

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

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FILED IN OFFICE  
MAR 2 2012  
DEPUTY CLERK SUPERIOR COURT  
FULTON COUNTY, GA

*Handwritten signature*

DAVID FARRAR, LEAH LAX, CODY  
ROBERT JUDY, LAURIE ROTH,

Petitioners,

v.

BARACK OBAMA and  
SECRETARY OF STATE,

Respondents.

CIVIL ACTION  
FILE NO. 2012CV211398

CARL SWENSSON,

Petitioner,

v.

BARACK OBAMA,

Respondent.

CIVIL ACTION  
FILE NO. 2012CV211527

KEVIN RICHARD POWELL,

Petitioner,

v.

BARACK OBAMA,

Respondent.

CIVIL ACTION  
FILE NO. 2012CV211528

*Farrar, et al. v. Obama, et al:* Civil Action No. 2012CV211398  
*Swensson v. Obama:* Civil Action No. 2012CV211527  
*Powell v. Obama:* Civil Action No. 2012CV211528  
*Welden v. Obama:* Civil Action No. 2012CV211537  
ORDER GRANTING MOTION(S) TO DISMISS

DAVID P. WELDEN,

Petitioner,

v.

BARACK OBAMA,

Respondent.

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CIVIL ACTION  
FILE NO. 2012CV211537

**ORDER GRANTING RESPONDENT BARACK OBAMA’S MOTION(S) TO DISMISS**

The above-captioned actions are before the Court on the Petition(s) for Judicial Review of Petitioners David Farrar, *et al.*, Carl Swensson, Kevin Richard Powell, and David P. Welden, which were filed in this Court on February 13, 2012 and February 15, 2012, respectively. Although initially assigned to four (4) different Superior Court Judges, the matters were transferred to the Honorable Chief Judge Cynthia D. Wright, to whom the first-filed case was assigned (*Farrar, et al. v. Obama, et al.*, Civil Action File No. 2012CV211398), because each is an appeal of the same decision issued on February 3, 2012 by Administrative Law Judge Michael M. Malihi in the Office of State Administrative Hearings and thereafter adopted by the Secretary of State.

Presently before the Court is the Motion to Dismiss of Respondent Barack Obama, filed in each of the above-referenced actions on February 27, 2012. The Motion(s) to Dismiss are identical in form and substance and will, therefore, be addressed by the Court in one consolidated Order to be applied in each case. Now, having considered the Motion(s) to Dismiss, the other pleadings of record, and applicable Georgia law, the Court finds as follows:

Petitioners filed their Appeal/Petition for Judicial Review of the Secretary of State’s decision in this Court pursuant to O.C.G.A. § 21-2-5(e), which provides as follows:

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*Farrar, et al. v. Obama, et al*: Civil Action No. 2012CV211398

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The elector filing the challenge or the candidate challenged shall have the right to appeal the decision of the Secretary of State by filing a petition in the Superior Court of Fulton County within ten days after the entry of the final decision by the Secretary of State. The filing of the petition shall not itself stay the decision of the Secretary of State; however, the reviewing court may order a stay upon appropriate terms for good cause shown. As soon as possible after service of the petition, the Secretary of State shall transmit the original or a certified copy of the entire record of the proceedings under review to the reviewing court. The review shall be conducted by the court without a jury and shall be confined to the record.

Petitioners allege that Respondent Barack Obama is not a “natural born citizen”<sup>1</sup> and, thus, is not qualified for candidacy in Georgia’s 2012 Presidential Primary. Despite its application in the court below, this Court does not believe that O.C.G.A. § 21-2-5 applies in this case because the challenge at issue involves the Presidential Preference Primary, which by its terms, is an opportunity for electors “to express their preference for one person to be a candidate for nomination.” O.C.G.A. § 21-2-191. The Presidential Preference Primary apportions delegates, but neither elects nor nominates candidates for the Presidency. Therefore, because Respondent Barack Obama is not yet a “candidate” for the Presidential election in question and because the Presidential Preference Primary is not an “election” within the meaning of O.C.G.A. § 21-2-1, *et seq.*, O.C.G.A. § 21-2-5 does not apply. *See* O.C.G.A. § 21-2-2(5) and 21-2-5.

Moreover, it is well established in Georgia as elsewhere in the United States that voters vote on “presidential electors,” rather than voting directly for a candidate, when voting for the Office of President of the United States. O.C.G.A. § 21-2-172. The political parties’ candidates for President are determined by convention of the political party. *See* O.C.G.A. §§ 21-2-191 to

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<sup>1</sup> Petitioners claim is based, in part, on a contention that at the time of his birth, Respondent’s father was not a citizen of the United States.

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21-2-200. In the case of a democratic candidate for President, the Democratic Party of Georgia has the sole discretion to determine the qualifications of potential candidates and the name(s) to be included on its Presidential Preference Primary ballot. O.C.G.A. § 21-2-193; *see Duke v. Cleland*, 954 F.2d 1523 (11th Cir. 1992); *Duke v. Cleland*, 884 F. Supp. 511, 515-16 (N.D. Ga. 1995).

The Secretary of State is prohibited by the Fourteenth Amendment of the United States Constitution and Georgia statutory law from infringing on the associational rights of the Democratic Party of Georgia and is limited in its authority to examining presidential electors. O.C.G.A. §§ 21-2-172 to 21-2-200; *Duke v. Cleland*, 884 F. Supp. at 515-16 (N.D. Ga. 1995). Even if the Secretary of State believes that a challenger's claims are valid, the Secretary of State may not interfere with a political party's internal decision-making. *Id.*

Based upon Georgia law and governing precedent, the Court finds it has no authority to exercise jurisdiction over the Democratic Party of Georgia's selection of the names(s) to be included in the Presidential Preference Primary or to examine the qualifications of those individuals. Therefore, these actions should be DISMISSED in accordance with O.C.G.A. § 9-11-12(b).

Additionally, even if the Court had determined that O.C.G.A. § 21-2-5 applied to these matters and provided the Court with appellate jurisdiction over same, the Court finds that Petitioners have failed entirely to perfect personal service upon Respondent(s) as required by O.C.G.A. § 21-2-5(e) and O.C.G.A § 9-11-4. *See Bible v. Bible*, 259 Ga. 418, 418 (1989).

Therefore, IT IS HEREBY ORDERED AND ADJUDGED that Respondent Barack Obama's Motion(s) to Dismiss in the above matters are GRANTED, and the above actions are hereby DISMISSED.

SO ORDERED this the 2<sup>nd</sup> day of March, 2012.



**CYNTHIA D. WRIGHT**, Chief Judge  
Fulton County Superior Court  
Atlanta Judicial Circuit

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