

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



04/04/2024

Devin Hamilton, Legal Assistant

KRISTA BREWER,
Petitioner,
v.
NADINE THOMAS,
Respondent.

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:
: Docket No.: 2434746
: 2434746-OSAH-SECSTATE-CE-44-Walker
:
: Agency Reference No.: 2434746
:
:
:

INITIAL DECISION

I. INTRODUCTION

The Petitioner, Krista Brewer, challenges the Respondent’s qualifications to be a candidate in the general primary election to be held on May 21, 2024, for Georgia State Senate District 44. The Petitioner asserts that the Respondent fails to meet constitutional and statutory requirements as set forth in GA. CONST. art. II, § II, para. III.¹ An administrative hearing took place on April 2, 2024. Jeremy Berry, Esq. represented the Petitioner, and Richard Schrade, Esq. appeared for the Respondent. For the reasons indicated below, the undersigned Administrative Law Judge finds that the Respondent **is qualified** to be a candidate in the general primary election for Georgia State Senate District 44.

¹ The Petitioner alleged that the Respondent should be disqualified as a candidate because she had both federal and state tax liabilities in violation of GA. CONST. art. II, § II, para. III and O.C.G.A. § 45-2-1(2). During the administrative hearing, the Respondent presented documentation that the Georgia Department of Revenue had issued a Payment Plan Approval to the Respondent, indicating that her first payment to repay her outstanding debt to the State of Georgia would be due on March 22, 2024. Subsequently, the Petitioner withdrew her challenge regarding the Respondent’s state tax delinquency. See Exs. P-2, P-3, R-2, R-3.

II. FINDINGS OF FACT

1.

The Petitioner, Krista Brewer, is a registered voter and eligible elector in Georgia State Senate District 44. (Stipulation of the Parties.)

2.

On or about March 4, 2024, the Respondent submitted a sworn Notice of Candidacy and Affidavit to be a candidate in the general primary to be held on May 21, 2024, for Georgia State Senate District 44. (Testimony of the Respondent.)

3.

On or about March 12, 2018, the United States Department of the Treasury – Internal Revenue Service (hereinafter “IRS”) filed a Notice of Federal Tax Lien against the Respondent with the Clerk of the Superior Court of Clayton County, Georgia. The Notice of Federal Tax Lien reflected that the IRS had assessed \$16,145.44 in delinquent federal taxes for the tax periods ending on December 31, 2006, and December 31, 2015, against the Respondent. (Ex. P-1.)²

4.

The Respondent admitted that she owed federal taxes but testified that she had entered into a payment plan with the IRS. On or about July 31, 2023, the IRS sent the Respondent a letter reflecting that she had unresolved federal income tax liability for the tax periods ending on December 31, 2015, December 31, 2017, December 31, 2018, December 31, 2019, December

² When the IRS issues an assessment, it indicates that an individual owes unpaid taxes to the Federal Government, United States v. Fior D’Italia, Inc., 536 U.S. 238, 242 (2002), and “[t]he assessment is given the force of a judgment” Franchise Tax Bd. v. U. S. Postal Serv., 467 U.S. 512, 523 (1984) (citation omitted).

31, 2020, December 31, 2021, and December 31, 2022, and establishing an installment agreement (“Installment Agreement”) to repay her debt. (Testimony of Respondent; Ex. R-4.)

5.

According to the terms of the Installment Agreement, the Respondent must make monthly payments of \$800.00 to the IRS, beginning on September 20, 2023, and thereafter on the 20th of each month. The monthly payment amount increases to \$900.00 on September 20, 2024, and to \$1,500 on September 20, 2025, “until you pay the balance in full, pay the amount required under your partial payment installation agreement, or your financial situation changes.” (Testimony of Respondent; Ex. R-4.)

6.

The Installment Agreement also provides that the Respondent “must meet all conditions of your installment agreement. If you don’t, your installment agreement could go into default and we may terminate it and take enforcement action to collect the full amount of your tax liability.” According to the Respondent, she began making her monthly payments as required under the Installment Agreement; however, she failed to send the payment due on February 20, 2024. (Testimony of Respondent; Ex. R-4.)

7.

On or about March 4, 2024, the IRS sent the Respondent a letter stating as follows:

Dear Taxpayer:

You have an installment agreement to pay your taxes; however, our records show that you missed a payment. Your installment agreement will remain in effect as long as you make your next monthly payment on time.

[. . .]

IF WE DON’T HEAR FROM YOU

Your installment agreement is still in effect; however, if you don't pay the monthly amount you owe by the next payment due date, we will cancel the agreement and bill you for the remaining balance, which will be due in full. We may also start collection action on your account.

(Ex. R-7.)

8.

On March 20, 2024, the Respondent sent a \$1,000.00 payment to the IRS. (Testimony of Respondent; Ex. R-5.)

III. CONCLUSIONS OF LAW

1.

Candidates for state office must meet the constitutional and statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a). Pursuant to O.C.G.A. § 21-2-5(b), “[w]ithin two weeks after the deadline for qualifying, any elector who is eligible to vote for a candidate may challenge the qualifications of the candidate by filing a written complaint with the Secretary of State. . . .” When the Georgia Secretary of State receives a challenge from an elector, she or he “shall notify the candidate in writing that his or her qualifications are being challenged . . . and shall advise the candidate that he or she is requesting a hearing on the matter before an administrative law judge of the Office of State Administrative Hearings”³ Id.

2.

