

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

DAVID FARRAR

Plaintiff,

v.

BARACK OBAMA,

Defendant.

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

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**PRE-TRIAL ORDER**

COMES NOW the Defendant and files the following Pre-trial Order:

- (1) The name, address, phone number, fax number and E-mail address of the attorney(s) (or Pro se party) who will conduct the hearing is as follows:

Michael Jablonski  
260 Brighton Road NE  
Atlanta, Georgia 30309

Phone: 404-290-2977  
Fax: 815-846-0719  
Email: michael.jablonski@comcast.net

- (2) The estimated time required for hearing:

**Direct examination:** 20 minutes (if necessary)  
**Cross examination:** impossible to estimate since Plaintiff does not provide a witness list in the proposed pretrial order. I would reserve 40 minutes per witness.  
**Total:** 1 hour

- (3) The following motion(s) is pending/anticipated for consideration by the Court:

(a) **Motion:** Motion to Dismiss on ground that there is no legal basis for a challenge.

(b) **Date filed:** December 16, 2011

Defendant reserves the right to file a motion in limine pertaining to any witness later identified by the Plaintiff.

(4) The issues for determination by the Court are as follows:

- A. Whether a legal basis exists for a challenge to a political party's identification of candidates to appear on a Presidential Preference Primary ballot.
- B. Whether the Secretary of State would violate associational rights of the Democratic Party under the First Amendment to the United States Constitution by entertaining a purported challenge.
- C. If a challenge is appropriate, whether Plaintiff timely raised issues in front of the Executive Committee of the Democratic Party of Georgia before filing with the Secretary of State.

(5) The following is an in depth outline of the case and contentions including specific statutes or rules or other source of law upon which each issue is based and any special authorities relied upon (please attach a copy of any case, statute, rule, and/or regulation cited):

- A. The Democratic Party of Georgia is one of two political parties qualified as such under O.C.G.A. § 21-2-2(25).
- B. O.C.G.A. § 21-2-191 authorizes the State of Georgia to hold a Presidential Preference Primary on behalf of political parties so that Democrats can express their preference in the candidate that the Georgia delegation to the Democratic National Convention will support. The purpose of the primary is to apportion delegates between competing candidates in years when there is more than one person seeking support from the Georgia delegation.
- C. The Presidential Preference Primary is not an election. The election code definition of "election" clearly excludes the preference primary: "Election' ordinarily means any general or special election and shall not include a primary or special primary unless the context in which the term is used clearly requires that a primary or special primary is included." O.C.G.A. § 21-2-2(5). A primary is defined as "any election held for the purpose of electing party officers or nominating candidates for public offices to be voted on at an election." O.C.G.A. § 21-2-2(29). No one is elected or nominated in the Georgia Presidential Preference Primary. No delegates are selected as a result of the vote. It is an expression of opinion.
- D. Expressions of opinion are guaranteed under the First Amendment to the Constitution of the United States and the Article I, Section I, Paragraph V of the Constitution of the State of Georgia. Freedom of speech provisions of the United States Constitution are applicable to the State of Georgia under the Fourteenth Amendment to the United States Constitution.

