EXHIBIT A

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

RESPONDENT-APPELLEE'S NOTICE OF FILING
THE ADMINISTRATIVE RECORD

Respondent-Appellee Brian P. Kemp ("the Secretary" or "SOS") rendered a final decision on May 2, 2018, in a challenge to the candidacy of Petitioner-Appellant Maria Palacios in the case of *Ryan Sawyer v. Maria Palacios*, (Docket No. 1835339-OSAH-SECSTATE-CE-6-Beaudrot). Petitioner-Appellant Maria Palacios has filed in this Court a petition for judicial review of such decision. Pursuant to O.C.G.A. § 21-2-5, the Secretary, by and through its counsel of record, the Attorney General for the State of Georgia, now files herein a certified copy of the record for the decision under review.

Done this 29th day of May, 2018.

Respectfully submitted,

CHRISTOPHER M. CARR 112505
Attorney General

ANNETTE M. COWART 191199
Deputy Attorney General

RUSSELL D. WILLARD 760280
Senior Assistant Attorney General

/s/Elizabeth A. Monyak
ELIZABETH A. MONYAK 005745
Senior Assistant Attorney General

PLEASE ADDRESS ALL
COMMUNICATIONS TO:

ELIZABETH A. MONYAK
Senior Assistant Attorney General
40 Capitol Square, S.W.
Atlanta, Georgia 30334-1300
Telephone: (404) 463-3630
emonyak@law.ga.gov

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brian P. Kemp, Secretary of State of the State of Georgia, do hereby certify that

the attached 54 pages constitute a true and correct copy of the entire record of the candidate qualifications challenge in Ryan Sawyer v. Maria Palacios, Docket No. 1835339-OSAH-SECSTATE-CE-6-Beaudrot; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 24th day of May, in the year of our Lord Two Thousand and Eighteen and of the Independence of the United States of America the Two Hundred and Forty-Second.

STATE OF GEORGIA CONSTITUTION WISDOM JUSTICE MODERATION 1776

B. P. Kemp

Brian P. Kemp, Secretary of State

TABLE OF CONTENTS

05/01/2018

GEORGIA SECRETARY OF STATE VOTER REGISTRATION SYSTEM

INDIVIDUAL VOTER REPORT

Generated By:JANHEAD

Voter Current Information

Voter Registration #:	11350915
Name:	PALACIOS, MARIA DEL ROSARIO
Race:	Hispanic
Gender:	Female
Residence Address:	4347 PEARHAVEN LN GAINESVILLE 30504
Mailing Address:	
Voter Status:	Active
Status Reason:	
Special Designation:	

State Districts Information:	CONG	HOUSE	JUDIC	SENAT
	009	029	NEST	049

County Districts Information:	COMMI
	002

Municipal Districts Information:	MUNIB	WARD
	C04	LRG

05/01/2018

GEORGIA SECRETARY OF STATE VOTER REGISTRATION SYSTEM

INDIVIDUAL VOTER REPORT

Generated By:JANHEAD

Voter Current Information

Voter Registration #:	05588960
Name:	SAWYER, RYAN EUGENE
Race:	White not of Hispanic Origin
Gender:	Male
Residence Address:	2501 KATHERINE CIR GAINESVILLE 30506
Mailing Address:	2501 KATHERINE CIR GAINESVILLE 30506 - 1843
Voter Status:	Active
Status Reason:	
Special Designation:	

State Districts Information:

CONG	HOUSE	JUDIC	SENAT
009	029	NEST	049

County Districts Information:

COMMI	SCHOL
003	LRG

Municipal Districts Information:

To: [illegible] Chairman and Secretary [illegible]
State Executive Committee of the
DEMOCRATIC [illegible]
State of Georgia

DECLARATION OF CANDIDACY AND AFFIDAVIT

STATE

[illegible] MARIA DEL ROSARIO PALACIOS

my residence address is [illegible] PEARHAVEN LN

GAINESVILLE [illegible] GA 30504

my post office address is 1347 PEARHAVEN LN GAINESVILLE GA 30504

my telephone number is [redacted]

my profession, business, or occupation is [illegible] COORDINATOR

[illegible] of the county of my [illegible]

[illegible] the office

[illegible] STATE REPRESENTATIVE, DISTRICT [illegible] my date of birth is [redacted]1989

I have been a legal resident of the State of Georgia for [illegible] 8 [illegible] I have been a legal resident

HALL [illegible] legal resident of my district (if applicable)

for 2 consecutive [illegible]

[illegible]

[illegible] DEMOCRATIC GENERAL PRIMARY [illegible] the [illegible] day of May 2018

I have never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction of domestic violence under the laws of this State, any other State, or of the United States, or if so convicted that my civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude; I am not a defaulter for any federal, state, [illegible] such officeholder or candidate if such person has been finally ad[illegible] making payments to the tax [illegible] authority pursuant to a payment plan or under [illegible] General Assembly may provide by general law [illegible] pursuant to Ga. Const. Art. II, Sec. II, para. [illegible] I will not knowingly [illegible] the Georgia Election Code (O.C.G.A. § 21-2) or of the rules or regulations adopted thereunder [illegible] regulations of the Democratic party.

[illegible]

[illegible] (Signature of candidate)

[illegible]

[illegible]

[illegible]

[illegible] (Notary)

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] Notary Public, [illegible] Georgia [illegible] 2022

I ☑ hereby tender check/cash in the amount of $400.00

NAME OF BANK [redacted]

CHECK NUMBER: [redacted]

In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check as prescribed in O.C.G.A. § 21-2-5(d).

☐ I hereby file a Pauper's Affidavit, accompanied by a qualifying petition as prescribed in O.C.G.A. § 21-2-132(d)(3), in lieu of paying the qualifying fee.

Form #DC-5-09

Georgia General Assembly
Legislative and Congressional Reapportionment Office
Coverdell Legislative Office Building, Suite 407
18 Capitol Square SW
Atlanta, Georgia 30334
404-656-5063

April 2, 2018

This certifies that the attached maps show a portion of the district lines for state House districts 29 and 30, as well as a plotting reference for the address of 4347 Pearhaven Way, Gainesville, Georgia, 30504. Based on the map adopted by the General Assembly in House Bill 1 EX (Act 1 EX)(2011) pre-cleared under Section 5 by the United States Attorney General, for use beginning in the 2012 election cycle, amended by House Bill 829 (Act 277)(2012), pre-cleared under Section 5 by the United States Attorney General, for use beginning in the 2014 election cycle, and also amended by House Bill 566 (Act 251)(2015) effective May 12, 2015, as reflected on the attached map, this further certifies that the address of 4347 Pearhaven Way, Gainesville, Georgia, 30504 is located in Georgia House District 29.

This further certifies that these district lines and plotting reference on the attached maps contain a true and accurate representation of the information maintained by the Legislative and Congressional Reapportionment Office of the Georgia General Assembly and accurately reflect information from the state House district map adopted by the General Assembly in House Bill 1 EX (Act 1 EX)(2011) pre-cleared under Section 5 by the United States Attorney General, for use beginning in the 2012 election cycle, amended by House Bill 829 (Act 277)(2012), pre-cleared under Section 5 by the United States Attorney General, for use beginning in the 2014 election cycle, and further amended by House Bill 566 (Act 251)(2015), effective May 12, 2015.

Gina H. Wright

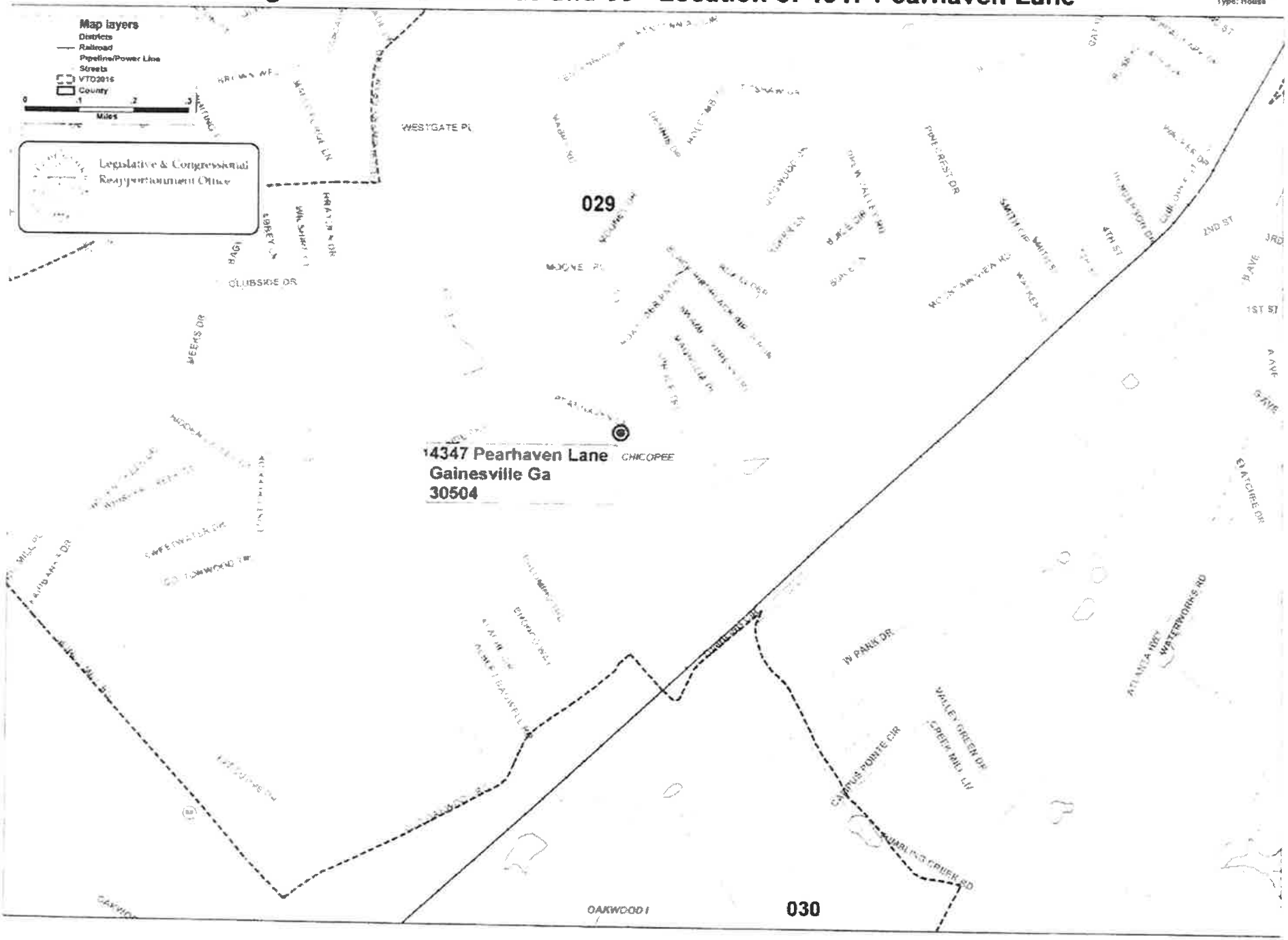
Gina H. Wright
Executive Director
Legislative and Congressional Reapportionment Office

JOSEPHINE LAMAR NOTARY PUBLIC DEKALB COUNTY, GEORGIA COMMISSION EXPIRES MAY APRIL 27, 20

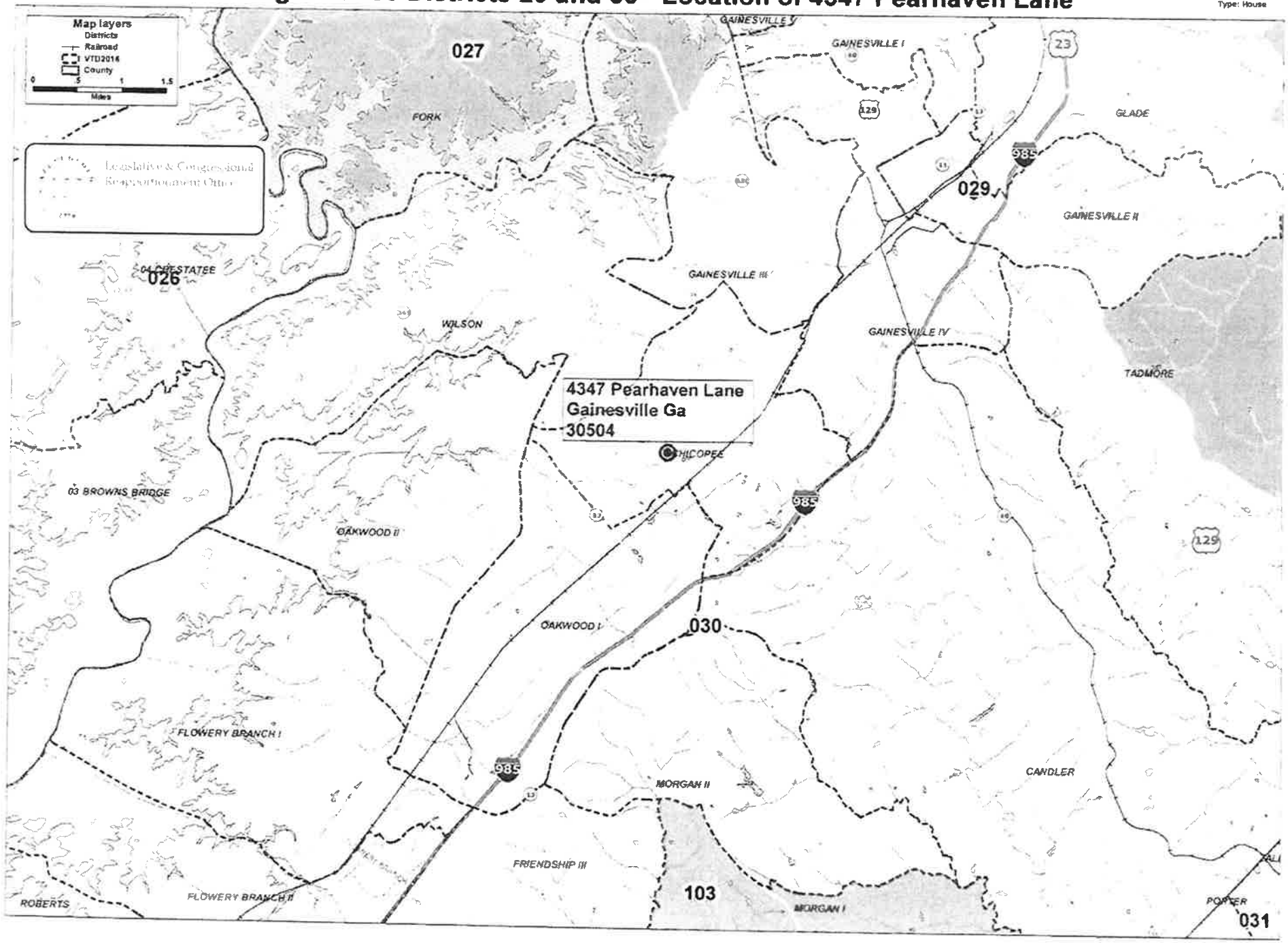
Josephine Lamar

Sworn to and subscribed before me this 2nd day of April

Georgia House Districts 29 and 30- Location of 4347 Pearhaven Lane



Georgia House Districts 29 and 30- Location of 4347 Pearhaven Lane



OSAH FORM 1

This form is available online at http://www.osah.ga.gov or by telephone request at (404) 657-2800

OSAH USE ONLY DOCKET NUMBER	AGENCY CODE	CASE TYPE	DOCKET NUMBER	COUNTY	JUDGE
	SECSTATE	CE			

NAME OF REFERRING AGENCY: **GEORGIA SECRETARY OF STATE**

CHALLENGE TO CANDIDATE QUALIFICATIONS

DATE OF REQUEST FOR HEARING: March 29, 2018

COUNTY OF CANDIDATE Hall County

CONTACT PERSON IN REFERRING AGENCY

NAME:	TEL NO:	FAX NO:
Chris Harvey	404-657-5380	
CURRENT ADDRESS INCLUDING ZIP CODE ON HEARING REQUEST 2 MLK Jr. Drive, SE Suite 802, West Tower Atlanta, GA 30334	POSITION Elections Division Director, Office of the Georgia Secretary of State	EMAIL: wharvey@sos.ga.gov PAGER:

PETITIONER *

NAME:	TEL NO:	FAX NO:
Ryan Sawyer		
CURRENT ADDRESS INCLUDING ZIP CODE ON HEARING REQUEST 2501 Katherine Circle Gainesville, GA 30506	POSITION Elector	EMAIL: ryan@biotrauma.com PAGER

ATTORNEY FOR PETITIONER

ATTORNEY NAME:	TEL NO:	FAX NO:
CURRENT ADDRESS INCLUDING ZIP CODE ON HEARING REQUEST	GEORGIA BAR NO:	EMAIL: PAGER:

RESPONDENT **

NAME:	TEL NO:	FAX NO:
Maria Del Rosario Palacios		
CURRENT ADDRESS INCLUDING ZIP CODE ON HEARING REQUEST 4347 Pearhaven Lane Gainesville, GA 30504		EMAIL: PAGER:

ATTORNEY FOR RESPONDENT

NAME:	TEL NO:	FAX NO:
CURRENT ADDRESS INCLUDING ZIP CODE ON HEARING REQUEST	GEORGIA BAR NO:	EMAIL: PAGER:

*** PARTY CHALLENGING QUALIFICATIONS IS THE PETITIONER**
**** CANDIDATE IS THE RESPONDENT**

Attach the Complaint to be served on the Respondent. Please also attach a sheet identifying any applicable statutes or rules and highlight any such statutes or rules that establish any specific timeframes or procedures that are to be applied by in resolving the matter

Mail to: Clerk of Court
Office of State Administrative Hearings
225 Peachtree Street, NE, South Tower, Suite 400
Atlanta, GA 30303

ATTACHMENTS TO OSAH FORM 1

1. Written Complaint from Elector
2. Legal and Factual Matters to be Resolved
3. Applicable Laws and Regulations, Special Requirements

Head, Jansen

From: Broce, Candice
Sent: Friday, March 16, 2018 11:07 AM
To: Head, Jansen
Subject: FW: Challenge to qualification.

