

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.

And

Ryan Sawyer

Respondent-Intervenor

*
 *
 *
 * Civil Action File
 *
 * No. 2018CV305433
 *
 * (Administrative Docket Number:
 * 1835339-OSAH-SECSTATE-CE-6-
 * Beaudrot)
 *
 *
 *
 *
 *
 *

Order

This matter is before the Court on a Petition for Review (“Petition”) of a final decision by the Secretary of State (“the Secretary”) under O.C.G.A. § 21-2-5 finding that Petitioner Maria Palacios (“Petitioner”) was not eligible to seek or hold the office of Representative in the Georgia House of Representatives because she does not satisfy the constitutional requirement in Article III, Section 2, Paragraph 3(b) of the Georgia Constitution (“the Qualification Clause”) that she have been a citizen of this State for at least two years. Petitioner has appealed the final decision of the Secretary pursuant to O.C.G.A. § 21-2-5. Having considered

the administrative record for the Secretary's final decision and the pleadings filed in the above-captioned action, including the parties' Cross- Motions for Summary Judgment and their supporting briefs, and having heard argument from the parties at a hearing in this matter held on July 18, 2018, this Court hereby AFFIRMS the final decision of the Secretary.

The Secretary's decision held that one must be a citizen of the United States in order to be a Georgia citizen. Because the Petitioner did not become a United States citizen until 2017, the Secretary determined that she did not, therefore, satisfy the constitutional requirement in the Qualifications Clause that she have been a citizen of this State for at least 2 years. The Petitioner has argued that it is not necessary to be a United States citizen in order to be "a citizen of this State" and that Petitioner's residency in the State for more than two years was sufficient to make her a "citizen of this State" for purposes of satisfying the requirement in the Qualifications Clause. The parties filed cross-motions for summary judgment on the dispositive legal issue in this case as to whether United States citizenship is required in order to be "a citizen of this State" under the Qualifications Clause. As discussed below, the Secretary's interpretation of "citizen of this State" as requiring United States citizenship is reasonable, consistent with legislative intent, and should be affirmed.

A plain reading of the Georgia Constitution makes clear that United States citizenship is required in order to be a Georgia citizen. Article I, Section 1, Paragraph 7 of the Georgia Constitution clearly defines the term “citizens of this State” as “[a]ll citizens of the United States, resident in this state. . .” This constitutional provision was added to the Georgia Constitution at the same time that the framers added the “citizens of this State” language to the Qualifications Clause in Article III. Reading the two provisions together in harmony, as is required, it is clear that a “citizen of this State” is *both* a United States citizen *and* a resident in this state. The fact that both the Qualifications Clause in Article III and the definition of “citizens of this State” in Article I contain the words “citizen” juxtaposed with the word “resident” demonstrates that the framers were aware of the term “resident” and recognized that “citizen” and “resident” were different terms with different meanings. If the framers had intended that residency in Georgia is all that were required to be a Georgia citizen, they could have said so, but they did not, choosing instead to impose a requirement that Georgia citizens also be citizens of the United States.

The history of the constitutional language through prior versions of the state constitution also supports the correctness of the Secretary’s determination. Versions of the Qualifications Clause in the Georgia Constitution prior to 1868 used the term “inhabitant” of this state to set forth the state durational requirements

necessary to be qualified to serve in the State House of Representatives. The 1868 Constitution, however, replaced “inhabitant” with “citizen of this state” and also at the same time added the provision in Article I defining a “citizen of the State” as a United States citizen. This language change thus demonstrates that the framers did not view “inhabitancy” or “resident” as synonymous with the utilized term “citizens of this State.” Furthermore, the historical context of the 1868 Constitution, which was drafted shortly after the Civil War had ended, further supports the Secretary’s interpretation because the framers specifically added language to that Constitution affirming Georgia citizens’ allegiance to the United States, thus demonstrating the framers’ belief that United States citizenship was a critical aspect of Georgia citizenship.

Finally, the use of the word “citizen” in the context of several Georgia statutes, such as O.C.G.A. §§ 1-2-2, § 1-2-3, 1-2-5, and 1-2-6, also makes clear that state citizenship necessarily requires United States citizenship. These statutes or their historical antecedents were in existence when the 1868 Constitution was adopted and ratified and remained in place through the adoption of subsequent constitutions that carried forward the term “citizens of this State.” Under established rules of constitutional construction, it is presumed that the framers were aware of these pre-existing laws and that their use of the term “citizens of this

State” is consistent with the legislative meaning of state citizenship that is expressed in Georgia statutes.

Because the Petitioner has failed to show that the decision of the Secretary of State was affected by error or law, contrary to the Constitution or laws of this State, or subject to reversal based on any of the grounds set forth in O.C.G.A. § 21-2-5(e), the final decision of the Secretary should be affirmed. For all of the

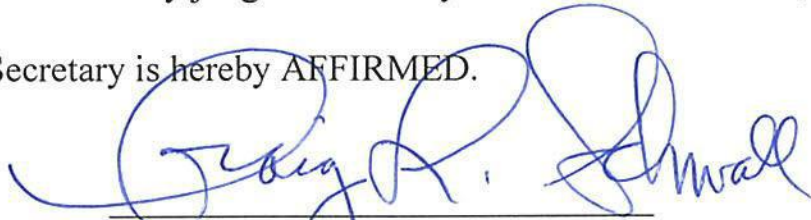
foregoing reasons, it is hereby ORDERED, ADJUDGED and DECREED this

18 day of JULY 2018 that the motions for summary judgment filed by

Respondent-Appellant Kemp and Respondent-Intervenor Sawyer are hereby

GRANTED; the motion for summary judgment filed by Petitioner is DENIED; and

the final decision of the Secretary is hereby AFFIRMED.



The Honorable Craig L. Schwall
Fulton County Superior Court

Proposed Order submitted by:

/s/Elizabeth A. Monyak

Elizabeth A. Monyak 005745

Senior Assistant Attorney General

DISTRIBUTION LIST

The above and foregoing ORDER was served this 19th day of July, 2018 on the following via eFileGA:

Sean J. Young, Esq.

Elizabeth A. Monyak, Esq.

Vincent R. Russo, Esq.

Kimberly Anderson, Esq.

David B. Dove, Esq.