- E. O.C.G.A. § 21-2-5, relied upon by Plaintiff, applies to elections, not preference primaries. The challenge statute uses the term “election” while that term does not appear anywhere in the Presidential Preference Primary statutes except to the extent that a political party may choose to elect delegates or party officers on the same ballot. Title 21, Chapter 2, Article 5. The Democratic Party of Georgia does not use this balloting to choose either delegates or officers. The statute relied upon by Plaintiff is in a different chapter of the code, neither statute refers to each other, nor is there any statute making the challenge statute apply to the preference primary.
- F. O.C.G.A. § 21-2-5, relied upon by Plaintiff, cannot apply to Presidential elections. The statute allows challenges to candidates to be elected. The President of the United States is not elected by popular vote in November but is elected by the Electoral College. See, Article II, Section 1, Clause 2 of the Constitution of the United States. Georgia members of the Electoral College are chosen pursuant O.C.G.A. § 21-2-10. Since the vote in November selects people entitled to vote for President under the Constitution of the United States, the challenge statute cannot apply to Presidential candidates because they are not elected in November, although someone like the Plaintiff may challenge the qualifications of someone to be a Presidential elector since these people are in fact elected.
- G. Plaintiff is not a Presidential elector, having never been elected himself pursuant to O.C.G.A. § 21-2-10, so even if O.C.G.A. § 21-2-5 applies to a Presidential election Plaintiff does not fulfill the requirement of being an elector. Moreover, Plaintiff has not alleged that he is a Democrat, nor has he shown that he has participated in the Democratic Party, nor has he stated that he will declare himself to be a Democrat when he goes to the polls on March 6. Since the Plaintiff has not shown that he will be a voter in the Presidential Preference Primary then he will not be an elector even if the agency determines that the challenge statute applies to the preference primary.
- H. The Democratic Party of Georgia “enjoys a constitutionally protected freedom which includes the right to identify the people who constitute this association that was formed for the purpose of advancing shared beliefs and to limit the association to those people only.” See *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107, 101 S.Ct. 1010, 1019, 67 L.Ed.2d 82 (1981). *Duke v. Cleland*, 954 F.2d 1526, 1530-1 (11th Cir. 1992). The right to associate not only contemplates the ability to exclude but, necessarily, who to include.
- I. The Executive Committee of the Democratic Party of Georgia, under O.C.G.A. § 21-2-193, has an unrestricted right to name individuals to appear on the Presidential Preference Primary ballot. The Democratic Party exercised that right. Only the Democratic Party of Georgia can determine qualifications of candidates named on the Presidential

Preference Primary ballot. See, *Duke v. Cleland*, 954 F.2d 1526 (11th Cir., 1992); *Belluso v. Poythress*, 485 F.Supp. 904 (N.D. Ga., 1980).

- J. The fact that the legislature did not pass HB 41, referenced by the Plaintiff in his pretrial submission, indicates that the legislature recognized that the State cannot interfere with the selection of presidential candidates by political parties.

(6) The types of relief sought are stated as follows:

Defendant seeks dismissal of the challenge on the ground that there is neither a factual nor a legal basis for it.

(7) The following facts are stipulated (if any):

Plaintiff did not ask counsel for the defendant about stipulations. In an effort to save time at any hearing, Defendant offers the following stipulations of fact:

1. The Democratic Party of Georgia is a political party authorized to submit names for inclusion on the Presidential Primary ballot.
2. The Executive Committee of the Democratic Party of Georgia timely submitted the name of Barack Obama to the Secretary of State for inclusion on the Presidential Primary ballot.
3. No delegates are elected as a result of the Presidential Preference Primary.
4. No one is nominated for President or any other office as a result of the Presidential Preference Primary.
5. Barack Obama has not yet been nominated to be a Democratic candidate for President of the United States in 2012.
6. The Democratic nominee for President of the United States is selected at the Democratic National Convention.
7. The 2012 Democratic National Convention will be held in in Charlotte, NC during the week of September 3, 2012.
8. David Farrar is not a member of the executive Committee of the Democratic Party of Georgia.
9. David Farrar is not a Democrat.
10. David Farrar has never been selected as a Presidential Elector for the State of Georgia under O.C.G.A. § 21-2-10.
11. Leah Lax is not an elector in the State of Georgia.
12. Leah Lax never contacted the Executive Committee of the Democratic Party of Georgia to express an interest in having her name placed on the Presidential Preference Primary ballot.
13. Cody Judy is not an elector in the State of Georgia.
14. Cody Judy never contacted the Executive Committee of the Democratic Party of Georgia to express an interest in having her name placed on the Presidential Preference Primary ballot.
15. Thomas MacLaren is not an elector in the State of Georgia.

16. Thomas MacLaren never contacted the Executive Committee of the Democratic Party of Georgia to express an interest in having her name placed on the Presidential Preference Primary ballot.
17. Exhibits P-1 through P-10 are exhibits previously submitted in a challenge to this defendant being named to the primary ballot in New Hampshire.
18. The New Hampshire Ballot Law Commission unanimously ruled that Barack Obama should stay on the primary ballot.
19. Barack Obama was born in the State of Hawaii.
20. Barack Obama is not a naturalized citizen of the United States.