From: Ryan Sawyer [mailto:ryan@biotrauma.com]
Sent: Wednesday, March 14, 2018 4:51 PM
To: Simmons, Jessica <jsimmons@sos.ga.gov>
Subject: Challenge to qualification.

Jessica,

I am writing to submit a written challenge to the qualification of Maria Palacios (also known as Maria Del Rosario Palacios) for the Georgia House of Representatives District 29. One of the qualifications listed is that a candidate "must have been a citizen of Georgia for at least two years." I request that you investigate her qualification for this public office as she became a United States citizen in 2017.

Best Regards,

Ryan Sawyer
2501 Katherine Circle
Gainesville, Georgia 30506

OSAH FORM 1
ATTACHMENT NO. 2

Legal and Factual Matters to be Resolved:
Qualifications Challenge against Maria Del Rosario Palacios,
Candidate for the Office of Georgia State House District 29

Pursuant to O.C.G.A. § 21-2-5, Mr. Ryan Sawyer challenges the qualification of Maria Del Rosario Palacios, candidate for the general primary Tuesday, May 22, 2018, for Georgia State House District 29. In the written complaint, Mr. Sawyer asserts that the candidate became a citizen of the United States in 2017, and thus, has not been a citizen of Georgia for the requisite period of at least two years. The Georgia State Constitution states, in relevant part, that "[a]t the time of their election, the members of the House of Representatives . . . shall have been citizens of this state for at least two years." GA. CONST. Art. III, Sec. 2, Para. 3(b).

Accordingly, the matter to be resolved at this hearing is whether candidate Maria Del Rosario Palacios has been a "citizen" of Georgia for the requisite period of time.

OSAH FORM 1
ATTACHMENT NO. 3

Applicable Laws and Regulations:

1. GA. CONST. Art. I, Sec. 1, Para. 7
2. GA. CONST. Art. III, Sec. 2, Para. 3(b)
3. O.C.G.A. § 21-2-5
4. O.C.G.A. § 45-2-1
5. Haynes v. Wells, 273 Ga. 106 (2000)
6. Handel v. Powell, 284 Ga. 550 (2008)
7. Pritchett v. Mabra, Docket No. OSAH-SECSTATE-CE-1238680-60-Howells (2012)
8. O'Brien v. Gross, Docket No. OSAH-SECSTATE-CE-0829726-60-Malihi (2008)

Special Requirements:

The general primary for Georgia State House District 29 shall be held on Tuesday, May 22, 2018. The hearing for this matter and a decision is needed on or before the date of the general primary.

The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Chris Harvey
DIRECTOR OF ELECTIONS

March 29, 2018

VIA CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Maria Del Rosario Palacios
4347 Pearhaven Lane
Gainesville, GA 30504

Re: Received Written Complaint to Challenge Candidate Qualifications,
Maria Del Rosario Palacios for Georgia State House District 29

Dear Ms. Palacios:

On March 8, 2018, you submitted a Declaration of Candidacy and Affidavit for the office of Georgia State House District 29. This letter serves to inform you that an elector has challenged your qualifications for failure to meet the requisite term of being a citizen of Georgia for the office of the Georgia State House District 29, as required by the Georgia Constitution, Article III, Section 2, Paragraph 3. A copy of the written complaint is enclosed for your reference.

This matter has been referred to the Office of State Administrative Hearings ("OSAH") for review by an administrative law judge and an expedited hearing has been requested. Please direct any inquiries to OSAH with respect to a hearing:

225 Peachtree Street NE, Suite 400
4th Floor, South Tower
Atlanta, Georgia 30303
Telephone: 404-657-2800

Sincerely,

Chris Harvey
Election Director

Enclosures

Head, Jansen

From: Broce, Candice
Sent: Friday, March 16, 2018 11:07 AM
To: Head, Jansen
Subject: FW: Challenge to qualification.

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To: Simmons, Jessica <jsimmons@sos.ga.gov>
Subject: Challenge to qualification.

Jessica,

I am writing to submit a written challenge to the qualification of Maria Palacios (also known as Maria Del Rosario Palacios) for the Georgia House of Representatives District 29. One of the qualifications listed is that a candidate "must have been a citizen of Georgia for at least two years." I request that you investigate her qualification for this public office as she became a United States citizen in 2017.

Best Regards,

Ryan Sawyer
2501 Katherine Circle
Gainesville, Georgia 30506

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name) MARIA D PALACIOS C. Date of Delivery 02APR18

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

Maria Del Rosario Palacios
4347 PearHaven Lane
Gainesville, GA 30504

9590 9402 2174 6193 7632 85

2. Article Number (Transfer from service label)
7015 3010 0001 7654 1948

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ sured Mail
sured Mail Restricted Delivery
ver $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

USPS TRACKING # METRO GA 302 [illegible] 18

9590 9402 2174 6193 7632 85

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Justine Poteau, Legal Affairs Coordinator
Secretary of State, Elections
2 Martin Luther King Jr. Dr. SE
West Tower, Suite 802
Atlanta, GA 30334

7015 3010 0001 7654 1948

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®

Certified Mail Fee
$
Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) $
☐ Return Receipt (electronic) $
☐ Certified Mail Restricted Delivery $
☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $
Postage
$
Total Postage and Fees
$
Sent To Maria Del Rosario Palacios
Street and Apt. No., or PO Box No. 4347 Pearhaven Lane
City, State, ZIP+4® Gainesville, GA 30504

Postmark Here
Candidate Challenge

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

The Office of Secretary of State

Brian P. Kemp
SECRETARY OF STATE

Chris Harvey
DIRECTOR OF ELECTIONS

March 29, 2018

VIA CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Ryan Sawyer
2501 Katherine Circle
Gainesville, GA 30506

Re: Your Written Complaint to Challenge Candidate Qualifications,
Maria Del Rosario Palacios for Georgia State House District 29

Dear Mr. Sawyer:

On March 14, 2018, you submitted a written complaint to this office to challenge the qualifications of Maria Del Rosario Palacios who qualified as a candidate for Georgia State House District 29 for the general primary that will be held on May 22, 2018. Specifically, you are challenging whether the candidate has been a citizen of Georgia for at least two years. A copy of your written complaint is enclosed for your reference.

This letter serves to inform you that this matter has been referred to the Office of State Administrative Hearings ("OSAH") for review by an administrative law judge and an expedited hearing has been requested. Please direct any inquiries to OSAH with respect to a hearing:

225 Peachtree Street NE, Suite 400
4th Floor, South Tower
Atlanta, Georgia 30303
Telephone: 404-657-2800

Sincerely,

Chris Harvey
Election Director

Enclosures

Head, Jansen

From: Broce, Candice
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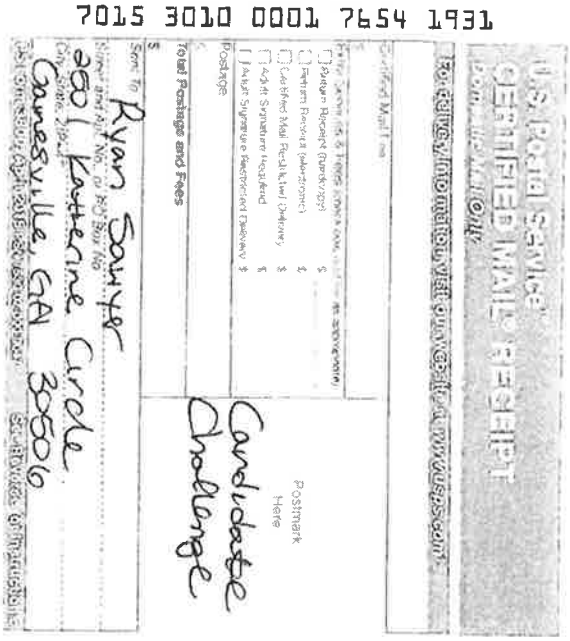
Best Regards,

Ryan Sawyer
2501 Katherine Circle
Gainesville, Georgia 30506


7015 3010 0001 7654 1931
U.S. Postal Service
CERTIFIED MAIL® RECEIPT
Domestic Mail Only
For delivery information, visit our website at www.usps.com®
Certified Mail Fee
Postmark Here
Candidate Challenge
Total Postage and Fees
Sent To
Ryan Sawyer
Street and Apt. No., or PO Box No.
250 Katherine Circle
City, State, ZIP+4®
Gainesville, GA 30506

USPS Tracking®

FAQs

Track Another Package +

Remove

Tracking Number:
70153010000176541931

Expected Delivery on

MONDAY
23 APRIL 2018 by **8:00pm**

Delivered

April 23, 2018 at 8:26 am
Delivered, To Original Sender
ATLANTA, GA 30334

Tracking History

April 23, 2018, 8:26 am
Delivered, To Original Sender
ATLANTA, GA 30334
Your item has been delivered to the original sender at 8:26 am on April 23, 2018 in ATLANTA, GA 30334.

April 23, 2018, 7:46 am
Arrived at Unit
ATLANTA, GA 30303

April 22, 2018, 5:12 am
Arrived at USPS Regional Facility
ATLANTA GA DISTRIBUTION CENTER

April 21, 2018
In Transit to Next Facility

April 20, 2018, 4:09 pm
Departed USPS Regional Facility
ATLANTA NORTH METRO DISTRIBUTION CENTER

April 18, 2018, 10:08 am
Unclaimed/Being Returned to Sender
GAINESVILLE, GA 30503

Reminder to Schedule Redelivery of your item

April 2, 2018, 2:34 pm
Notice Left (No Authorized Recipient Available)
GAINESVILLE, GA 30506

April 2, 2018, 9:58 am
Out for Delivery
GAINESVILLE, GA 30506

April 2, 2018, 9:48 am
Sorting Complete
GAINESVILLE, GA 30506

April 2, 2018, 7:31 am
Arrived at Unit
GAINESVILLE, GA 30501

March 30, 2018, 11:26 pm
Arrived at USPS Regional Facility
ATLANTA NORTH METRO DISTRIBUTION CENTER

Product Information

Postal Product:

Features:
Certified Mail™

Docket No.: 1835339-OSAH-SECSTATE-CE-69-Beaudrot

RYAN SAWYER
2501 KATHERINE CIRCLE
GAINESVILLE, GA 30506

MARIA DEL ROSARIO PALACIOS
4347 PEARHAVEN LANE
GAINESVILLE, GA 30504

CHRIS HARVEY
OFFICE OF SECRETARY OF STATE
2 MLK JR. DRIVE
SUITE #802 WEST TOWER
ATLANTA, GA 30334

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

RYAN SAWYER,
Petitioner,

v.

MARIA PALACIOS,
Respondent.

Docket No.: 1835339
1835339-OSAH-SECSTATE-CE-69-Beaudrot

FILED
04-20-2018
OFFICE OF STATE ADMINISTRATIVE HEARINGS

NOTICE OF HEARING

Your case has been assigned to a judge and is scheduled for a hearing as follows:

DATE: **MAY 2, 2018**
TIME: **12:00 PM**
LOCATION: **OSAH - OFFICE OF STATE ADMINISTRATIVE HEARINGS**
225 PEACHTREE STREET NE
SUITE 400, SOUTH TOWER
ATLANTA, GA 30303

CONTACT INFORMATION: The judge's assistant is **Kevin Westray - 404-656-3508**; Email: **kwestray@osah.ga.gov**; Fax: 404-818-3772; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

ATTENDANCE: You may attempt to resolve this matter by contacting the opposing party prior to the above hearing date and time. If the matter is not resolved, it is important for you to attend the hearing and to bring witnesses and documents that support your case. **If you do not appear on time, the judge may enter a default and/or dismissal order.**

HEARING PROCEDURES: The hearing will follow the procedures of the Georgia Administrative Procedure Act, O.C.G.A. §§ 50-13-1 to -44, and OSAH's Administrative Rules of Procedure, Ga. Comp. R. & Regs. 616-1-2-.01 to -.43. You have the right to be represented by legal counsel, to respond and present evidence on all issues, to confront and cross-examine witnesses, and to subpoena witnesses and documentary evidence. To obtain subpoenas or for additional information, please visit OSAH's website at *www.osah.ga.gov*. All motions must be made in writing and filed with the judge's assistant, with a copy served simultaneously upon all parties of record.

GETTING YOUR DECISION: In most cases, decisions are available on OSAH's website within 10 days after the hearing date (including default and/or dismissal orders issued because a party failed to appear). In other cases, it may take up to 30 days to issue the decision. Visit *www.osah.ga.gov*, click on *Get My Decision*, and fill in the required information. Your decision will also be mailed to you. If you do not receive your decision by mail and/or you cannot access it online, please contact the judge's assistant.

PURPOSE OF HEARING: The purpose of the hearing is for the judge to review the agency determination in this matter.

STATUTES AND RULES INVOLVED: The relevant statutes and rules involved are set forth in the determination letter previously issued by the agency.

OSAH FORM 1
ATTACHMENT NO. 2

Legal and Factual Matters to be Resolved:
Qualifications Challenge against Maria Del Rosario Palacios,
Candidate for the Office of Georgia State House District 29

Pursuant to O.C.G.A. § 21-2-5, Mr. Ryan Sawyer challenges the qualification of Maria Del Rosario Palacios, candidate for the general primary Tuesday, May 22, 2018, for Georgia State House District 29. In the written complaint, Mr. Sawyer asserts that the candidate became a citizen of the United States in 2017, and thus, has not been a citizen of Georgia for the requisite period of at least two years. The Georgia State Constitution states, in relevant part, that "[a]t the time of their election, the members of the House of Representatives . . . shall have been citizens of this state for at least two years." GA. CONST. Art. III, Sec. 2, Para. 3(b).

Accordingly, the matter to be resolved at this hearing is whether candidate Maria Del Rosario Palacios has been a "citizen" of Georgia for the requisite period of time.

OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

RYAN SAWYER,	:	
Petitioner,	:	
	:	
v.	:	**DOCKET NUMBER:**
	:	**OSAH-SECSTATE-CE-1835359-69**
MARIA PALACIOS,	:	**Beaudrot**
	:	
Respondent.	:	
	:	

DECISION

Petitioner challenges Respondent's qualification to be a candidate for House District 29. A hearing was scheduled for today, May 2, 2018. Respondent failed to appear.

1.

Every candidate for state office must meet all the constitutional statutory requirements for holding the office sought by the candidate. O.C.G.A. § 21-2-5(a).

2.

At the time of their election, members of the Georgia House of Representatives must have been "citizens of the state for at least two years." GA. CONST., Art. 3, Sec. 2, Par. 3(b). In order to qualify as a citizen of the state of Georgia, an individual must be a citizen of the United States and resident of the State of Georgia. GA. CONST., Art. 1, Sec. 1, Par. 7.

3.

At the time of their election, members of the Georgia House of Representatives must also "have been legal residents of the territory embraced within the district from which elected for at least one year." GA. CONST., Art. 3, Sec. 2, Par. 3(b); O.C.G.A. 28-2-1(b).

4.

The Georgia Election Code provides that a qualified elector from the district in which the candidate is seeking election may challenge the candidate's qualifications to hold office. O.C.G.A. § 21-2-5(b).

5.

In this case, Petitioner contends that Respondent does not meet the qualifications required to be a candidate for House District 29.

6.

Under *Haynes v. Wells*, 273 Ga. 106, 538 S.E.2d 430 (2000), the burden of proof is entirely upon Respondent to establish affirmatively her eligibility for office:

> Thus, the statutes place the affirmative obligation on Haynes [the challenged candidate] to establish his qualifications 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. He failed to make that showing. Hence, his candidacy for the fifth district seat was invalid.

Haynes, 538 S.E.2d at 108-109.

7.

The standard of proof on all issues is the preponderance of the evidence standard. OSAH Rule 616-1-2-.21(4).

8.

Respondent failed to meet her burden of proof by failing to appear for the hearing. Accordingly,

DECISION

IT IS HEREBY ORDERED THAT Respondent, Maria Palacios, is not qualified to be a candidate for House District 29 and her name shall be removed from the ballot.

May 2, 2018.

