

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

DAVID FARRAR, LEAH LAX, CODY
JUDY, THOMAS MALAREN, LAURIE
ROTH,

Plaintiffs,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-
1215136-60-MALIHI

Counsel for Plaintiffs: Orly Taitz

Counsel for Defendant: Michael Jablonski

DAVID P. WELDEN,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-
1215137-60-MALIHI

Counsel for Plaintiff: Van R. Irion

Counsel for Defendant: Michael Jablonski

CARL SWENSSON,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-
1216218-60-MALIHI

Counsel for Plaintiff: J. Mark Hatfield

Counsel for Defendant: Michael Jablonski

KEVIN RICHARD POWELL,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-
1216823-60-MALIHI

Counsel for Plaintiff: J. Mark Hatfield

Counsel for Defendant: Michael Jablonski

ORDER ON MOTION TO DISMISS

On December 15, 2011, Defendant, President Barack Obama, moved for dismissal of Plaintiffs' challenge to his qualifications for office. The Court has jurisdiction to hear this contested case pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

For the reasons indicated below, Defendant's Motion to Dismiss is **DENIED**.¹

I. Discussion

1.

The Georgia Election Code (the "Code") mandates that "[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. § 21-2-5(a).

2.

Both the Secretary of State and the electors of Georgia are granted the authority under the Code to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b), which authorizes any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

3.

The Georgia law governing presidential preference primaries mandates that "[o]n a date set by the Secretary of State . . . the state executive committee of each party which is to conduct a presidential preference primary shall submit to the Secretary of State a list of the names of the candidates of such party to appear on the presidential preference primary ballot." O.C.G.A. § 21-2-193. On October 6, 2011, Secretary Kemp issued a notice to the chairman of each political

¹ Because Defendant's Motion to Dismiss is denied, in the interest of efficiency, the Court finds it unnecessary to wait for the Plaintiffs' responses before denying the motion.

party to notify them that the deadline for submitting the list of candidate names for the 2012 presidential preference primary was November 15, 2011. On November 1, 2011, the Executive Committee of the Democratic Party submitted President Barack Obama's name as the sole candidate for the Democratic Party. To be timely, complaints challenging a presidential candidate's qualifications in the presidential preference primary had to be filed no later than November 29, 2011. Plaintiffs, as electors eligible to vote for Defendant, timely filed challenges with the Secretary of State before the deadline of November 29, 2011.

4.

In the instant motion, Defendant contends that Georgia law does not give Plaintiffs authority to challenge a political party's nominee for president in a presidential preference primary because Code Section 21-2-5 does not apply to the presidential preference primary.

5.

Statutory provisions must be read as they are written, and this Court finds that the cases cited by Defendant are not controlling. When the Court construes a constitutional or statutory provision, the "first step . . . is to examine the plain statutory language." Morrison v. Claborn, 294 Ga. App. 508, 512 (2008). "Where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden. In the absence of words of limitation, words in a statute should be given their ordinary and everyday meaning." Six Flags Over Ga. v. Kull, 276 Ga. 210, 211 (2003) (citations and quotation marks omitted). Because there is no other "natural and reasonable construction" of the statutory language, this Court is "not authorized either to read into or to read out that which would add to or change its meaning." Blum v. Schrader, 281 Ga. 238, 240 (2006) (quotation marks omitted).

6.

Code Section 21-2-5(a) states that "*every candidate for federal and state office*" must meet the qualifications for holding that particular office, and this Court has seen no case law limiting this provision, nor found any language that contains an exception for the office of president or stating that the provision does not apply to the presidential preference primary. O.C.G.A. 21-2-5(a) (emphasis added). Although the word "candidate" is not explicitly defined in the Code, Section 21-2-193 states that the political party for the presidential preference

Page 3 of 4

primary “shall submit to the Secretary of State a list of the names of the *candidates* of such party to appear on the presidential preference primary ballot.” O.C.G.A. 21-2-193 (emphasis added). Accordingly, this Court finds that Defendant is a candidate for federal office.

7.

Code Sections 21-2-190 to 21-2-200 set out the procedures of the presidential preference primary and also provide no exception to the Section 21-2-5 qualification requirement. This Court finds no basis under Georgia law why the qualification requirements in Section 21-2-5 would not apply to a candidate for the office of the president in the presidential preference primary.

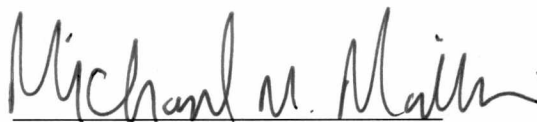
8.

Accordingly, this Court finds that Defendant is a candidate for federal office who has been certified by the state executive committee of a political party, and therefore must, under Code Section 21-2-5, meet the constitutional and statutory qualifications for holding the office being sought.

II. Decision

Based on the foregoing, the motion to dismiss is **DENIED**.

SO ORDERED, this the 3rd day of January, 2012.


MICHAEL M. MALIHI, Judge