

6.

The Respondent and Ms. Lewis have continuously lived together at the 822 Heritage house since September 2014, when they moved in. After pre-paying the first few months of their lease, the couple wired monthly rental payments of \$2,900.00 to Peggy Slappey Properties from December 2014 to March 2015. (Testimony of Mr. Green and Ms. Lewis; Exhibits R-2, R-9.)

7.

Sometime in April or May 2015, the McTiernans sold the 822 Heritage house to the Respondent and Ms. Lewis. The Respondent and Ms. Lewis intended to make the 822 Heritage house their permanent place of abode when they purchased it, and they have made monthly mortgage payments thereafter. (Testimony of Mr. Green and Ms. Lewis; Exhibits R-5, R-9.)

8.

Ms. Lewis established power service to the 822 Heritage house in September 2014, and she and the Respondent have made monthly payments reflecting the use of power at their home from September 2014 through April 2016. The Respondent and Ms. Lewis own no other houses

or real property, and they have no present intent to move to a different residence. (Testimony of Mr. Green and Ms. Lewis.)

9.

The Respondent works for the health care division of 3M, based out of Atlanta. As part of his job, the Respondent maintains an office at the 822 Heritage house, and he also commutes across the state. His wife, Ms. Lewis, commutes from the 822 Heritage house to her job in Athens, Georgia. Both the Respondent and Ms. Lewis also commute to the John Marshall Law School in Atlanta, where they are third-year law students. (Testimony of Mr. Green and Ms. Lewis.)

10.

As part of his work with 3M, the Respondent utilizes a post-office box located on 860 Johnson Ferry Road in Atlanta, Georgia. The post-office box is used exclusively for work-related correspondence, including packages of samples that require a signature upon delivery. The Respondent testified that, beyond the post office box, he has no other ties to Fulton County. (Testimony of Mr. Green.)

11.

The Respondent testified that his current driver's license does not show a Gwinnett County address.³ (Testimony of Mr. Green.)

12.

The Respondent initially registered to vote in Fulton County in 2005. When he moved to DeKalb County in 2011, he did not transfer his voter registration because he was "in the process of getting ready to move," and he did not want to continue switching his registration to different

³ The Respondent did not give the actual address on his driver's license, nor was he asked to specify the address during direct or cross examination.

counties. The Respondent also did not transfer his voter registration to Gwinnett County immediately upon moving to the 822 Heritage house in September 2014. In fact, he voted in Fulton County while living at the 822 Heritage house on at least one occasion, as he cast a ballot in the November 2015 general election. (Testimony of Mr. Green.)

13.

On March 10, 2016, nearly a year after purchasing the 822 Heritage house and eighteen months after first moving to Gwinnett County, the Respondent submitted a request in person to transfer his voter registration from Fulton County to Gwinnett County.⁴ He listed the 822 Heritage house as his residence. The Respondent's transfer placed him in House District 105. At the hearing, when he was asked why he did not change his voter registration to Gwinnett County sooner, the Respondent stated that he always intended to get it transferred, but had been doing a lot of traveling and "just didn't get it changed." (Testimony of Mr. Green; Exhibit R-10.)

14.

On either March 10 or 11, 2016, the Respondent submitted his application to qualify for candidacy in the Democratic primary for House District 105.⁵ (Testimony of Mr. Green.)

⁴ The Respondent testified that he initially mailed a voter registration change request one to two weeks before he qualified as a House District 105 candidate on March 10 or 11, 2016. However, because the change had not yet shown up in the records, he hand-delivered a second change request on March 10, 2016. This potentially explains the discrepancy in the voter registration records submitted by the Respondent, which show that, in addition to the request for a voter registration transfer that was received on March 10, 2016, an application was received by mail on March 14, 2016. This mailed application appears to have been processed separately and treats the Respondent as if he were a new voter, rather than an existing voter transferring to a new county. Despite this apparent discrepancy, this Court finds no reason to doubt the validity of the voter registration transfer dated March 10, 2016. (Testimony of Mr. Green; Exhibit R-10.)

⁵ At the hearing, the Respondent was unsure of the exact date on which he qualified to run for House District 105. However, as the qualifying deadline was March 11, 2016, the uncertainty as to whether the date was March 10 or 11 is inconsequential.

At the hearing, Gabriel Okoye, vice chairman of recruitment for the Democratic Party of Gwinnett County, testified as the sole witness for the Petitioner. Mr. Okoye told the Court that he did not recruit the Respondent to run for House District 105. However, once he found out that the Respondent was running, he invited the Respondent to several functions and spoke with him “to assess the strength of our team.” Mr. Okoye testified that, during one conversation, the Respondent told him that he had not been politically active in Gwinnett County, and that most of his prior political activity had been in Atlanta. (Testimony of Mr. Okoye.)

III. Conclusions of Law

1.

This matter is governed by the Georgia Constitution and the Georgia Election Code, O.C.G.A. § 21-2-1, et seq. Every candidate for state office must meet all of the constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

2.

Any qualified elector from the district in which a candidate is seeking election may challenge the candidate’s qualifications to hold office. O.C.G.A. § 21-2-5(b). Thus, the Petitioner was authorized to challenge the Respondent’s residency qualifications.

3.

The Georgia Constitution provides that “[a]t the time of their election, the members of the House of Representatives . . . shall have been legal residents of the territory embraced within the district from which elected for at least one year.” GA. CONST., Art. III, § II, Par. III(b); see also O.C.G.A. § 28-2-1(b).