CHARLES BEAUDROT, JUDGE

BEFORE THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA

RYAN SAWYER, Petitioner, vs. MARIA PALACIOS, Respondent.	Docket No.: 1835339 1835339-OSAH-SECSTATE-CE-6-Beaudrot

RESPONDENT MARIA PALACIOS'S MEMORANDUM IN OPPOSITION TO CANDIDATE QUALIFICATIONS CHALLENGE

Respondent Maria Palacios, a candidate for Georgia State House District 29, submits this memorandum in opposition to the candidate qualifications challenge submitted by Petitioner Ryan Sawyer pursuant to O.C.G.A. § 21-2-5. The Petitioner's challenge alleges that Ms. Palacios should be disqualified as a candidate solely because she became a United States citizen in 2017—a fact she does not dispute—because Article III, Section 2, Paragraph 3(b) of the Georgia Constitution (the "Qualifications Clause") allegedly requires candidates to be United States citizens for at least two years before the time of election.[1] For the reasons stated below, the Secretary of State's Office should dismiss Petitioner Sawyer's challenge or otherwise rule that Respondent is qualified to be a candidate for Georgia State House District 29.

The legal analysis in this matter is straightforward. Petitioner Sawyer's challenge fails on its face because the plain text of the Qualifications Clause only requires, with respect to United

[1] A hearing date before an administrative law judge was scheduled for May 2, 2018. Counsel for Respondent was retained on May 4, 2018, and it is our understanding that the administrative law judge has recommended that Ms. Palacios be disqualified as a candidate. However, because the issue in this case turns on a question of law, no factual hearing is necessary, and the matter can be decided on the papers.

States citizenship, that candidates be "citizens of the United States" "[a]t the time of their election." That Clause provides, in full:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

(Emphasis added). Since Ms. Palacios will obviously be a "citizen[] of the United States" "[a]t the time of their election" this year, she has satisfied that qualification. The durational two-year requirement Petitioner mistakenly relies upon only applies to the separate state citizenship requirement ("At the time of their election, the members of the House of Representatives . . . shall have been citizens of this state for at least two years" (emphasis added)).

Petitioner's challenge appears to rest on the premise that being a "citizen of the state" is exactly the same thing as being a "citizen of the United States," but this cannot be the case since the Qualifications Clause expressly treats them differently. While the Georgia Constitution elsewhere provides that all "citizens of the United States" automatically become "citizens of this state," Ga. Const., Art. 1, § 1, Para. VII, as does the United States Constitution, U.S. Const., Amend. XIV, that does not preclude the possibility that one can be a citizen of the state while *not* being a citizen of the United States. In fact, by imposing a two-year durational residency requirement solely with respect to state citizenship but not United States citizenship, the Qualifications Clause expressly contemplates a scenario where one could be a citizen of the state while not being a citizen of the United States. For example, a candidate could be a citizen of the state from 2016 to 2018, but a citizen of the United States in 2018, and satisfy the requirements of the Qualifications Clause.[2]

[2] By way of illustration, the two-year durational requirement similarly does not apply to the separate clause requiring that candidates "be at least 21 years of age" "[a]t the time of their election." In other

This may beg the question of what it means to be a "citizen of the state," an arcane phrase dating back to at least 1877,[3] but this question need not be definitively answered to dismiss Petitioner Sawyer's challenge. The challenge should be dismissed on its face because it fails to make a prima facie case: the challenge rests entirely on the mere fact that Ms. Palacios became a United States citizen in 2017; there is no durational requirement with respect to United States citizenship; Ms. Palacios undisputedly satisfies the United States citizenship requirement; the two-year durational requirement only applies to state citizenship; and Petitioner's challenge makes no factual allegation that Ms. Palacios has not been a "citizen of this state" for at least two years, nor does it proffer a legal interpretation of that phrase that Ms. Palacios allegedly does not satisfy.

But even if the Secretary of State's Office were to find it necessary to define what it means to be a "citizen of the state" in this matter, Ms. Palacios would prevail. While counsel for Ms. Palacios was unable to locate a Georgia court decision interpreting that arcane phrase, much less any recent court decision doing so, several decades- and centuries-old court decisions from other states—including high court decisions and decisions specifically concerning electoral or candidate qualifications—consistently interpret this old formulation to mean that one is a "citizen of the state" when they are a resident or domiciliary (i.e., live and intend to remain there) of that state. *See, e.g.*, the following cases, which have been bulleted for clarity:

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words, a candidate may be 21 years of age at the time of election; they do not need to be 23 years of age; otherwise, the drafters would have likely said so plainly.

[3] When pulling up the Qualifications Clause on Westlaw, it indicates that prior versions of the Qualifications Clause date back to 1877. Looking at the 1877 Georgia Constitution reveals that the "citizens of this state" formulation has remained unchanged since that time. *See* Ga. Const. (1877), Art. III, § VI, Para. I ("The Representatives shall be citizens of the United States who have attained the age of twenty-one years, and who shall have been citizens of this state for two years . . ."), *found at:* https://bit.ly/2K340Lz.

- *Crosse v. Bd. of Sup'rs of Elections of Baltimore City*, 221 A.2d 431, 433-36 (Md. 1966) (Maryland Constitution's five-year "citizen of the State" durational requirement for Sheriff candidates "was meant to be synonymous with domicile, and . . . citizenship of the United States is not required, even by implication, as a qualification for this office");[4]

- *McKenzie v. Murphy*, 1863 WL 444 (Ark. 1863) (six-month "citizen of this state" durational requirement for electors in Arkansas Constitution of 1836 "mean[s] only an inhabitant, a resident of a town, state, or county, without any implication of political or civil privileges");

- *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 564-65 (N.D. 1935) ("The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors mean substantially the same thing" (citing cases));

- *Smith v. Birmingham Waterworks Co.*, 16 So. 123, 125-26 (Ala. 1894) ("citizens of Birmingham" "has the same meaning and operation as 'inhabitant'"), *overruled on other grounds by City of Montgomery v. Smith*, 88 So. 671 (Ala. 1921);

- *Halaby v. Bd. of Dirs. Of Univ. of Cincinnati*, 123 N.E.2d 3, 5 (Ohio 1954) ("It is apparent, however, from a study of legislation and court decisions, that, except where a citizen of the United States is referred to, . . . 'citizen[]' is often used in legislation where 'domicile' is meant");

- *Bacon v. Bd. of State Tax Comm'rs*, 85 N.W. 307, 309-10 (Mich. 1901) (interpreting "citizens of this state," holding, "We think the legislature intended to use the word 'citizen' as synonymous with 'inhabitant,' or 'resident'");

- *Sedgwick v. Sedgwick*, 144 P. 488, 490 (Colo. 1911) (fact that Colorado "had long been in good faith his genuine home and domicile, . . . made him a citizen of the state . . . .");

- *Union Hotel Co. v. Thompson Hersee*, 34 Sickels 454, 461 (N.Y. 1880) ("citizens of Buffalo" can mean "an inhabitant" or "permanent resident");

- *W. H. Cobbs and Another v. C. Coleman*, 14 Tex. 594, 597 (Tex. 1855) ("the phrase 'every citizen' . . . is not to be taken in a restricted sense as designating only the native-born or naturalized citizen, but in its general acceptation and meaning as descriptive of the inhabitants of this county");

- *Vachikinas v. Vachikinas*, 112 S.E. 316, 318 (W.Va. 1922) ("citizen of this state" includes aliens who are "bona fide residents domiciled in the State");

- *In re Wehlitz*, 1863 WL 1069 (Wis. 1863) ("Under our complex system of government there may be a citizen of a state who is not a citizen of the United States");

- *Stevens v. Larwill*, 84 S.W. 113, 117-18 (Mo. App. 1904) (interpreting "citizen of Tennessee," observing that "[t]he words 'inhabitant,' 'citizen,' and 'resident' mean

[4] The highest courts in New York, Maryland, and West Virginia are called the Court of Appeals.

substantially the same thing, and one is an inhabitant, resident, or citizen of the place where he has his domicile or home.");

- *Powell Estate*, 71 Pa. D. & C. 51, 59 (Pa. Orphans' Ct. 1950) ("State citizenship is predicated upon domicile"); *see also id.* at 60-61 (citing numerous cases interpreting state "citizen" to mean either a mere "resident" or "inhabitant" or something more, like a domiciliary);
- *Gomes v. Pub. Utils. Comm'n*, 1981 WL 390992 (Superior Ct. R.I. 1981) (need not be United States citizen to be a "citizen resident within this state").

Petitioner Sawyer does not, and cannot, dispute that Ms. Palacios has been both a resident and a domiciliary of Georgia for well over two years. As the attached documents show,[5] she obtained legal permanent residence in 2009; obtained a driver's license in December 2014 while living in Gainesville, Georgia; applied for citizenship on April 11, 2016 while living in Gainesville, Georgia; and, of course, obtained United States citizenship in 2017 and lives in Gainesville today.

CONCLUSION

"Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified." *Gazan v. Heery*, 187 S.E. 371, 378 (Ga. 1936). As shown above, no "liberal construction" is even necessary because the plain language of the Qualifications Clause disposes of Petitioner Sawyer's challenge.

For the foregoing reasons, Respondent Maria Palacios requests that the Secretary of State's Office dismiss Petitioner Sawyer's challenge or otherwise rule that Respondent is qualified to be a candidate for Georgia State House District 29.

Respectfully submitted,

[5] Ms. Palacios's birthdate, street address, and A number are redacted from the documents.

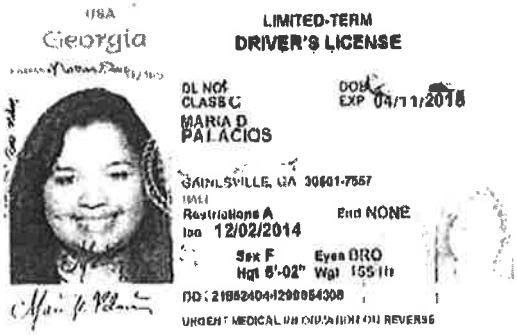
this 7th of May, 2018

/s/ Sean J. Young

Sean J. Young (Ga. Bar No. 790399)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
770-303-8111
syoung@acluga.org

Attorney for Respondent Maria Palacios


PERMANENT RESIDENT CARD


USA
Georgia
LIMITED-TERM
DRIVER'S LICENSE
DL NO
CLASS C
DOB
EXP 04/11/2018
MARIA D
PALACIOS
GAINESVILLE, GA 30501-7557
Restrictions A
End NONE
Iss 12/02/2014
Sex F
Eyes BRO
Hgt 5'-02"
Wgt 155 lb
DD: 21982404129005430B
URGENT MEDICAL INFORMATION ON REVERSE

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

Receipt			NOTICE DATE: April 12, 2016
CASE TYPE: N-400, Application for Naturalization			USCIS A#: A060746901
APPLICATION NUMBER: NBC*0006769539	RECEIVED DATE: April 11, 2016	PRIORITY DATE: April 11, 2016	PAGE: 1 of 1

APPLICANT NAME AND MAILING ADDRESS

MARIA D PALACIOS
GAINESVILLE, GA 30504

18 00003840

PAYMENT INFORMATION:

Single Application Fee: $680.00
Total Balance Due: $0.00

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth:
Address Where You Live: GAINESVILLE, GA 30504

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

Upon receipt of all required Record Checks, you will be scheduled to appear for an interview at your local USCIS field office.

For more information about the naturalization process and eligibility requirements, please read A Guide to Naturalization (M-476). USCIS also has a free booklet to help study for the naturalization test. Ask about Learn About the United States: Quick Civics Lessons when you go to have your fingerprints taken at the Application Support Center.

You can get a copy of the Guide, the Quick Civics Lessons booklet, and other civics and citizenship study materials from the USCIS website (www.uscis.gov). You can also visit the USCIS website to find valuable information about forms and filing instructions, and about general immigration services and benefits.

If you have additional questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TTD at **1-800-767-1833**.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other case you may have filed.

USCIS Office Address:
USCIS National Benefits Center
P O Box 648005
Lee's Summit, MO 64002
Attention N-400 Naturalization Applications
NBC*0006769539

USCIS Customer Service Number:
(800)375-5283
APPLICANT COPY

If this is an interview or biometrics appointment notice, please see the back of this notice for important information. Form I-797C 07/11/14 Y

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Respondent Maria Palacios's Memorandum in Opposition to Candidate Qualifications Challenge, including the attached Exhibit A, was e-mailed to the Office of the Secretary of State via Chris Harvey (charvey@sos.ga.gov) and Ryan Germany (rgermany@sos.ga.gov), and mailed via FedEx Overnight to Petitioner Ryan Sawyer at 2501 Katherine Circle, Gainesville, GA 30506.

This 7th day of May, 2018

/s/ Sean J. Young_____

Sean J. Young (Ga. Bar No. 790399)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
770-303-8111
syoung@acluga.org

Attorney for Respondent Maria Palacios

ROBBINS
LITIGATION AND REGULATORY LAW

VINCENT R. RUSSO
DIRECT LINE: 678-701-9381
Email: vrusso@robbinsfirm.com

May 17, 2018

VIA FEDERAL EXPRESS AND EMAIL

The Honorable Brian P. Kemp
Georgia Secretary of State
214 State Capitol
Atlanta, Georgia 30334
Attn: Chris Harvey, Elections Director
charvey@sos.ga.gov

Re: Challenge to the Eligibility and Qualifications of Maria Del Rosario Palacios Candidate for Georgia State House of Representatives District 29

Dear Secretary Kemp:

Our law firm represents Ryan Sawyer, a registered voter and eligible elector in Georgia State House of Representatives District 29 ("House District 29"). Mr. Sawyer resides and is registered to vote at 2501 Katherine Circle, Gainesville, Georgia 30506.[1] Pursuant to O.C.G.A. § 21-2-5, Mr. Sawyer has standing to challenge the eligibility and qualifications of Maria del Rosario Palacios, a candidate for the office of State Representative for House District 29, to seek and hold that office.

It is well established under Georgia law that the burden of proof in an action challenging the eligibility of a candidate for office is placed entirely upon the candidate to establish his or her eligibility for office. *Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The party challenging the candidate "is not required to disprove anything" regarding the candidate's eligibility to run for office. *Id.* As further detailed below, records and Georgia law support Administrate Law Judge Beaudrot's findings issued on May 2, 2018 (the "Decision") and the Office of Secretary of State should affirm the Decision.

I. Background

The General Election for House District 29 is November 6, 2018. On March 8, 2018, Maria Palacio filed a sworn Declaration of Candidacy and Affidavit ("Declaration") with the

[1] A true and correct copy of Mr. Sawyer's Hall County precinct card is attached as Exhibit A.

Democratic Party of Georgia to qualify as a candidate for House District 29.[2] Ms. Palacio's Declaration indicates that she has been a legal resident of the State of Georgia for 8 consecutive years. *Id.* Ms. Palacio does not dispute the fact that she became a citizen of the United States less than a year ago – in June 2017. (Respondent Maria Palacio's Memorandum in Opp. to Candidate Qualifications Challenge at 3.)

On May 2, 2018, Administrative Law Judge Beaudrot (the "ALJ") held a hearing on Mr. Sawyer's challenge to Ms. Palacios's candidacy qualifications. While Ms. Palacios received notice of the hearing, she failed to appear. That same day, the ALJ issued the Decision, finding Ms. Palacios failed to meet the qualifications to be a candidate for the office of State Representative for House District 29. On May 7, 2018, Ms. Palacio, through the American Civil Liberties Union Foundation of Georgia, Inc. (the "ACLU"), filed opposition to the Decision, asserting a candidate running for office in Georgia only must be a citizen of the United States at the time of election. Ms. Palacios' reasoning ignores the plain language of the Georgia Constitution and the United States Constitution, and is nonsensical.

II. Law and Analysis

The Georgia Election Code requires 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. § 21-1-5(a). The Georgia Constitution establishes the qualifications to hold a seat in the General Assembly. In relation to the Georgia House of Representatives, the Georgia Constitution provides:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

GA. CONST. art. III, § 2, ¶ III(b). Thus, the Georgia Constitution sets forth four clear requirements that a person must meet at the time of election to qualify to be a member of the Georgia House of Representatives: (1) be a citizen of the United States; (2) be at least 21 years

[2] A true and correct copy of Mr. Palacios' Declaration of Candidacy and Affidavit is attached as Exhibit B.

old; (3) be a citizen of Georgia for at least two years; and (4) be a legal resident of the district from which elected for at least one year.

The Georgia Constitution further defines the parameters for Georgia citizenship: "**All citizens of the United States, resident in this state, are hereby declared citizens of this state.**" GA. CONST. art. I, § 1, ¶ VII (emphasis added). Similarly, the United States Constitution provides that "all persons born or naturalized in the United States . . . are citizens of the United States **and of the State wherein they reside.**" U.S. CONST. AMEND. XIV, § 1 (emphasis added). Put simply, to be a citizen of this state, a person must be both (1) a United States citizen, and (2) reside in Georgia.

In turn, to meet the two-year Georgia citizenship requirement and be eligible for election as a State Representative in the November 6, 2018 General Election, Ms. Palacios must have been a United States citizen **and** a resident of Georgia for at least two years from the date of the November 6, 2018 General Election, i.e. since at least November 6, 2016. Ms. Palacios did not become United States citizen until June 2017, and as such, Ms. Palacios will not have been a Georgia citizen for at least two years at the time of the November 2018 General Election. Therefore, Ms. Palacios does not meet the constitutional requirements to seek and hold office as State Representative.