(8) The following is a list of all exhibits that will be tendered at the hearing. Unless noted, the parties have stipulated as to the authenticity of the exhibits listed and the exhibits listed may be admitted without further proof of authenticity. All exhibits shall be marked by counsel prior to hearing. Parties shall consolidate exhibits by eliminating duplicates and use a common numbering system for joint exhibits so that one set of joint exhibits is presented to the Judge. Exhibits shall be pre-marked by the parties sequentially starting with "P-1," for the Plaintiffs exhibits, and "D-1" for the Defendant's exhibits. A copy of the exhibits shall be given to the opposing party no less than 5 days before the hearing and to the Judge when first identified at the hearing.

Defendant has no plans to offer any exhibits at this time but reserves the right to use exhibits after hearing the plaintiffs' case in chief.

In an effort to expedite any hearing on this matter, defendant shows that it will object to P1, P2, P3, P4, P5, P6, P7, P8, P9, and P10 on the ground that they constitute hearsay, among other objections specific to each document. Defendant will insist on the right to cross-examine each individual making a statement in the documents. Defendant will insist on a foundation establishing the authenticity of documents.

(9) The testimony of the following persons may be introduced by depositions:

None

(10) The following are lists of witnesses and a brief description of each witness' expected testimony and relation to the issues for determination:

Defendant may not have witnesses present.  
The only potential witness is Michael Berlon. The substance of his testimony is set forth in the affidavit attached to the Motion to Dismiss.

Opposing counsel may rely on representation by the designated party that she/he will have a witness present unless notice to the contrary is given in sufficient

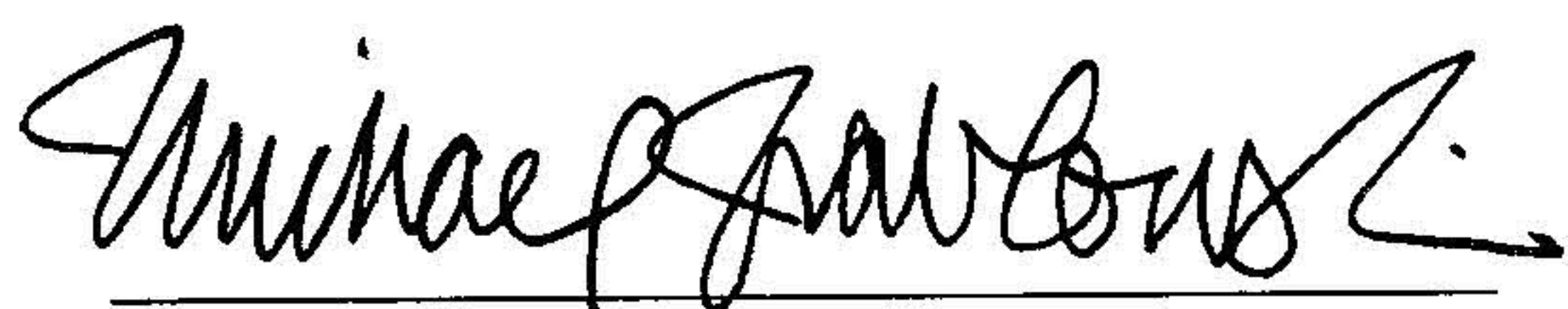
time prior to the hearing to allow the opposing party to subpoena the witness or obtain her/his testimony by other means.

- (11) The hearing can be avoided if the parties are able to settle the dispute voluntarily. Mediation is available as a possible means of resolving your differences without the necessity of a formal hearing. The possibilities of settling the case are:

Extremely unlikely.

This the 16<sup>th</sup> day of December, 2011.

Submitted by:



Michael Jablonski  
Attorney for Defendant

### ORDER

**IT IS HEREBY ORDERED THAT** the foregoing, including the attachments thereto, constitutes the PRE-TIUAL ORDER in the above case upon filing with the Clerk and supersedes the pleadings that may not be further amended except by order of the Court to prevent manifest injustice.

SO ORDERED, This \_\_\_ day of \_\_\_\_\_, 2011.

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MICHAEL M. MALIHI, Judge