4.

Under Haynes v. Wells, 273 Ga. 106 (2000), the burden of proof is on the Respondent to affirmatively establish his eligibility for office:

[T]he statutes place the affirmative obligation on Haynes [the challenged candidate] to establish his qualification for office. Wells [the challenger] is not required to disprove anything regarding Haynes's eligibility to run for office, as the entire burden is placed upon Haynes to affirmatively establish his eligibility for office.

Haynes, 273 Ga. at 108-109. Here, to be qualified as a candidate, the Respondent must prove both that he is a current resident of House District 105 and that he has been a resident of House District 105 since at least November 8, 2015, one year prior to the date of the upcoming general election. See Cox v. Barber, 275 Ga. 415, 416-17 (2002). The standard of proof on all issues is the preponderance of the evidence standard. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

5.

To resolve issues related to the Respondent's residency, the Court looks to both statutory and common law. Under O.C.G.A. § 21-2-217(a)(1), "residence" is defined as "that place in which such person's habitation is fixed, without any present intention of removing therefrom." Although the terms "residence" and "domicile" are not generally synonymous, they have the same meaning for purposes of the Georgia Election Code. O.C.G.A. § 21-2-2(32); Dozier v. Baker, 283 Ga. 543, 543-544 (2008); Handel v. Powell, 284 Ga. 550, 550 (2008); Smiley v. Davenport, 139 Ga. App. 753, 755-56 (1976). The essential considerations are whether the individual has demonstrated both a physical presence and an intent to make the particular location his or her home. Smiley, 139 Ga. App. at 757.

6.

The Georgia General Assembly has enacted a set of standards, found at O.C.G.A. § 21-2-217, for determining the residency of individuals wishing to run for elected office. These

standards guide the Court in its consideration of this matter. The statute provides, *inter alia*, that a person changes his or her residency within the state by moving to another location with the intention of making that place the person's residence; that the "mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention;" and that certain evidence indicating where a person resides – such as where the person receives a significant amount of mail or has declared a homestead exemption – may be considered. O.C.G.A. § 21-2-217(a).

7.

A candidate can demonstrate his or her intent to acquire a new residence in a multitude of ways, including the purchase of property, voter registration, voting history, homestead exemption, vehicle registrations, payment of property taxes, service on a jury, income tax returns, campaign disclosure reports, declaration of candidacy and qualifying affidavit, address where the candidate receives personal and business mail, and church attendance. Dozier, 283 Ga. at 544. The relevant issue is whether the candidate intended to establish a new residence, without regard to his or her motive for doing so. Id. at 545. The address used by an individual for voting purposes is particularly persuasive evidence of domicile. Id. at 544.

8.

In this case, the Respondent has the affirmative burden to demonstrate that he is a resident of House District 105 and has been a resident since November 8, 2015. Although the evidence he presented is somewhat underwhelming, the Respondent has met this burden. The evidence shows that the Respondent currently resides at the 822 Heritage house—which is located in House District 105—and has resided there continuously since September 2014. He first rented the 822 Heritage house with his wife in September 2014, and eventually bought the

property in April or May 2015. Since buying the house, he and his wife have lived there together continuously, making regular monthly power and mortgage payments. The Respondent and his wife also own no other homes or property, and both have expressed the intention of staying permanently in the 822 Heritage house. Furthermore, while the Respondent utilizes a post office box in Atlanta, this Court finds credible his explanation that the box is strictly used for work-related correspondence.

9.

Although the Respondent has failed to update the address on his driver's license to reflect an address in Gwinnett County, this omission does not fatally undermine the undisputed evidence showing the Respondent's continuous residency at the 822 Heritage house since September 2014. Likewise, the Respondent's delay in transferring his voter registration to Gwinnett County—while certainly not supportive of a residency finding—does not negate the remaining evidence that he has lived exclusively at the 822 Heritage house for the past eighteen months, and intended to stay there permanently following the purchase of the house in April or May 2015.⁶ Finally, although Mr. Okoye testified that the Respondent told him he had not been politically active in Gwinnett County, local political activity is not dispositive as to the question of residency. Furthermore, the Respondent's previous political activity in Atlanta does not necessarily equate with a current residency in that city, particularly since he resided in Fulton County at one time and currently attends law school in Atlanta.

⁶ The fact that the Respondent had been registered to vote as a Georgia citizen since 2005, and transferred his registration to House District 105 on March 10, 2016—just in time for his qualification on March 10 or 11—means that he satisfied all constitutional and statutory voter-registration requirements. See GA. CONST., Art. II, § II, Par. III (stating that “[n]o person who is not a registered voter” shall be eligible to hold office); O.C.G.A. § 21-2-153(e)(5) (stating that before a candidate is qualified to be nominated in a state primary, he or she must file an affidavit attesting that he is “an elector of the county of his or her residence eligible to vote in the primary election in which he or she is a candidate for nomination”); see also Haynes v. Wells, 273 Ga. 106, 107-08 (2000); 1992 Op. Atty. Gen. U92-14.


10.

Accordingly, the Respondent proved, by a preponderance of the evidence, that he currently resides in House District 105 and has resided in the district since before November 8, 2015.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent is **QUALIFIED** to be a candidate for House District 105, and his name shall remain on the ballot.

SO ORDERED, this 2nd day of May, 2016.


KRISTIN L. MILLER
Administrative Law Judge