In her opposition, Ms. Palacios' response cites cases from other states to assert that residency in Georgia is equivalent to citizenship here.[3] Ms. Palacio seemingly ignores the plain language of the Georgia Constitution and Georgia law. The fact that Ms. Palacio has resided in Georgia for 8 years does not automatically make her a Georgia citizen for 8 years. The Georgia Constitution's definition of a Georgia citizen necessarily requires an individual to be a citizen of the United States who resides in Georgia. *See* GA. CONST. art. I § 1, ¶ VII. The Georgia Code confirms this. Code Section 1-2-6 sets forth the rights of citizens, which includes "**[t]he right of**

[3] The response also contains a disjointed argument that Ms. Palacios only has to be a United States citizen "at the time of the election," to meet the two-year Georgia citizenship requirement. If adopted, this interpretation of the Georgia Constitution would lead to an absurd result. *Roberts v. Deal*, 290 Ga. 705 (2012) (noting statutes (including the Constitution) must be construed to avoid absurd results). Ms. Palacios' interpretation would nullify the Georgia citizenship requirement and replace it with a two-year state residency requirement. However, the two-year Georgia citizenship requirement is not merely a two-year state residency requirement. It requires United States citizenship coupled with Georgia residency for two years.

the elective franchise." (emphasis added). Ms. Palacio recognizes she could not vote in any election (national, state, or local) until she became a naturalized citizen.[4]

While Ms. Palacio may have resided in Georgia for 8 years, she did not attain citizenship – from either the United States or Georgia – until she became a naturalized United States citizen in June 2017. Therefore, she is ineligible to be a candidate in the upcoming election for State House District 29, or hold the office of State Representative, as she fails to meet the two-year requirement as a Georgia citizen under the Georgia Constitution.

III. Conclusion

While Ms. Palacios is now a United States citizen with all of the rights of a United States citizen, she still must meet the eligibility requirements to qualify to seek and hold office. Since Ms. Palacios has not been a United States citizen resident in Georgia for two years, she is not qualified and eligible to be a candidate for House District 29 in the 2018 General Election. Accordingly, we respectfully request that the Secretary of State disqualify Maria Palacios as a candidate for House District 29 and withhold her name from the ballot or strike Ms. Palacios's name from the ballot if the ballots have been printed. If her name cannot be withheld or struck, we request that in accordance with O.C.G.A. § 21-2-5(c), that notices be placed at affected polling places advising voters of her disqualification and that all votes cast for Ms. Palacios will be voided and not counted. Thank you for your attention to this matter.

Sincerely,

Vincent R. Russo

Enclosures

Cc: Sean J. Young, Esq.
Attorney for Candidate
syoung@acluga.org

Kimberly Anderson, Esq.
David B. Dove, Esq.

[4] Regina Willis, *Candidate in Gainesville takes on voting, diversity*, BETTERGEORGIA.ORG dated Sep. 11, 2017, available at http://bettergeorgia.org/2017/09/11/candidate-in-gainesville-takes-on-voting-diversity/ (last accessed May 16, 2018).

EXHIBIT A

VOTER REGISTRATION OFFICE
2875 PO BOX 1435
BROWNS BRIDGE RD
GAINESVILLE GA 30503
PHONE: 770-531-6945

RETURN SERVICE REQUESTED

REG. DATE	09/06/2007
ISSUE DATE	05/17/2018
REG. No.	05588960

HALL COUNTY PRECINCT CARD
SIGN CARD AND KEEP FOR YOUR RECORDS

PRECINCT NAME: WHELCHEL

POLLING PLACE: RIVERBEND BAPTIST CHURCH
1715 CLEVELAND HIGHWAY
GAINESVILLE GA 30501 - 6000

CITY PRECINCT NAME:

POLLING PLACE:

VOTING DISTRICTS:

003	049	029	NEST	003	LRG
CONG	SENATE	HOUSE	JUDIC	COMMI	SCHOL

RYAN EUGENE SAWYER
2501 KATHERINE CIR
GAINESVILLE GA 30506 - 1843

ATTENTION: This is your NEW Voter Registration Precinct Card. It replaces any other Voter Card you currently have in your possession. Keep for your records.

(Cut or fold on the dotted line for wallet card)

If you change your address within the county, complete this form and mail to the return address on the front of this card.

Note: Change of address must be submitted at least 30 days preceding any election.

If you move to another county or if there is a change in your legal name, you must complete a new voter registration application in order to remain qualified to vote.

This card may not be used as evidence to prove United States Citizenship or as identification to vote. (ref.1996 United States Public Law 104-99)

YOUR NEW RESIDENCE ADDRESS WITHIN COUNTY
(PLEASE PRINT)

Number Street Apartment

City Zip Code

Mailing Address (If Different)

City Zip Code

Daytime Date

VOTER'S SIGNATURE

From the Secretary of State website, www.sos.ga.gov, a registered voter with a valid Georgia driver's license or identification card issued by the GA Department of Driver Services may change his or her name or address using Online Voter Registration. You may also access Online Voter Registration by downloading the GA Votes app.
Visit our website at www.mvp.sos.ga.gov/MVP, download the GA Votes app or contact your local registrar's office.

For Android **For Apple**

EXHIBIT B

For The Chairman and Secretary of
State Executive Committee of the
DEMOCRATIC Party
State of Georgia

DECLARATION OF CANDIDACY AND AFFIDAVIT
(STATE)

I, the undersigned, being first duly sworn on oath, do depose and say, my name is MARIA DEL ROSARIO PALACIOS;

my residence address is 4347 PEARHAVEN LN (Street);

GAINESVILLE (City) HALL (County) GA 30504 (State) (Zip Code);

my post office address is 4347 PEARHAVEN LN GAINESVILLE GA 30504;

my telephone number is [redacted] (Home);

my profession, business, occupation (if any) is NON-PROFIT COORDINATOR;

the name of my precinct is 002; I am an elector of the county of my residence and eligible to vote in the primary election in which I am a candidate for nomination, the name of the office I am seeking is STATE REPRESENTATIVE, DISTRICT 29 (If more than one, state Post Number); my date of birth is [redacted]089;

I have been a legal resident of the State of Georgia for 8 consecutive years, I have been a legal resident of HALL county for 8 consecutive years, I have been a legal resident of my district (if applicable) for 8 consecutive years, I have been a legal resident of my circuit (if applicable) for _____ consecutive years, I am a citizen of the United States, I am eligible to hold such office; I am a candidate for nomination in the DEMOCRATIC GENERAL PRIMARY (Primary) to be held on the 22 day of May, 2018;

I have never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction of domestic violence under the laws of this State, any other State, or of the United States, or, if so convicted that my civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude; I am not 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 (pursuant to Ga. Const. Art. II, Sec. II, paragraph III); I will not knowingly violate any provisions of the Georgia Election Code (O.C.G.A. § 21-2) or of the rules or regulations adopted thereunder; I will not knowingly violate the rules or regulations of the Democratic party.

I understand that any false statement knowingly made by me in this Declaration of Candidacy and Affidavit will subject me to criminal penalties as provided by law and I hereby request you to cause my name to be placed on the ballots to be used in such primary election as a candidate for the nomination I am seeking.

Maria del Rosario Palacios
(Signature of Candidate)

Sworn to and subscribed before this 6th day of March 2018

Chrystian S Woods
(Notary Public)

CHRYSTIAN S WOODS
Notary Public, Georgia
Cobb County
My Commission Expires
January 23, 2022

My Commission Expires [illegible]

(Required by Ga. Election Code O.C.G.A. § 21-2-153.)

I desire that my name appear on the ballot as follows: (the surname of the candidate shall be as it appears on the candidate's voter registration card)

MARIA PALACIOS
(Please Print)

Sworn to and subscribed before me this same date by official

MARIA PALACIOS
(Signature)

1. ☑ I hereby tender check/cash in the amount of $400.00

NAME OF BANK [redacted]

CHECK NUMBER

In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check as prescribed in O.C.G.A. § 21-2-5(d).

☐ I hereby file a Pauper's Affidavit, accompanied by a qualifying petition as prescribed in O.C.G.A. § 21-2-133 (a.1), in lieu of paying the qualifying fee

Form #DC-S-09

BEFORE THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA

RYAN SAWYER, Petitioner, vs. MARIA PALACIOS, Respondent.	Docket No.: 1835339 1835339-OSAH-SECSTATE-CE-6-Beaudrot

RESPONDENT MARIA PALACIOS'S REPLY MEMORANDUM IN OPPOSITION TO CANDIDATE QUALIFICATIONS CHALLENGE

Respondent Maria Palacios, a candidate for Georgia State House District 29, submits this reply memorandum in response to Petitioner Ryan Sawyer's May 17, 2018, letter arguing for Ms. Palacios's disqualification. The entirety of Petitioner's letter rests on a single premise: that because both the Georgia Constitution and United States Constitution declare that all citizens of the United States are citizens of the state, GA. CONST. art. I, § 1, ¶ VII; U.S. CONST. AMEND. XIV, § 1, therefore all citizens of the state must at least be citizens of the United States.

This is illogical. If we say that "all cars are considered vehicles," it does not follow that "all vehicles must at least be cars." Similarly, just because all United States citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens.

Footnote 3 of Petitioner's letter suggests that Ms. Palacios's interpretation yields an absurd result because it would equate state citizenship with state residency. It is unclear how this is absurd, since an avalanche of cases from other states cited by Ms. Palacios's prior brief has

been equating the two concepts for over 100 years, and Petitioner does not cite a single case from anywhere suggesting otherwise.

For the sake of completeness, Ms. Palacios reminds the Secretary of State's Office that, as discussed in the prior brief, some cases debate whether state citizenship means merely residency, or whether it means domiciliary (residency + an intent to remain). Since GA. CONST. art. III, § 2, ¶ III(b) already requires that the candidate be "legal residents" of the district for "at least one year," it would not at all be unusual to interpret "citizens of this state" to mean "domiciliary"—a definition different from "residency," but a requirement that Ms. Palacios undisputedly satisfies.

For the foregoing reasons, Respondent Maria Palacios requests that the Secretary of State's Office dismiss Petitioner Sawyer's challenge or otherwise rule that Respondent is qualified to be a candidate for Georgia State House District 29.

Respectfully submitted,

this 17th of May, 2018

/s/ Sean J. Young

Sean J. Young (Ga. Bar No. 790399)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
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Attorney for Respondent Maria Palacios

IN THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA

RYAN SAWYER,	)	
	)	
Petitioner,	)	
	)	**Docket Number:**
v.	)	**1835339-OSAH-SECSTATE-CE-6-**
	)	**Beaudrot**
MARIA PALACIOS,	)	
	)	
Respondent.	)	
	)	

FINAL DECISION

The Georgia Constitution requires that candidates for the State House of Representatives "shall have been citizens of this state for at least two years." Ga. Const. Art. III, § 2, Para. 3(b). This challenge raises the question of whether a candidate must be a United States citizen (hereinafter "U.S. citizen") in order to be a "citizen of this state." Pursuant to O.C.G.A. § 21-2-5, the Secretary of State makes the following findings and determination with regard to the above-captioned matter:

I. Summary of Proceedings

1.

On March 8, 2018, Respondent qualified to be a candidate for the Democratic Party nomination for the Georgia House of Representatives District 29 (hereinafter "HD 29"). (Ex. 3: Certified Copy of Maria Palacios Declaration of Candidacy and Affidavit).

2.

On March 14, 2018, Petitioner filed a written challenge with the Secretary of State giving reasons why Petitioner believed Respondent is not qualified to seek and hold the public office for HD 29. Specifically, Petitioner contends that Respondent became a U.S. citizen in 2017, and thus,

Respondent does not meet the legal requirement of being a citizen of the state for at least two years. (Ex. 1: OSAH Form 1 and attachments).

3.

Petitioner's individual voter report from the Georgia Voter Registration System indicates that Petitioner is eligible to vote in HD 29 and, therefore, Petitioner has standing to bring this challenge. (Ex. 2: Certified Copy of Ryan Sawyer Individual Voter Report).

4.

On or about March 29, 2018, the Elections Division of the Secretary of State's Office (hereinafter "Elections Division") sent a notification letter to Petitioner and Respondent by certified mail to notify both parties of its receipt of the Complaint and referral of such matter to the Office of Administrative Hearings (hereinafter "OSAH") for review by an administrative law judge. A returned certified mail receipt indicates Respondent received the notification letter. Although a certified mail receipt was not returned from Petitioner, the tracking number assigned to such mailing indicated that Petitioner received the notification letter on April 23, 2018. (Ex. 4: Copy of Notification Letter and Certified Mailing to Ryan Sawyer; Ex. 5 Copy of Notification Letter and Certified Mailing to Maria Palacios).

5.

Judge Beaudrot held an administrative hearing at OSAH in this matter on May 2, 2018. Both Petitioner and Respondent failed to appear. Judge Beaudrot then entered an Initial Decision finding that Respondent failed to meet her burden of proof and recommending that she be disqualified as a candidate for HD 29. (Ex. 6: OSAH Initial Decision).

6.

Subsequent to the OSAH Initial Decision, Attorneys for both Respondent and Petitioner filed memorandums with the Secretary of State in support of their respective positions. Respondent

argues that it is not necessary to be a U.S. citizen in order to be "citizen of this state." Petitioner asserts that U.S. citizenship is necessary to be a Georgia citizen. (Ex. 7: Copy of Respondent's Memorandum in Opposition to Candidate Qualifications Challenge; Ex. 8: Copy of Petitioner's Memorandum in Response to Respondent's Memorandum; Ex. 9: Copy of Respondent's Reply Memorandum).

II. Findings of Fact

The relevant fact is not in dispute. Respondent obtained status as a U.S. citizen in 2017. *See* Respondent's Memorandum in Opposition to Candidate Qualifications Challenge, p. 1.

III. Conclusions of Law

1.

Every candidate for state office must meet the constitutional and statutory qualifications for holding the office being sought. O.C.G.A. § 21-2-5(a).

2.

The Georgia Constitution requires:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2, Para. 3(b) (emphasis added).

3.

The burden of proof is on the candidate to establish his or her eligibility for public office. Haynes v. Wells, 273 Ga. 106 (2000) (clarifying that the Georgia Election Code places the burden on the candidate to establish his or her eligibility to run for office).

4.

With regard to citizenship, the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Georgia Constitution provides, "[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state...." Ga. Const. Art. I, § 1, Para. 7.

5.

In 1984, the Secretary of State requested an official opinion from the Georgia Attorney General as to "whether a person must be a naturalized citizen of the United States in order to be a citizen of the State of Georgia or of a county within the State of Georgia." 1984 Op. Atty Gen. Ga 122. Relying on the same state and federal constitutional provisions quoted above, the Attorney General concluded as follows:

> Based upon the foregoing, it is my official opinion that a person must be a citizen, either natural born or naturalized, of the United States and must reside within this State in order to be a citizen of the State of Georgia and that, since a county is only a subdivision of the state and is not a sovereign, citizenship of a county means only domicile or residence within the county.

Id. While not binding on courts, Attorney General opinions are considered persuasive authority. Moore v. Ray, 269 Ga. 457, 459 (1998) (quoting C.W. Matthews Contracting Co. v. Collins, 214 Ga. App. 532, 533 (1994)).

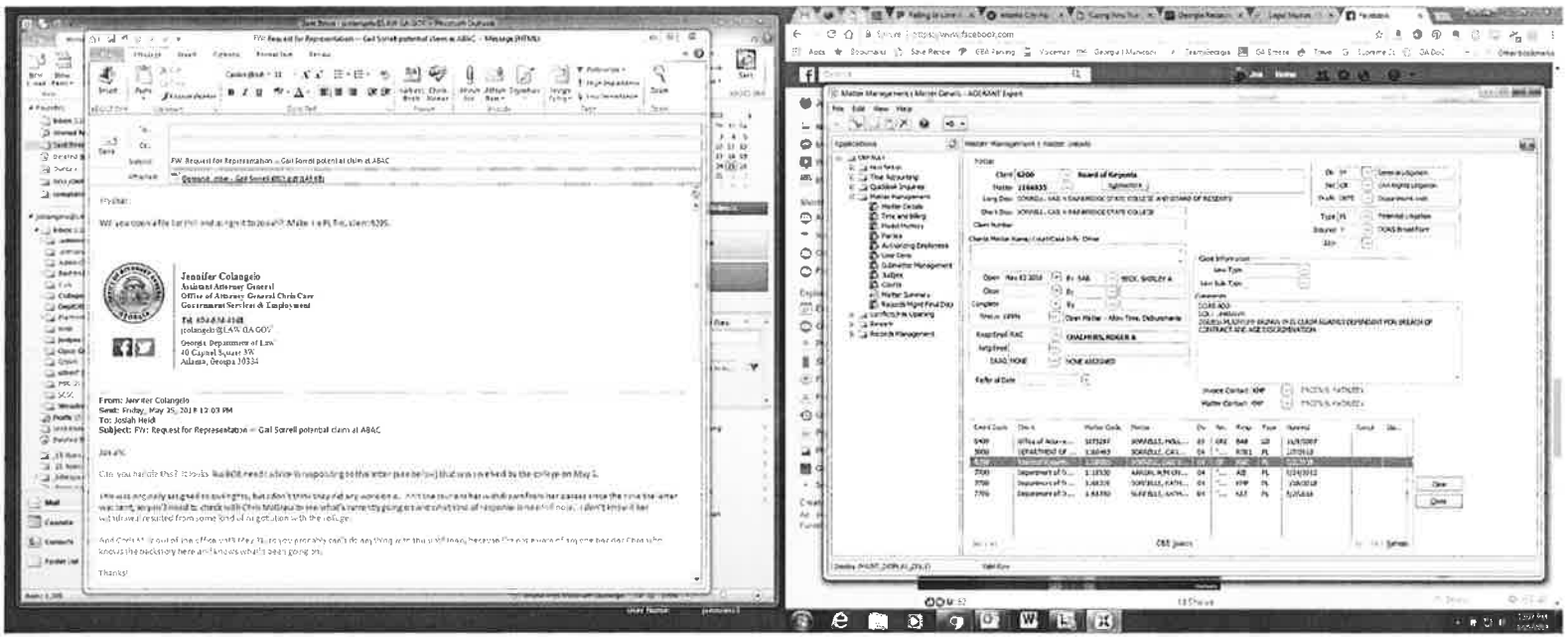
IV. Decision

In keeping with the Attorney General opinion, I find that it is necessary to be a U.S. citizen in order to be a "citizen of this state." Therefore, Respondent does not meet the requirement of Art. III, § 2, Para. 3(b) of the Georgia Constitution that she be a "citizen of this state" for at least two years prior to her election. **IT IS HEREBY DECIDED** that Respondent, MARIA PALACIOS, is **NOT QUALIFIED** to be a candidate for the office of Georgia State House District

29. A prominent notice shall be placed at each affected polling place advising voters of the disqualification and all votes cast for the candidate shall be void and shall not be counted pursuant to O.C.G.A. § 21-2-5(c).