The Petitioner has challenged the Respondent's qualifications to be a candidate in the general primary election for Georgia State Senate District 44. This matter is governed by the Georgia Constitution and the Georgia Election Code, O.C.G.A. § 21-2-1 et seq. The scope of the

³ The Administrative Law Judge reports his or her findings to the Secretary of State, and the Secretary of State “shall determine if the candidate is qualified to seek and hold the public office for which such candidate is offering.” O.C.G.A. § 21-2-5(b), (c).

hearing is limited to whether the candidate has met the constitutional and statutory qualifications for the office.

3.

Under Haynes v. Wells, 273 Ga. 106, 108-109 (2000), the burden of proof is on the Respondent to affirmatively establish 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.

The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

4.

The Georgia Constitution identifies persons not eligible to hold office, including a person:

who is a defaulter for any federal, state, county, municipal, or school system taxes required of such officeholder or candidate if such person has been finally adjudicated by a court of competent jurisdiction to owe those taxes, but such ineligibility may be removed at any time by full payment thereof, or by making payments to the tax authority pursuant to a payment plan, or under such other conditions as the General Assembly may provide by general law.

GA. CONST. art. II, § II, para. III.

The Respondent acknowledges that she has outstanding federal tax liabilities. However, she maintains that she is qualified to run as a candidate because she has been making payments to the IRS pursuant to a payment plan.

5.

The Petitioner argues that because the Respondent missed a payment to the IRS, she is not “making payments to the tax authority pursuant to a payment plan” as required under GA. CONST. art. II, § II, para. III. The undersigned is not persuaded.

6.

The Internal Revenue Code authorizes the Secretary of the Treasury to “enter into written agreements with any taxpayer under which such taxpayer is allowed to make payment on any tax in installment payments if the Secretary determines that such agreement will facilitate full or partial collection of such liability.” 26 U.S.C. § 6159(a). Although the Secretary of the Treasury may terminate the written agreement if the taxpayer fails to make an installment payment on the due date, he or she may not do so without providing notice to the taxpayer. 26 U.S.C. § 6159(b)(4)(A), (5).

7.

In this case, the Respondent testified credibly that she had not been notified that the Installment Agreement had been terminated. Additionally, the March 4, 2024, letter from the IRS to the Respondent states that “[y]our installment agreement will remain in effect as long as you make your next monthly payment on time.” The Respondent demonstrated that she sent a \$1,000 payment to the IRS by the next due date, March 20, 2024.

8.

The Petitioner contends that the Respondent provided insufficient evidence that the missed installment payment occurred in February 2024. She suggests that had the missed installment payment occurred prior to February 20, 2024, the Respondent’s March 20, 2024,

payment would be irrelevant. The undersigned finds the Respondent's testimony that the missed payment took place in February 2024 to be credible.

9.

Next, the Petitioner asserts that the March 4, 2024, letter mandates that the Respondent pay both the missed payment (February 2024) and the actual payment due (March 2024) by the March 20, 2024, due date. The March 4, 2024, letter from the IRS initially states that the "installment agreement will remain in effect as long as you make your next monthly payment on time." Based on this language, the Respondent believed that she would be in compliance with the Installment Agreement if she made her March 2024 payment as directed. In turn, the Petitioner points out that the March 4, 2024, letter also cautions that the "installment agreement is still in effect; however, if you don't pay the monthly amount you owe by the next payment[']s due date, we will cancel the agreement" The Petitioner asserts that this language mandates that the Respondent must make both the February 2024 and the March 2024 payment by the March 20, 2024, due date.

10.

Pretermitted whether the March 4, 2024, letter requires the Respondent to make one or two payments by the March 20, 2024, due date, there is no evidence that the Secretary of the Treasury has terminated the Installment Agreement or that the Installment Agreement is in default. The terms of the Installment Agreement provide only that if the taxpayer does not satisfy the Installment Agreement's requirements, it "*could* go into default and we *may* terminate it and take enforcement action to collect the full amount of your tax liability." Ex. R-4 (emphasis added.) There is no indication that the Secretary of the Treasury has notified the Respondent that the Installment Agreement is in default or has been terminated. See 26 U.S.C. §

6159(b)(5). To the contrary, the March 4, 2024, letter affirms that, notwithstanding the missed payment, the “installment agreement is still in effect” Ex. R-7.

IV. DECISION

Candidates for state office in Georgia must meet the “constitutional and statutory qualifications” for holding the office being sought. O.C.G.A. § 21-2-5(a). Based upon the above Findings of Fact and Conclusions of Law, the undersigned finds that the Respondent **is qualified** to be a candidate for the Georgia State Senate District 44.

SO ORDERED THIS 4th day of April, 2024.

Ronit Walker

RONIT WALKER, ALJ





NOTICE OF INITIAL DECISION

Attached is the Initial Decision of the administrative law judge. A party who disagrees with the Initial Decision may file a motion with the administrative law judge and/or an application for agency review.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Initial Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Devin Hamilton - 404-657-3337; Email: devinh@osah.ga.gov; Fax: 404-657-3337; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing an Application for Agency Review

A party who seeks review by the referring agency must file an application for agency review within 30 days after service of the Initial Decision. O.C.G.A. §§ 50-13-17(a), -41. **In nearly all cases, agency review is a prerequisite for judicial review.** O.C.G.A. § 50-13-19(a).

The application for agency review must be filed with: . Copies of the application for agency review must be served upon all parties of record and filed simultaneously with the OSAH Chief Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. If a timely application for agency review is not filed and the referring agency does not review the Initial Decision on its own motion, the Initial Decision will become the Final Decision of the referring agency by operation of law. O.C.G.A. §§ 50-13-17(a), -41.

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