SO DECIDED this 18th day of May, 2018.

BRIAN P. KEMP
Secretary of State


Jennifer Colangelo
Assistant Attorney General
Office of Attorney General Chris Carr
Government Services & Employment
Georgia Department of Law
40 Capitol Square SW
Atlanta, Georgia 30334
From: Jennifer Colangelo
Sent: Friday, May 25, 2018 12:03 PM
To: Josiah Heidt
Subject: FW: Request for Representation – Gail Sorrell potential claim at ABAC

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the foregoing **NOTICE OF FILING THE ADMINISTRATIVE RECORD** via the Odyssey e-file system and by e-mailing an electronic copy in PDF format to the following counsel of record:

Sean Young
SYoung@aclu.org

Vincent Russo
vrusso@robbinsfirm.co,

Kimberly Anderson
Kimberly.Anderson@robbinsfirm.com

This 29th day of May, 2018.

/s/Elizabeth A. Monyak
ELIZABETH A. MONYAK 005745
Senior Assistant Attorney General

EXHIBIT B

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

PETITION TO REVERSE SECRETARY OF STATE'S FINAL DECISION

SUMMARY

Petitioner Maria Palacios, a United States citizen since 2017 who has called Georgia her home since 2009, is a candidate for the uncontested Democratic Party nomination for Georgia State House District 29. On May 18, 2018, the Secretary of State issued a final decision disqualifying her candidacy because she allegedly did not satisfy the Georgia Constitution's requirement that a candidate for the state House of Representatives be a "citizen[] of the state for at least two years" "[a]t the time of their election" (here, November 6, 2018), since she did not become a United States citizen until 2017. Ga. Const. Art. I, § 1, ¶ 7. *See* Final Decision (attached as Exhibit A). This was an error of law, because, as explained below, one does not have to be a United States citizen in order to be a "citizen of the state." Accordingly, Ms. Palacios urgently files this Petition pursuant to O.C.G.A. § 21-2-5(e) seeking reversal of the Secretary of State's misguided decision and an order directing that Ms. Palacios be placed on the November 6, 2018 general election ballot as the Democratic nominee for Georgia State House

District 29. If necessary, Ms. Palacios also asks to be restored to the ballot on Election Day of the uncontested Democratic Primary on May 22.[1]

Though Georgia courts appear to have been silent on the meaning of "citizen of a state," courts around the country—including the highest courts of at least 11 other states—have long interpreted this phrase to mean a someone who is either a "resident" or "domiciliary" (a resident with the intent to remain) of that state, without any requirement that the individual be a United States citizen. *See infra* Argument Part I. Since no party has disputed that Ms. Palacios has lived in Georgia and has intended to remain there since 2009, she clearly satisfies the "citizen of the state" requirement under the Georgia Constitution, regardless of when she became a United States citizen.

Without citing a single case in response to this considerable weight of judicial authority, the Secretary of State's final decision ultimately cites without discussion to a single, one-page Attorney General's opinion from 1984, 1984 Op. Atty Gen. Ga 122 (attached as Exhibit B), which the Secretary of State acknowledges is not binding on the courts. *See, e.g.*, *Moore v. Ray*, 499 S.E.2d 636, 637 (Ga. 1998). The Attorney General's 1984 opinion, in turn, also does not cite any judicial authority and instead rests on a single chain of reasoning: that because both the Georgia Constitution and the United States Constitution provide that all United States citizens are automatically considered citizens of the state in which they reside, Ga. Const. art. I, § 1, ¶

[1] Though Election Day for the primary is on May 22, early voting has concluded and votes have already been cast in favor of Ms. Palacios during that period. Because Ms. Palacios is the only candidate in the Democratic Primary for Georgia State House District 29 and no write-in candidates are allowed in general primaries, O.C.G.A. § 21-2-133(c), she already has the votes needed to secure the Democratic nomination. Nonetheless, out of an overabundance of caution, Ms. Palacios is concurrently filing an Emergency Motion to Stay the Secretary of State's Final Decision through May 22 pending the outcome of this case. Because the Primary is uncontested, there will be no harm in issuing a stay and in allowing the election to proceed with Ms. Palacios on the ballot. As of the filing of this Petition, counsel for Ms. Palacios is in discussions with opposing counsel about precluding the need for a stay.

VII; U.S. Const. Amend. XIV, § 1, then all citizens of the state must at least be United States citizens.

But this reasoning fails basic logic. If we say that "all cars are vehicles," it does not automatically follow that "all vehicles must be cars." Similarly, just because all United States citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens. Rather, this Court should follow the traditional interpretation of "citizen of a state," adopted by the highest courts of other states as meaning resident or domiciliary without a United States citizenship requirement, and it should reject the Attorney General opinion's illogical proposition, which forms the basis of the Secretary of State's final decision.

For these reasons, the Secretary of State's final decision disqualifying Ms. Palacios as a candidate for Georgia State House District 29 should be reversed.

JURISDICTION

This Court has jurisdiction of this appeal of the Secretary of State's final administrative decision concerning a candidate's qualifications pursuant to O.C.G.A. § 21-2-5(e) ("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 final decision was entered on May 18, 2018. The instant petition was filed two days later on May 20, 2018, within the ten day deadline.

PROCEDURAL HISTORY

The procedural posture of this matter is set forth in the Secretary of State's Final Decision. *See* Exhibit A. As the decision recounts, on March 8, 2018, Ms. Palacios qualified to be a candidate for the Democratic Party nomination for the Georgia House of Representatives District 29. On March 14, an elector in the district, Ryan Sawyer, filed a written challenge with

the Secretary of State arguing that because Ms. Palacios became a United States citizen in 2017, she did not satisfy the requirement of being a citizen of the state for at least two years. An administrative hearing was scheduled for May 2, 2018, both parties did not appear, and an initial decision was issued recommending that the Secretary of State's Office disqualify Ms. Palacios as a candidate. Ms. Palacios thereafter obtained counsel, who submitted a brief to the Secretary of State's Office on May 7, 2018, *see* Exhibit C; Mr. Sawyer submitted a response letter on May 17, *see* Exhibit D; and Ms. Palacios submitted a reply brief that same day, *see* Exhibit E. Both parties advanced only legal arguments concerning the meaning of "citizen of a state," and neither party raised any disputed issues of fact or sought a factual hearing. The following day, on May 18, 2018, the Secretary of State issued the final decision disqualifying Ms. Palacios, relying without discussion on a lone Attorney General's opinion from 1984. *See* Exhibit A. This petition followed.

FACTS

As the Secretary of State's final decision acknowledged, there are no disputed issues of fact. *See* Exhibit A at 3. It is undisputed that Ms. Palacios became a United States citizen in 2017, and no one has disputed that Ms. Palacios has lived in Georgia and intended to remain in Georgia since 2009.[2]

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[2] In the proceedings below, Ms. Palacios submitted evidence to show that she has lived in Georgia and intended to remain there since 2009. *See* Exhibit C. The elector who initially challenged her qualifications did not dispute this evidence in his response. *See* Exhibit D.

STANDARD OF REVIEW

This Court has the power to "reverse" the decision of a Secretary of State concerning candidate qualifications "if substantial rights of the appellant have been prejudiced[3] because the . . . decisions of the Secretary of State are" "in violation of the Constitution or laws of this state" or "[a]ffected by other error of law." O.C.G.A. § 21-2-5(e); (e)(1); (e)(4). When there is no factual issue and the question on review is purely legal, this Court does not defer to the Secretary of State's legal conclusions, because courts "have the ultimate authority to construe statutes." *Handel v. Powell*, 670 S.E.2d 62, 65 (Ga. 2008) (upholding reversal of Secretary of State's legal conclusion in candidate qualification decision where the parties "acknowledged there was no factual issue"). The standard of review here is "virtually identical to the standard of review provided in the Administrative Procedure Act, O.C.G.A. § 50-13-19(h) . . . ." *Id.* at 65.

ARGUMENT

As discussed below, the Secretary of State's legal conclusion that Ms. Palacios did not satisfy the Georgia Constitution's durational state citizenship requirement is both "in violation of the Constitution or laws of this state" and/or "[a]ffected by other error of law." O.C.G.A. § 21-2-5(e)(1); (e)(4). Accordingly, the final decision should be reversed. *See, e.g.*, *Handel v. Powell*, 670 S.E.2d 62 (Ga. 2008) (upholding reversal of Secretary of State's final decision concerning candidate qualifications based on an error of law).

I. State citizenship has traditionally meant state residency or domicile and does not require United States citizenship

"Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice

[3] The disqualification of a candidate constitutes prejudice of a substantial right. *See Handel v. Powell*, 670 S.E.2d 62, 65 n.3 (Ga. 2008).

from all those who are in fact and in law qualified." *Gazan v. Heery*, 187 S.E. 371, 378 (Ga. 1936). The sole legal question in this case is whether Ms. Palacios has legally satisfied the Georgia Constitution's requirement that she be a "citizen[] of the state for at least two years" "[a]t the time of their election" (here, November 6, 2018). Ga. Const. Art. I, § 1, ¶ 7. The relevant provision of the Georgia Constitution provides, in full, that:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2 ¶ 3(b). (There is no dispute that Ms. Palacios has satisfied the "citizens of the United States" requirement of this provision, which only requires that she be a United States citizen at the time of election.)

The formulation "citizens of the state" is an old one, dating back in the Georgia Constitution since at least 1877,[4] and although counsel for Ms. Palacios was unable to locate a Georgia court decision interpreting this phrase, the highest courts from at least 11 states have long interpreted this phrase to mean resident or domiciliary (meaning a resident who intends to remain, *Handel v. Powell*, 670 S.E.2d 62, 63 (Ga. 2008)) based on the traditional meaning of the "citizen of a state" phrase, regardless of whether the individual was a United States citizen. Notably, neither the original challenger to Ms. Palacios's candidacy nor the Secretary of State's office (nor the Attorney General's opinion upon which it relies) have cited a single court decision from anywhere, including in Georgia, that have disagreed with these cases.

[4] When locating this constitutional provision on Westlaw, Westlaw indicates that prior versions of this clause date back to 1877. Looking at the 1877 Georgia Constitution reveals that the "citizens of this state" formulation has remained unchanged since that time. *See* Ga. Const. (1877), Art. III, § VI, ¶ 1 ("The Representatives shall be citizens of the United States who have attained the age of twenty-one years, and who shall have been citizens of this state for two years . . . ."), *found at:* https://bit.ly/2K340Lz.

For example, in a case virtually identical to this one, the highest court in Maryland concluded that the Maryland Constitution's durational state citizenship requirement simply required that the candidate be a domiciliary of Maryland during that time regardless of whether they were a United States citizen. *See Crosse v. Bd. of Supervisors of Elections of Baltimore City*, 221 A.2d 431, 433-36 (Md. 1966).[5] There, the Maryland Constitution required that candidates for Sheriff be "above the age of twenty-five years and at least five years preceding his election, a citizen of the State." The high court surveyed various out-of-state cases and concluded that "citizen of the State" "was meant to be synonymous with domicile." *Id.* at 435. Importantly, it added that the candidate did *not* need to be a United States citizen in order to be a citizen of the state, explaining that historically, both before and after the civil war, "it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." *Id.* at 433. Thus, it concluded, "citizenship of the United States is not required, even by implication, as a qualification for this office," *id.* at 435.

The interpretation of "citizen of the state" as being synonymous with residency or domiciliary without connotation of United States citizenship is consistent with the way in which the phrase "citizen of the state" was traditionally used, including around the time of the 1877 Georgia Constitution. Thus, as early as 1863, the Supreme Court of Arkansas observed that "[t]he word 'citizen' is often used in common conversation and writing, as meaning only an inhabitant, a resident of a town, state, or county, *without any implication of political or civil privileges*." *McKenzie v. Murphy*, 1863 WL 444, at *4 (Ark. 1863) (emphasis added). Accordingly, the durational state citizenship requirement for electors in Arkansas meant "nothing

[5] The highest court in Maryland is called the Court of Appeals.

else than to [be] a resident of the state for that time, [or] an inhabitant." *Id.*[6] The Supreme Court of North Dakota similarly observed in the electoral context that "[t]he words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors mean substantially the same thing." *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 564-65 (N.D. 1935). So widespread was this understanding that the highest courts of Alabama, Colorado, and New York have all arrived at similar conclusions even outside the electoral context. *See Smith v. Birmingham Waterworks Co.*, 16 So. 123, 125-26 (Ala. 1894) ("citizens of Birmingham" "has the same meaning and operation as 'inhabitant'"), *overruled on other grounds by City of Montgomery v. Smith*, 88 So. 671 (Ala. 1921); *Sedgwick v. Sedgwick*, 144 P. 488, 490 (Colo. 1911) (fact that Colorado "had long been in good faith his genuine home and domicile, . . . made him a citizen of the state"); *Union Hotel Co. v. Thompson Hersee*, 34 Sickels 454, 461 (N.Y. 1880) ("citizens of Buffalo" can mean "an inhabitant" or "permanent resident").[7] None of these cases insisted on United States citizenship as a prerequisite.

Other high courts have also confirmed that one does not have to be a citizen of the United States in order to be a citizen of a state. For example, the Supreme Court of Ohio clarified this distinction as early as 1841, explaining, "When we speak of a citizen of the United States, we mean one who was born within the limits of, or has been naturalized by the laws of, the United States," but when "we speak of a person of a particular place, . . . we mean nothing more by it

[6] Many of these older cases cited here were decided during the ugly period when only white males were allowed to vote and hold office, and some cases cited here were also decided during times of slavery. Nonetheless, there is no reason why these cases' traditional interpretation of state citizenship should not hold today, especially as it is consistent with the Georgia Supreme Court's command to give a "liberal construction in favor of those seeking to hold office," *Gazan*, 187 S.E. at 378, and indeed promotes democratic participation of those like Ms. Palacios who recently became United States citizens.

[7] The highest court in New York is called the Court of Appeals.

than that he is a resident of that place." *State ex rel. Owens v. Trustees of Sec. 29, Delhi Tp.*, 1841 WL 43, at *3 (Ohio 1841). The Supreme Court of Michigan, relying on this traditional meaning, later adopted that same distinction. *See Bacon v. Bd. of State Tax Comm'rs*, 85 N.W. 307, 309-10 (Mich. 1901) (quoting citizenship distinction language from *Owens* and concluding, "We think the legislature intended to use the word 'citizen' as synonymous with 'inhabitant,' or 'resident'"). The Supreme Court of Texas also clarified around the time of the 1877 Georgia Constitution that being a "citizen of Texas" "is not to be taken in a restricted sense as designating only the native-born or naturalized citizen, but in its general acceptation and meaning as descriptive of the inhabitants . . . ." *Cobbs v. Coleman*, 1855 WL 4942, at *3 (Tex. 1855). The highest courts of Wisconsin and West Virginia have also held that United States citizenship is not necessary for state citizenship. *See Vachikinas v. Vachikinas*, 112 S.E. 316, 317, 318 (W.Va. 1922) ("citizen of this state" includes individuals who are "bona fide residents domiciled in the State," even where the individuals "never applied for or bec[a]me naturalized citizens of the United States"); *In re Wehlitz*, 1863 WL 1069, at *3 (Wis. 1863) ("Under our complex system of government there may be a citizen of a state who is not a citizen of the United States").

Lower courts from Missouri, Rhode Island, and Pennsylvania have also arrived at similar conclusions. *See Stevens v. Larwill*, 84 S.W. 113, 117-18 (Mo. App. 1904) (interpreting "citizen of Tennessee," observing that "[t]he words 'inhabitant,' citizen' and 'resident' mean substantially the same thing, and one is an inhabitant, resident, or citizen of the place where he has his domicile or home."); *Gomes v. Pub. Utils. Comm'n*, 1981 WL 390992 (Superior Ct. R.I. 1981) (need not be United States citizen to be a "citizen resident within this state"); *Powell Estate*, 71 Pa. D. & C. 51, 59 (Pa. Orphans' Ct. 1950) (state citizenship means either residency or domicile). To be sure, there is some division in the courts over whether state citizenship means

residency or domiciliary, the latter of which requires an intent to remain, *see id.* (surveying cases), but regardless of which definition applies, Ms. Palacios's circumstances undisputedly satisfy either requirement.

The considerable weight of judicial authority persuasively establishes that the traditional meaning of "citizen of a state" has only meant either "resident" or "domiciliary" of the state without a United States citizenship requirement. Because Ms. Palacios undisputedly satisfies this two-year residency or domiciliary requirement, this Court should reverse the Secretary of State's final decision.

II. The 1984 Attorney General opinion is not persuasive because it is illogical on its face

Rather than grappling with any of these authorities, citing any other cases to the contrary, or providing any meaningful reason to justify departing from the traditional meaning of "citizen of the state," the Secretary of State's final decision rests solely on a one-page Attorney General opinion from 1984 which opines that "A person must be a citizen, either natural born or naturalized, of the United States and must reside within this state in order to be a citizen of the State of Georgia." 1984 Ga. Op. Atty. Gen. 122 (attached as Exhibit B). The opinion, in turn, also fails to cite any judicial authority, but instead rests on the following chain of reasoning: First, it noted that both the Georgia Constitution and the United States Constitution provide that all United States citizens are automatically considered citizens of the state in which they reside. *See* Exhibit B (citing Ga. Const. art. I, § 1, ¶ VII ("[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state"); U.S. Const. Amend. XIV, § 1 ("[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside")). Thus, it concluded, all citizens of the state must at least be United States citizens. That was the beginning and the end of its analysis.

As the Secretary of State acknowledges, Exhibit A at 4, Attorney General opinions are not binding on the courts and are at most considered persuasive authority. *See, e.g., Moore v. Ray*, 499 S.E.2d 636, 637 (Ga. 1998) (declining to adopt Attorney General's opinion, which is "not binding on the appellate courts"). And here, the Attorney General's opinion is hardly persuasive because it fails basic logic. If we say that "all cars are vehicles," it does not automatically follow that "all vehicles must be cars." Similarly, just because all United States citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens. Indeed, none of the above cited cases post-dating the Fourteenth Amendment have found that the Fourteenth Amendment's automatic conferral of state citizenship to United States citizens somehow meant that one had to be a Untied States citizen in order to be a citizen of a state. To the contrary, "Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." *Crosse*, 221 A.2d at 433.

It is notable that not even the Secretary of State's final decision labors to defend the Attorney General's one-page opinion. Though Ms. Palacios pointed out the illogical nature of the above reasoning in a reply brief submitted to the Secretary of State's Office, *see* Exhibit E, the final decision fails to address it. Indeed, the final decision does not even explain why the Attorney General's opinion is persuasive at all, instead adopting it wholesale. This is perhaps because the Secretary of State's Office, as an executive branch agency, considers itself compelled to follow the opinions of the Attorney General, who is the "legal adviser of the executive branch," O.C.G.A. § 45-15-3(4), especially when those opinions are directed specifically to the Secretary of State's Office. *See* Exhibit A at 4 ("*In keeping with the Attorney*

General opinion, I find that it is necessary to be a U.S. citizen in order to be a 'citizen of this state.'" (emphasis added)).

This Court, of course, is not so bound. Even if there were any logical basis to support the Attorney General's opinion—and the Secretary of State has not proffered any—this Court should decline to follow it, and instead adhere to the traditional interpretation of "citizen of a state" that has been recognized by courts around the country for well over a century.

* * *

For centuries, courts around the country have recognized that "citizen of a state" means someone who is either a resident or a domiciliary of that state. The Georgia Constitution requires that candidates for the State House of Representatives be citizens of the state for at least two years at the time of the election. Because Petitioner Maria Palacios has undisputedly been both a resident and domiciliary of the State of Georgia since 2009, she satisfies that legal requirement. The Secretary of State's legal conclusion to the contrary are both "in violation of the Constitution or laws of this state" and/or "[a]ffected by other error of law." O.C.G.A. § 21-2-5(e)(1); (e)(4). Thus, this Court should reverse that final decision.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Maria Palacios requests that this Court reverse the Secretary of State's May 18, 2018 final decision disqualifying Ms. Palacios from the race for Georgia State House District 29, and that the Secretary of State be ordered to place Ms. Palacios on the November 6, 2018 general election ballot as the Democratic nominee for Georgia State House District 29.

This 20th day of May, 2018.

Respectfully submitted,

/s/ Sean J. Young

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Foundation of Georgia, Inc.
P.O. Box 77208
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(770) 303-8111

EXHIBIT A

IN THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA

RYAN SAWYER,	)	
	)	
Petitioner,	)	
	)	**Docket Number:**
v.	)	**1835339-OSAH-SECSTATE-CE-6-**
	)	**Beaudrot**
MARIA PALACIOS,	)	
	)	
Respondent.	)	
	)	

FINAL DECISION

The Georgia Constitution requires that candidates for the State House of Representatives "shall have been citizens of this state for at least two years." Ga. Const. Art. III, § 2, Para. 3(b). This challenge raises the question of whether a candidate must be a United States citizen (hereinafter "U.S. citizen") in order to be a "citizen of this state." Pursuant to O.C.G.A. § 21-2-5, the Secretary of State makes the following findings and determination with regard to the above-captioned matter:

I. Summary of Proceedings

1.

On March 8, 2018, Respondent qualified to be a candidate for the Democratic Party nomination for the Georgia House of Representatives District 29 (hereinafter "HD 29"). (Ex. 3: Certified Copy of Maria Palacios Declaration of Candidacy and Affidavit).

2.

On March 14, 2018, Petitioner filed a written challenge with the Secretary of State giving reasons why Petitioner believed Respondent is not qualified to seek and hold the public office for HD 29. Specifically, Petitioner contends that Respondent became a U.S. citizen in 2017, and thus,

Respondent does not meet the legal requirement of being a citizen of the state for at least two years. (Ex. 1: OSAH Form 1 and attachments).

3.

Petitioner's individual voter report from the Georgia Voter Registration System indicates that Petitioner is eligible to vote in HD 29 and, therefore, Petitioner has standing to bring this challenge. (Ex. 2: Certified Copy of Ryan Sawyer Individual Voter Report).

4.

On or about March 29, 2018, the Elections Division of the Secretary of State's Office (hereinafter "Elections Division") sent a notification letter to Petitioner and Respondent by certified mail to notify both parties of its receipt of the Complaint and referral of such matter to the Office of Administrative Hearings (hereinafter "OSAH") for review by an administrative law judge. A returned certified mail receipt indicates Respondent received the notification letter. Although a certified mail receipt was not returned from Petitioner, the tracking number assigned to such mailing indicated that Petitioner received the notification letter on April 23, 2018. (Ex. 4: Copy of Notification Letter and Certified Mailing to Ryan Sawyer; Ex. 5 Copy of Notification Letter and Certified Mailing to Maria Palacios).

5.

Judge Beaudrot held an administrative hearing at OSAH in this matter on May 2, 2018. Both Petitioner and Respondent failed to appear. Judge Beaudrot then entered an Initial Decision finding that Respondent failed to meet her burden of proof and recommending that she be disqualified as a candidate for HD 29. (Ex. 6: OSAH Initial Decision).

6.

Subsequent to the OSAH Initial Decision, Attorneys for both Respondent and Petitioner filed memorandums with the Secretary of State in support of their respective positions. Respondent

argues that it is not necessary to be a U.S. citizen in order to be "citizen of this state." Petitioner asserts that U.S. citizenship is necessary to be a Georgia citizen. (Ex. 7: Copy of Respondent's Memorandum in Opposition to Candidate Qualifications Challenge; Ex. 8: Copy of Petitioner's Memorandum in Response to Respondent's Memorandum; Ex. 9: Copy of Respondent's Reply Memorandum).

II. Findings of Fact

The relevant fact is not in dispute. Respondent obtained status as a U.S. citizen in 2017. *See* Respondent's Memorandum in Opposition to Candidate Qualifications Challenge, p. 1.

III. Conclusions of Law

1.

Every candidate for state office must meet the constitutional and statutory qualifications for holding the office being sought. O.C.G.A. § 21-2-5(a).

2.

The Georgia Constitution requires:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2, Para. 3(b) (emphasis added).

3.

The burden of proof is on the candidate to establish his or her eligibility for public office. Haynes v. Wells, 273 Ga. 106 (2000) (clarifying that the Georgia Election Code places the burden on the candidate to establish his or her eligibility to run for office).

4.

With regard to citizenship, the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." The Georgia Constitution provides, "[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state...." Ga. Const. Art. I, § 1, Para. 7.

5.

In 1984, the Secretary of State requested an official opinion from the Georgia Attorney General as to "whether a person must be a naturalized citizen of the United States in order to be a citizen of the State of Georgia or of a county within the State of Georgia." 1984 Op. Atty Gen. Ga 122. Relying on the same state and federal constitutional provisions quoted above, the Attorney General concluded as follows:

> Based upon the foregoing, it is my official opinion that a person must be a citizen, either natural born or naturalized, of the United States and must reside within this State in order to be a citizen of the State of Georgia and that, since a county is only a subdivision of the state and is not a sovereign, citizenship of a county means only domicile or residence within the county.

Id. While not binding on courts, Attorney General opinions are considered persuasive authority. Moore v. Ray, 269 Ga. 457, 459 (1998) (quoting C.W. Matthews Contracting Co. v. Collins, 214 Ga. App. 532, 533 (1994)).

IV. Decision

In keeping with the Attorney General opinion, I find that it is necessary to be a U.S. citizen in order to be a "citizen of this state." Therefore, Respondent does not meet the requirement of Art. III, § 2, Para. 3(b) of the Georgia Constitution that she be a "citizen of this state" for at least two years prior to her election. **IT IS HEREBY DECIDED** that Respondent, MARIA PALACIOS, is **NOT QUALIFIED** to be a candidate for the office of Georgia State House District

29. A prominent notice shall be placed at each affected polling place advising voters of the disqualification and all votes cast for the candidate shall be void and shall not be counted pursuant to O.C.G.A. § 21-2-5(c).

SO DECIDED this 18th day of May, 2018.

BRIAN P. KEMP
Secretary of State

EXHIBIT B

1984 Ga. Op. Atty. Gen. 122 (Ga.A.G.), Ga. Op. Atty. Gen. No. 84-55, 1984 WL 59926

Office of the Attorney General

State of Georgia
Opinion No. 84-55
August 15, 1984

***1 A person must be a citizen, either natural born or naturalized, of the United States and must reside within this state in order to be a citizen of the State of Georgia and, since a county is only a subdivision of the state and is not a sovereign, citizenship of a county means only domicile or residence within the county.**

To: Secretary of State

This is in response to your recent request for my official opinion concerning whether a person must be a naturalized citizen of the United States in order to be a citizen of the State of Georgia or of a county within the State of Georgia.

The Fourteenth Amendment to the United States Constitution provides in pertinent part that:
'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.'

Article I, Section I, Paragraph VII, of the 1983 Constitution of the State of Georgia provides that citizens of the United States resident in this state are citizens of this state. Thus, a person who is a naturalized citizen of the United States and who resides in the State of Georgia is a citizen of the State of Georgia.

Citizenship of a county is a different matter, however. In its purest sense, a person cannot be a citizen of a county. One can only be a citizen of a sovereign, i.e., a nation or a state. Counties are merely subdivisions of a sovereign. As such, one does not become a citizen of a county in the usual sense that one becomes a citizen of a state or of a nation. Thus, when one speaks of being a citizen of a county, one is normally using the term 'citizen' in a much broader sense which equates to 'domicile' or 'residence.' Therefore, citizenship in a county normally only requires residence or domicile within that county.

Based upon the foregoing, it is my official opinion that a person must be a citizen, either natural born or naturalized, of the United States and must reside within this state in order to be a citizen of the State of Georgia and that, since a county is only a subdivision of the state and is not a sovereign, citizenship of a county means only domicile or residence within the county.

Michael J. Bowers
Attorney General

1984 Ga. Op. Atty. Gen. 122 (Ga.A.G.), Ga. Op. Atty. Gen. No. 84-55, 1984 WL 59926

EXHIBIT C

BEFORE THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA

RYAN SAWYER, Petitioner, vs. MARIA PALACIOS, Respondent.	Docket No.: 1835339 1835339-OSAH-SECSTATE-CE-6-Beaudrot

RESPONDENT MARIA PALACIOS'S MEMORANDUM IN OPPOSITION TO CANDIDATE QUALIFICATIONS CHALLENGE

Respondent Maria Palacios, a candidate for Georgia State House District 29, submits this memorandum in opposition to the candidate qualifications challenge submitted by Petitioner Ryan Sawyer pursuant to O.C.G.A. § 21-2-5. The Petitioner's challenge alleges that Ms. Palacios should be disqualified as a candidate solely because she became a United States citizen in 2017—a fact she does not dispute—because Article III, Section 2, Paragraph 3(b) of the Georgia Constitution (the "Qualifications Clause") allegedly requires candidates to be United States citizens for at least two years before the time of election.[1] For the reasons stated below, the Secretary of State's Office should dismiss Petitioner Sawyer's challenge or otherwise rule that Respondent is qualified to be a candidate for Georgia State House District 29.

The legal analysis in this matter is straightforward. Petitioner Sawyer's challenge fails on its face because the plain text of the Qualifications Clause only requires, with respect to United

[1] A hearing date before an administrative law judge was scheduled for May 2, 2018. Counsel for Respondent was retained on May 4, 2018, and it is our understanding that the administrative law judge has recommended that Ms. Palacios be disqualified as a candidate. However, because the issue in this case turns on a question of law, no factual hearing is necessary, and the matter can be decided on the papers.

States citizenship, that candidates be "citizens of the United States" "[a]t the time of their election." That Clause provides, in full:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

(Emphasis added). Since Ms. Palacios will obviously be a "citizen[] of the United States" "[a]t the time of their election" this year, she has satisfied that qualification. The durational two-year requirement Petitioner mistakenly relies upon only applies to the separate state citizenship requirement ("At the time of their election, the members of the House of Representatives . . . shall have been citizens of this state for at least two years" (emphasis added)).

Petitioner's challenge appears to rest on the premise that being a "citizen of the state" is exactly the same thing as being a "citizen of the United States," but this cannot be the case since the Qualifications Clause expressly treats them differently. While the Georgia Constitution elsewhere provides that all "citizens of the United States" automatically become "citizens of this state," Ga. Const., Art. 1, § 1, Para. VII, as does the United States Constitution, U.S. Const., Amend. XIV, that does not preclude the possibility that one can be a citizen of the state while *not* being a citizen of the United States. In fact, by imposing a two-year durational residency requirement solely with respect to state citizenship but not United States citizenship, the Qualifications Clause expressly contemplates a scenario where one could be a citizen of the state while not being a citizen of the United States. For example, a candidate could be a citizen of the state from 2016 to 2018, but a citizen of the United States in 2018, and satisfy the requirements of the Qualifications Clause.[2]

[2] By way of illustration, the two-year durational requirement similarly does not apply to the separate clause requiring that candidates "be at least 21 years of age" "[a]t the time of their election." In other

This may beg the question of what it means to be a "citizen of the state," an arcane phrase dating back to at least 1877,[3] but this question need not be definitively answered to dismiss Petitioner Sawyer's challenge. The challenge should be dismissed on its face because it fails to make a prima facie case: the challenge rests entirely on the mere fact that Ms. Palacios became a United States citizen in 2017; there is no durational requirement with respect to United States citizenship; Ms. Palacios undisputedly satisfies the United States citizenship requirement; the two-year durational requirement only applies to state citizenship; and Petitioner's challenge makes no factual allegation that Ms. Palacios has not been a "citizen of this state" for at least two years, nor does it proffer a legal interpretation of that phrase that Ms. Palacios allegedly does not satisfy.

But even if the Secretary of State's Office were to find it necessary to define what it means to be a "citizen of the state" in this matter, Ms. Palacios would prevail. While counsel for Ms. Palacios was unable to locate a Georgia court decision interpreting that arcane phrase, much less any recent court decision doing so, several decades- and centuries-old court decisions from other states—including high court decisions and decisions specifically concerning electoral or candidate qualifications—consistently interpret this old formulation to mean that one is a "citizen of the state" when they are a resident or domiciliary (i.e., live and intend to remain there) of that state. *See, e.g.*, the following cases, which have been bulleted for clarity:

---

words, a candidate may be 21 years of age at the time of election; they do not need to be 23 years of age; otherwise, the drafters would have likely said so plainly.

[3] When pulling up the Qualifications Clause on Westlaw, it indicates that prior versions of the Qualifications Clause date back to 1877. Looking at the 1877 Georgia Constitution reveals that the "citizens of this state" formulation has remained unchanged since that time. *See* Ga. Const. (1877), Art. III, § VI, Para. 1 ("The Representatives shall be citizens of the United States who have attained the age of twenty-one years, and who shall have been citizens of this state for two years . . ."), *found at:* https://bit.ly/2K340Lz.

- *Crosse v. Bd. of Sup'rs of Elections of Baltimore City*, 221 A.2d 431, 433-36 (Md. 1966) (Maryland Constitution's five-year "citizen of the State" durational requirement for Sheriff candidates "was meant to be synonymous with domicile, and . . . citizenship of the United States is not required, even by implication, as a qualification for this office");[4]

- *McKenzie v. Murphy*, 1863 WL 444 (Ark. 1863) (six-month "citizen of this state" durational requirement for electors in Arkansas Constitution of 1836 "mean[s] only an inhabitant, a resident of a town, state, or county, without any implication of political or civil privileges");

- *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 564-65 (N.D. 1935) ("The words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors mean substantially the same thing" (citing cases));

- *Smith v. Birmingham Waterworks Co.*, 16 So. 123, 125-26 (Ala. 1894) ("citizens of Birmingham" "has the same meaning and operation as 'inhabitant'"), *overruled on other grounds by City of Montgomery v. Smith*, 88 So. 671 (Ala. 1921);

- *Halaby v. Bd. of Dirs. Of Univ. of Cincinnati*, 123 N.E.2d 3, 5 (Ohio 1954) ("It is apparent, however, from a study of legislation and court decisions, that, except where a citizen of the United States is referred to, . . . 'citizen[]' is often used in legislation where 'domicile' is meant");

- *Bacon v. Bd. of State Tax Comm'rs*, 85 N.W. 307, 309-10 (Mich. 1901) (interpreting "citizens of this state," holding, "We think the legislature intended to use the word 'citizen' as synonymous with 'inhabitant,' or 'resident'");

- *Sedgwick v. Sedgwick*, 144 P. 488, 490 (Colo. 1911) (fact that Colorado "had long been in good faith his genuine home and domicile, . . . made him a citizen of the state . . . .");

- *Union Hotel Co. v. Thompson Hersee*, 34 Sickels 454, 461 (N.Y. 1880) ("citizens of Buffalo" can mean "an inhabitant" or "permanent resident");

- *W. H. Cobbs and Another v. C. Coleman*, 14 Tex. 594, 597 (Tex. 1855) ("the phrase 'every citizen' . . . is not to be taken in a restricted sense as designating only the native-born or naturalized citizen, but in its general acceptation and meaning as descriptive of the inhabitants of this county");

- *Vachikinas v. Vachikinas*, 112 S.E. 316, 318 (W.Va. 1922) ("citizen of this state" includes aliens who are "bona fide residents domiciled in the State");

- *In re Wehlitz*, 1863 WL 1069 (Wis. 1863) ("Under our complex system of government there may be a citizen of a state who is not a citizen of the United States");

- *Stevens v. Larwill*, 84 S.W. 113, 117-18 (Mo. App. 1904) (interpreting "citizen of Tennessee," observing that "[t]he words 'inhabitant,' 'citizen,' and 'resident' mean

[4] The highest courts in New York, Maryland, and West Virginia are called the Court of Appeals.

substantially the same thing, and one is an inhabitant, resident, or citizen of the place where he has his domicile or home.");

- *Powell Estate*, 71 Pa. D. & C. 51, 59 (Pa. Orphans' Ct. 1950) ("State citizenship is predicated upon domicile"); *see also id.* at 60-61 (citing numerous cases interpreting state "citizen" to mean either a mere "resident" or "inhabitant" or something more, like a domiciliary);

- *Gomes v. Pub. Utils. Comm'n*, 1981 WL 390992 (Superior Ct. R.I. 1981) (need not be United States citizen to be a "citizen resident within this state").

Petitioner Sawyer does not, and cannot, dispute that Ms. Palacios has been both a resident and a domiciliary of Georgia for well over two years. As the attached documents show,[5] she obtained legal permanent residence in 2009; obtained a driver's license in December 2014 while living in Gainesville, Georgia; applied for citizenship on April 11, 2016 while living in Gainesville, Georgia; and, of course, obtained United States citizenship in 2017 and lives in Gainesville today.

CONCLUSION

"Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified." *Gazan v. Heery*, 187 S.E. 371, 378 (Ga. 1936). As shown above, no "liberal construction" is even necessary because the plain language of the Qualifications Clause disposes of Petitioner Sawyer's challenge.

For the foregoing reasons, Respondent Maria Palacios requests that the Secretary of State's Office dismiss Petitioner Sawyer's challenge or otherwise rule that Respondent is qualified to be a candidate for Georgia State House District 29.

Respectfully submitted,

[5] Ms. Palacios's birthdate, street address, and A number are redacted from the documents.

this 7th of May, 2018

/s/ Sean J. Young_____

Sean J. Young (Ga. Bar No. 790399)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
770-303-8111
syoung@acluga.org

Attorney for Respondent Maria Palacios

PERMANENT RESIDENT CARD

NAME PALACIOS, MARIA D

A# [redacted]

Birthdate [redacted] Category Sex

F

Country of Birth
Mexico

CARD EXPIRES: 09/23/19

Resident Since: 09/14/09

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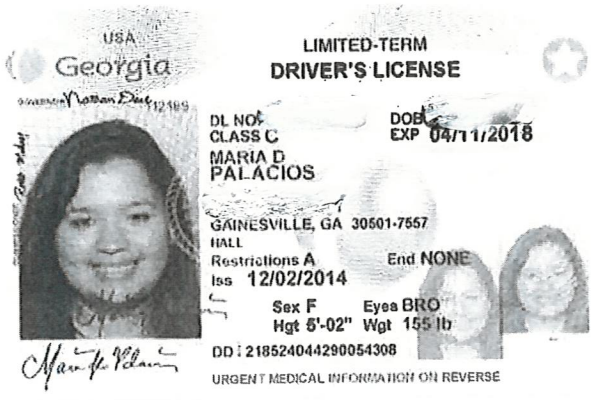
PALACIOS<<MARIA<DEL<ROSARIO<<<


USA
Georgia
LIMITED-TERM
DRIVER'S LICENSE
DL NO
CLASS C
DOB
EXP 04/11/2018
MARIA D
PALACIOS
GAINESVILLE, GA 30501-7557
HALL
Restrictions A
End NONE
Iss 12/02/2014
Sex F
Eyes BRO
Hgt 5'-02"
Wgt 155 lb
DD: 218524044290054308
URGENT MEDICAL INFORMATION ON REVERSE

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

Receipt			NOTICE DATE: April 12, 2016
CASE TYPE: N-400, Application for Naturalization			USCIS A#: A060746901
APPLICATION NUMBER: NBC*006769539	RECEIVED DATE: April 11, 2016	PRIORITY DATE: April 11, 2016	PAGE: 1 of 1

APPLICANT NAME AND MAILING ADDRESS

MARIA D. PALACIOS
GAINESVILLE, GA 30504

18 00003840

PAYMENT INFORMATION:

Single Application Fee: $680.00

Total Balance Due: $0.00

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth:
Address Where You Live: GAINESVILLE, GA 30504

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

Upon receipt of all required Record Checks, you will be scheduled to appear for an interview at your local USCIS field office.

For more information about the naturalization process and eligibility requirements, please read A Guide to Naturalization (M-476). USCIS also has a free booklet to help study for the naturalization test. Ask about *Learn About the United States: Quick Civics Lessons* when you go to have your fingerprints taken at the Application Support Center.

You can get a copy of the Guide, the Quick Civics Lessons booklet, and other civics and citizenship study materials from the USCIS website (www.uscis.gov). You can also visit the USCIS website to find valuable information about forms and filing instructions, and about general immigration services and benefits.

If you have additional questions about possible immigration benefits and services, filing information, or USCIS forms, please call the USCIS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TDD at **1-800-767-1833**.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other case you may have filed.

USCIS Office Address:
USCIS National Benefits Center
P. O. Box 648005
Lee's Summit, MO 64002
Attention: N-400 Naturalization Applications
NBC$006769539

USCIS Customer Service Number:
(800)375-5283
APPLICANT COPY

If this is an interview or biometrics appointment notice, please see the back of this notice for important information.

Form I-797C 07/11/14 Y

CERTIFICATE OF SERVICE

The undersigned hereby certifies that Respondent Maria Palacios's Memorandum in Opposition to Candidate Qualifications Challenge, including the attached Exhibit A, was e-mailed to the Office of the Secretary of State via Chris Harvey (charvey@sos.ga.gov) and Ryan Germany (rgermany@sos.ga.gov), and mailed via FedEx Overnight to Petitioner Ryan Sawyer at 2501 Katherine Circle, Gainesville, GA 30506.

This 7th day of May, 2018

/s/ Sean J. Young

Sean J. Young (Ga. Bar No. 790399)
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
770-303-8111
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Attorney for Respondent Maria Palacios

EXHIBIT D

ROBBINS
LITIGATION AND REGULATORY LAW

VINCENT R. RUSSO
DIRECT LINE: 678-701-9381
Email: vrusso@robbinsfirm.com

May 17, 2018

VIA FEDERAL EXPRESS AND EMAIL

The Honorable Brian P. Kemp
Georgia Secretary of State
214 State Capitol
Atlanta, Georgia 30334
Attn: Chris Harvey, Elections Director
charvey@sos.ga.gov

Re: Challenge to the Eligibility and Qualifications of Maria Del Rosario Palacios Candidate for Georgia State House of Representatives District 29

Dear Secretary Kemp:

Our law firm represents Ryan Sawyer, a registered voter and eligible elector in Georgia State House of Representatives District 29 ("House District 29"). Mr. Sawyer resides and is registered to vote at 2501 Katherine Circle, Gainesville, Georgia 30506.[1] Pursuant to O.C.G.A. § 21-2-5, Mr. Sawyer has standing to challenge the eligibility and qualifications of Maria del Rosario Palacios, a candidate for the office of State Representative for House District 29, to seek and hold that office.

It is well established under Georgia law that the burden of proof in an action challenging the eligibility of a candidate for office is placed entirely upon the candidate to establish his or her eligibility for office. *Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The party challenging the candidate "is not required to disprove anything" regarding the candidate's eligibility to run for office. *Id.* As further detailed below, records and Georgia law support Administrate Law Judge Beaudrot's findings issued on May 2, 2018 (the "Decision") and the Office of Secretary of State should affirm the Decision.

I. Background

The General Election for House District 29 is November 6, 2018. On March 8, 2018, Maria Palacio filed a sworn Declaration of Candidacy and Affidavit ("Declaration") with the

[1] A true and correct copy of Mr. Sawyer's Hall County precinct card is attached as Exhibit A.

Democratic Party of Georgia to qualify as a candidate for House District 29.[2] Ms. Palacio's Declaration indicates that she has been a legal resident of the State of Georgia for 8 consecutive years. *Id.* Ms. Palacio does not dispute the fact that she became a citizen of the United States less than a year ago – in June 2017. (Respondent Maria Palacio's Memorandum in Opp. to Candidate Qualifications Challenge at 3.)

On May 2, 2018, Administrative Law Judge Beaudrot (the "ALJ") held a hearing on Mr. Sawyer's challenge to Ms. Palacios's candidacy qualifications. While Ms. Palacios received notice of the hearing, she failed to appear. That same day, the ALJ issued the Decision, finding Ms. Palacios failed to meet the qualifications to be a candidate for the office of State Representative for House District 29. On May 7, 2018, Ms. Palacio, through the American Civil Liberties Union Foundation of Georgia, Inc. (the "ACLU"), filed opposition to the Decision, asserting a candidate running for office in Georgia only must be a citizen of the United States at the time of election. Ms. Palacios' reasoning ignores the plain language of the Georgia Constitution and the United States Constitution, and is nonsensical.

II. Law and Analysis

The Georgia Election Code requires 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. § 21-1-5(a). The Georgia Constitution establishes the qualifications to hold a seat in the General Assembly. In relation to the Georgia House of Representatives, the Georgia Constitution provides:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

GA. CONST. art. III, § 2, ¶ III(b). Thus, the Georgia Constitution sets forth four clear requirements that a person must meet at the time of election to qualify to be a member of the Georgia House of Representatives: (1) be a citizen of the United States; (2) be at least 21 years

[2] A true and correct copy of Mr. Palacios' Declaration of Candidacy and Affidavit is attached as Exhibit B.

old; (3) be a citizen of Georgia for at least two years; and (4) be a legal resident of the district from which elected for at least one year.

The Georgia Constitution further defines the parameters for Georgia citizenship: "**All citizens of the United States, resident in this state, are hereby declared citizens of this state.**" GA. CONST. art. I, § 1, ¶ VII (emphasis added). Similarly, the United States Constitution provides that "all persons born or naturalized in the United States . . . are citizens of the United States **and of the State wherein they reside.**" U.S. CONST. AMEND. XIV, § 1 (emphasis added). Put simply, to be a citizen of this state, a person must be both (1) a United States citizen, and (2) reside in Georgia.

In turn, to meet the two-year Georgia citizenship requirement and be eligible for election as a State Representative in the November 6, 2018 General Election, Ms. Palacios must have been a United States citizen **and** a resident of Georgia for at least two years from the date of the November 6, 2018 General Election, i.e. since at least November 6, 2016. Ms. Palacios did not become United States citizen until June 2017, and as such, Ms. Palacios will not have been a Georgia citizen for at least two years at the time of the November 2018 General Election. Therefore, Ms. Palacios does not meet the constitutional requirements to seek and hold office as State Representative.

In her opposition, Ms. Palacios' response cites cases from other states to assert that residency in Georgia is equivalent to citizenship here.[3] Ms. Palacio seemingly ignores the plain language of the Georgia Constitution and Georgia law. The fact that Ms. Palacio has resided in Georgia for 8 years does not automatically make her a Georgia citizen for 8 years. The Georgia Constitution's definition of a Georgia citizen necessarily requires an individual to be a citizen of the United States who resides in Georgia. *See* GA. CONST. art. I § 1, ¶ VII. The Georgia Code confirms this. Code Section 1-2-6 sets forth the rights of citizens, which includes "**[t]he right of**

[3] The response also contains a disjointed argument that Ms. Palacios only has to be a United States citizen "at the time of the election," to meet the two-year Georgia citizenship requirement. If adopted, this interpretation of the Georgia Constitution would lead to an absurd result. *Roberts v. Deal*, 290 Ga. 705 (2012) (noting statutes (including the Constitution) must be construed to avoid absurd results). Ms. Palacios' interpretation would nullify the Georgia citizenship requirement and replace it with a two-year state residency requirement. However, the two-year Georgia citizenship requirement is not merely a two-year state residency requirement. It requires United States citizenship coupled with Georgia residency for two years.

the elective franchise." (emphasis added). Ms. Palacio recognizes she could not vote in any election (national, state, or local) until she became a naturalized citizen.[4]

While Ms. Palacio may have resided in Georgia for 8 years, she did not attain citizenship – from either the United States or Georgia – until she became a naturalized United States citizen in June 2017. Therefore, she is ineligible to be a candidate in the upcoming election for State House District 29, or hold the office of State Representative, as she fails to meet the two-year requirement as a Georgia citizen under the Georgia Constitution.

III. Conclusion

While Ms. Palacios is now a United States citizen with all of the rights of a United States citizen, she still must meet the eligibility requirements to qualify to seek and hold office. Since Ms. Palacios has not been a United States citizen resident in Georgia for two years, she is not qualified and eligible to be a candidate for House District 29 in the 2018 General Election. Accordingly, we respectfully request that the Secretary of State disqualify Maria Palacios as a candidate for House District 29 and withhold her name from the ballot or strike Ms. Palacios's name from the ballot if the ballots have been printed. If her name cannot be withheld or struck, we request that in accordance with O.C.G.A. § 21-2-5(c), that notices be placed at affected polling places advising voters of her disqualification and that all votes cast for Ms. Palacios will be voided and not counted. Thank you for your attention to this matter.

Sincerely,

Vincent R. Russo

Enclosures

Cc: Sean J. Young, Esq.
Attorney for Candidate
syoung@acluga.org

Kimberly Anderson, Esq.
David B. Dove, Esq.

[4] Regina Willis, *Candidate in Gainesville takes on voting, diversity*, BETTERGEORGIA.ORG dated Sep. 11, 2017, available at http://bettergeorgia.org/2017/09/11/candidate-in-gainesville-takes-on-voting-diversity/ (last accessed May 16, 2018).

EXHIBIT A

VOTER REGISTRATION OFFICE
2875 PO BOX 1435
BROWNS BRIDGE RD
GAINESVILLE GA 30503
PHONE: 770-531-6945

RETURN SERVICE REQUESTED

REG. DATE	09/06/2007
ISSUE DATE	05/17/2018
REG. No.	**05588960**

HALL COUNTY PRECINCT CARD
SIGN CARD AND KEEP FOR YOUR RECORDS

PRECINCT NAME: WHELCHEL

POLLING PLACE: RIVERBEND BAPTIST CHURCH
1715 CLEVELAND HIGHWAY
GAINESVILLE GA 30501 - 0000

CITY PRECINCT NAME:

POLLING PLACE:

VOTING DISTRICTS:

009	049	029	NEST	003	LRG
CONG	SENAT	HOUSE	JUDIC	COMMI	SCHOL

RYAN EUGENE SAWYER
2501 KATHERINE CIR
GAINESVILLE GA 30506 - 1843

ATTENTION: This is your NEW Voter Registration Precinct Card. It replaces any other Voter Card you currently have in your possession. Keep for your records.

(Cut or fold on the dotted line for wallet card)

If you change your address within the county, complete this form and mail to the return address on the front of this card.

Note: Change of address must be submitted at least 30 days preceding any election.

If you move to another county or if there is a change in your legal name, you must complete a new voter registration application in order to remain qualified to vote.

This card may not be used as evidence to prove United States Citizenship or as identification to vote. (ref.1996 United States Public Law 104-99)

Fold Here

YOUR NEW **RESIDENCE** ADDRESS **WITHIN** COUNTY
(PLEASE PRINT)

Number Street Apartment

City Zip Code

Mailing Address (If Different)

City Zip Code

Daytime Date

VOTER'S SIGNATURE

From the Secretary of State website, www.sos.ga.gov, a registered voter with a valid Georgia driver's license or identification card issued by the GA Department of Driver Services may change his or her name or address using Online Voter Registration. You may also access Online Voter Registration by downloading the GA Votes app.
Visit our website at www.mvp.sos.ga.gov/MVP, download the GA Votes app or contact your local registrar's office.

For Android

For Apple

EXHIBIT B

141-24

To: The Chairman and Secretary of
State Executive Committee of the
DEMOCRATIC Party
State of Georgia

DECLARATION OF CANDIDACY AND AFFIDAVIT
(STATE)

I, the undersigned, being first duly sworn on oath, do depose and say: my name is MARIA DEL ROSARIO PALACIOS;

my residence address is 4347 (Street Number) PEARHAVEN LN (Street);

GAINESVILLE (City) HALL (County) GA (State) 30504 (Zip Code);

my post office address is 4347 PEARHAVEN LN GAINESVILLE GA 30504;

my telephone number is (Business) 6788973153 (Home);

my profession, business, occupation (if any) is NON-PROFIT COORDINATOR;

the name of my precinct is 002; I am an elector of the county of my residence and eligible to vote in the primary election in which I am a candidate for nomination; the name of the office I am seeking is STATE REPRESENTATIVE, DISTRICT 29 (Circuit, District, or Post if Applicable); my date of birth is [redacted]989;

I have been a legal resident of the State of Georgia for 8 consecutive years; I have been a legal resident of HALL county for 8 consecutive years; I have been a legal resident of my district (if applicable) for 8 consecutive years; I have been a legal resident of my circuit (if applicable) for _____ consecutive years; I am a citizen of the United States; I am eligible to hold such office; I am a candidate for nomination in the DEMOCRATIC GENERAL PRIMARY (Primary) to be held on the 22 day of May, 2018;

I have never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, or felony involving moral turpitude or conviction of domestic violence under the laws of this State, any other State, or of the United States, or, if so convicted that my civil rights have been restored and at least ten years have elapsed from the date of the completion of the sentence without a subsequent conviction of another felony involving moral turpitude; I am not 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 (pursuant to Ga. Const. Art. II, Sec. II, paragraph III); I will not knowingly violate any provisions of the Georgia Election Code (O.C.G.A. § 21-2) or of the rules or regulations adopted thereunder; I will not knowingly violate the rules or regulations of the Democratic party

I understand that any false statement knowingly made by me in this Declaration of Candidacy and Affidavit will subject me to criminal penalties as provided by law and I hereby request you to cause my name to be placed on the ballots to be used in such primary election as a candidate for the nomination I am seeking.

Maria Palacios
(Signature of Candidate)

Sworn to and subscribed before this 8th day of March, 2018.

Chrystian S Woods
(Notary Public)

CHRYSTIAN S WOODS
Notary Public, Georgia
Cobb County
My Commission Expires
January 23, 2022

My Commission Expires: 01-23-2022

(Required by Ga. Election Code O.C.G.A. § 21.2.153.)

I desire that my name appear on the ballot as follows (the surname of the candidate shall be as it appears on the candidate's voter registration card):

MARIA PALACIOS
(Please Print)

Should I be elected, I desire that my name appear on official documents as follows:

MARIA PALACIOS
(Please Print)

(over)

1. ☑ I hereby tender check/cash in the amount of $400.00

NAME OF BANK: [redacted]

CHECK NUMBER

In the event that a candidate pays his or her qualifying fee with a check that is subsequently returned for insufficient funds, the Secretary of State shall automatically find that such candidate has not met the qualifications for holding the office being sought, unless the bank, credit union, or other financial institution returning the check certifies in writing by an officer's or director's oath that the bank, credit union, or financial institution erred in returning the check as prescribed in O.C.G.A. § 21-2-5(d).

☐ I hereby file a Pauper's Affidavit, accompanied by a qualifying petition as prescribed in O.C.G.A. § 21-2-153 (a.1), in lieu of paying the qualifying fee.

Form #DC-S-09

EXHIBIT E

BEFORE THE OFFICE OF THE SECRETARY OF STATE
STATE OF GEORGIA

RYAN SAWYER, Petitioner, vs. MARIA PALACIOS, Respondent.	Docket No.: 1835339 1835339-OSAH-SECSTATE-CE-6-Beaudrot

RESPONDENT MARIA PALACIOS'S REPLY MEMORANDUM IN OPPOSITION TO CANDIDATE QUALIFICATIONS CHALLENGE

Respondent Maria Palacios, a candidate for Georgia State House District 29, submits this reply memorandum in response to Petitioner Ryan Sawyer's May 17, 2018, letter arguing for Ms. Palacios's disqualification. The entirety of Petitioner's letter rests on a single premise: that because both the Georgia Constitution and United States Constitution declare that all citizens of the United States are citizens of the state, GA. CONST. art. I, § 1, ¶ VII; U.S. CONST. AMEND. XIV, § 1, therefore all citizens of the state must at least be citizens of the United States.

This is illogical. If we say that "all cars are considered vehicles," it does not follow that "all vehicles must at least be cars." Similarly, just because all United States citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens.

Footnote 3 of Petitioner's letter suggests that Ms. Palacios's interpretation yields an absurd result because it would equate state citizenship with state residency. It is unclear how this is absurd, since an avalanche of cases from other states cited by Ms. Palacios's prior brief has

been equating the two concepts for over 100 years, and Petitioner does not cite a single case from anywhere suggesting otherwise.

For the sake of completeness, Ms. Palacios reminds the Secretary of State's Office that, as discussed in the prior brief, some cases debate whether state citizenship means merely residency, or whether it means domiciliary (residency + an intent to remain). Since GA. CONST. art. III, § 2, ¶ III(b) already requires that the candidate be "legal residents" of the district for "at least one year," it would not at all be unusual to interpret "citizens of this state" to mean "domiciliary"—a definition different from "residency," but a requirement that Ms. Palacios undisputedly satisfies.

For the foregoing reasons, Respondent Maria Palacios requests that the Secretary of State's Office dismiss Petitioner Sawyer's challenge or otherwise rule that Respondent is qualified to be a candidate for Georgia State House District 29.

Respectfully submitted,

this 17th of May, 2018

/s/ Sean J. Young

Sean J. Young (Ga. Bar No. 790399)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF GEORGIA, INC.
P.O. Box 77208
Atlanta, GA 30357
770-303-8111
syoung@acluga.org

Attorney for Respondent Maria Palacios

EXHIBIT C

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

PETITIONER'S NOTICE OF MOTION FOR SUMMARY JUDGMENT

Petitioner Maria Palacios, a United States citizen since 2017 who has called Georgia her home since 2009, is a candidate for the uncontested Democratic Party nomination for Georgia State House District 29 but was disqualified by the Secretary of State on May 18, 2018. The instant lawsuit was filed two days later, and Petitioner now moves that this Court enter summary judgment in her favor and files an accompanying memorandum of law. A statement pursuant to Rule 6.5 of the Uniform Rules is annexed to this notice of motion.

There are no disputed issues of fact in this action, which presents only a single question of law. The Georgia Constitution requires that a candidate for the state House of Representatives be a "citizen[] of the state for at least two years" "[a]t the time of their election" (here, November 6, 2018). Ga. Const. Art. I, § 1, ¶ 7. On May 18, 2018, without citing any judicial authority, the Secretary of State issued a final decision disqualifying her candidacy because she allegedly did not satisfy this "citizen of the state" requirement, arguing that she did not become a United States citizen until 2017. Ga. Const. Art. I, § 1, ¶ 7. *See* Petition, Exhibit A. However, as the accompanying memorandum of law details, courts around the country—including the highest courts of at least 11 other states—have long interpreted "citizen of a state" to mean a someone

who is either a "resident" or "domiciliary" (a resident with the intent to remain) of that state, without any requirement that the individual be a United States citizen. Since no party has disputed that Ms. Palacios has lived in Georgia and has intended to remain there since 2009, she clearly satisfies the "citizen of the state" requirement under the Georgia Constitution, regardless of when she became a United States citizen.

For these reasons, this Court should grant Petitioner's motion for summary judgment. Petitioner also respectfully and urgently requests that this Court resolve this motion as soon as practicable so that any direct appeal to the Georgia Supreme Court may ideally be resolved by the end of August, which should give enough time for elections officials to finalize printed ballots by September 18, 2018, which is the earliest day that a registrar may issue absentee ballots for the November general election.[1] *See, e.g.*, *Handel v. Powell*, 670 S.E.2d 62, 64 (Ga. 2008) (expediting candidate qualifications matter prior to election); *Cox v. Barber*, 568 S.E.2d 478, 480 (Ga. 2002) (same).

Respectfully submitted this 23rd day of May, 2018.

/s/ Sean J. Young

Sean J. Young
Georgia Bar No. 790399
syoung@acluga.org
American Civil Liberties Union
Foundation of Georgia, Inc.
P.O. Box 77208
Atlanta, Georgia 30357
(770) 303-8111

Attorney for Petitioner

[1] *See* http://sos.ga.gov/index.php/elections/2018_elections_and_voter_registration_calendar. On May 21, the parties filed a stipulation that the Secretary of State would place Petitioner on the general election ballot if this matter is resolved by November 6, 2018. It did not occur to Petitioner until further discussions with opposing counsel that the matter must actually be resolved well before September 18, 2018. We sincerely apologize to the Court for this oversight.

Rule 6.5 Statement

Pursuant to Rule 6.5 of the Uniform Rules of the Superior Courts of the State of Georgia, Petitioner annexes to this notice of motion this "separate, short and concise statement of each theory of recovery and of each of the material facts as to which the moving party contends there is no genuine issue to be tried."

Theory of recovery:

The Georgia Constitution requires that a candidate for the state House of Representatives be a "citizen[] of the state for at least two years" "[a]t the time of their election" (here, November 6, 2018). Ga. Const. Art. I, § 1, ¶ 7. "Citizen of the state" means someone who is a resident or a domiciliary of Georgia. Since Petitioner Maria Palacios has been a resident of Georgia since at least 2009 with the intention to remain, she satisfies this requirement.

Material facts to which the moving party contented there is no genuine issue to be tried:

1) Maria Palacios became a United States citizen in 2017. *See* Secretary of State's Final Decision (attached as Exhibit A to the Petition) at 3 ("The relevant fact is not in dispute. Respondent [Maria Palacios] obtained status as a U.S. citizen in 2017.").

2) Maria Palacios has lived in Georgia and intended to remain in Georgia since at least 2009. In the proceedings below, Ms. Palacios submitted evidence to show that she has lived in Georgia and intended to remain there since 2009. *See* Petition, Exhibit C. The elector who challenged her qualifications below did not dispute this evidence in his response. *See* Petition, Exhibit D.

Certificate of Service

I, the undersigned, hereby certify that a copy of Petitioner's Notice of Motion for Summary Judgment and accompanying Memorandum of Law was sent by certified mail and by e-mail to Counsel for Respondent Elizabeth Monyak, emonyak@law.ga.gov, Georgia Department of Law, 40 Capitol Square SW, Atlanta, GA 30334 and to Counsel for Proposed Intervenor-Respondent Kimberly Anderson, Kimberly.Anderson@robbinsfirm.com, 999 Peachtree Street NE, Suite 1120, Atlanta, GA 30309.

Dated: May 23, 2018

/s/ Sean J. Young

Sean J. Young
Georgia Bar No. 790399
syoung@acluga.org
American Civil Liberties Union
Foundation of Georgia, Inc.
P.O. Box 77208
Atlanta, Georgia 30357
(770) 303-8111

Attorney for Petitioner

Fulton County Superior Court
EFILEDLW
Date: 5/23/2018 10:41 AM
Cathelene Robinson, Clerk

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

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR SUMMARY JUDGMENT

SUMMARY

This case presents the important question of whether, under the Georgia Constitution, newly naturalized United States citizens who have long made Georgia their home may seek the privilege of representing their communities in state elected office. Petitioner Maria Palacios, who became a United States citizen in 2017 but has long called Georgia her home since at least 2009, is a candidate for the uncontested Democratic Party nomination for Georgia State House District 29. On May 18, 2018, the Secretary of State issued a final decision disqualifying her candidacy because she allegedly did not satisfy the Georgia Constitution's requirement that a candidate for the state House of Representatives be a "citizen[] of the state for at least two years" "[a]t the time of their election" (here, November 6, 2018). Ga. Const. Art. I, § 1, ¶ 7. The decision reasoned that she did not meet this requirement because she did not become a United States citizen until 2017 and asserted that United States citizenship is a prerequisite for state citizenship. *See* Final Decision (attached as Exhibit A to the Petition).[1]

[1] As of this filing, the Secretary of State has not yet transmitted the record of the administrative proceedings to this Court. *See* O.C.G.A. § 21-2-5(e) ("As soon as possible after service of the petition, the

This was an error of law. Courts around the country—including the highest courts of at least 11 other states—have long interpreted "citizen of a state" to mean someone who is a "resident" or "domiciliary" (meaning a resident with the intent to remain, *Handel v. Powell*, 670 S.E.2d 62, 63 (Ga. 2008)) of that state, without any requirement that the individual be a United States citizen. *See infra* Argument Part I. Since no party has disputed that Ms. Palacios has lived in Georgia and has intended to remain there since 2009, she clearly satisfies the "citizen of the state" requirement under the Georgia Constitution, regardless of when she became a United States citizen.

Without citing a single case in response to this considerable weight of judicial authority, the Secretary of State's final decision cites without discussion to a single, one-page Attorney General's opinion from 1984, 1984 Op. Atty Gen. Ga 122 (attached to the Petition as Exhibit B), which rests on a single chain of reasoning: that because both the Georgia Constitution and the United States Constitution provide that all United States citizens are automatically considered citizens of the state in which they reside, Ga. Const. art. I, § 1, ¶ VII; U.S. Const. Amend. XIV, § 1, then all citizens of the state must at least be United States citizens.[2] But this reasoning fails basic logic. If we say that "all cars are vehicles," it does not automatically follow that "all vehicles must be cars." Similarly, just because all United States citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens.

Secretary of State shall transmit the original or a certified copy of the entire record of the proceedings under review to the reviewing court."). Given the urgency of the matter, Petitioner attached the Secretary of State's final decision and the submissions below to the Petition, and will cite to those documents in this brief. Petitioner can later file an amended motion to substitute these citations with citations to the record if the Court deems it necessary.

[2] This was essentially the same argument advanced by the elector who initially challenged her candidacy, in a letter submitted to the Secretary of State. *See* Petition, Ex. D. That letter, too, failed to cite any judicial authority adopting their proposed definition of "citizen of a state."

Lastly, the Secretary of State's interpretation of "citizen of a state" should be rejected for the independent reason that it would render another constitutional clause superfluous. A separate clause already requires that candidates be a "United States citizen" "[a]t the time of their election." If the two-year "citizen of the state" requirement includes an implicit requirement that the candidate be a United States citizen for the two years leading up to the election, as the Secretary of State argues, then it is superfluous to also require the candidate be a "United States citizen" "[a]t the time of their election."

For these reasons, this Court should grant Petitioner's motion for summary judgment, reverse the Secretary of State's misguided decision, and order that Ms. Palacios be placed on the 2018 general election ballot as the Democratic nominee for Georgia State House District 29.[3] Petitioner also respectfully and urgently requests that the motion be resolved with sufficient time for any appeals to conclude ideally before August 31, 2018, so that elections officials have enough time to finalize printed ballots for issuance on September 18, 2018, which is the earliest date when elections officials may mail absentee ballots for the general election. [4] *See, e.g.*, *Handel v. Powell*, 670 S.E.2d 62, 64 (Ga. 2008) (expediting candidate qualifications matter); *Cox v. Barber*, 568 S.E.2d 478, 480 (Ga. 2002) (same).

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[3] Although Ms. Palacios was disqualified on May 18, by that time early votes had already been cast in her favor. Because the Democratic primary was uncontested and no write-in candidates are allowed, O.C.G.A. § 21-2-133(c), she already has the votes needed to secure the Democratic nomination.

[4] *See* http://sos.ga.gov/index.php/elections/2018_elections_and_voter_registration_calendar. On May 21, the parties filed a stipulation that the Secretary of State would place Petitioner on the general election ballot if this matter is resolved by November 6, 2018. It did not occur to Petitioner until further discussions with opposing counsel that the matter must actually be resolved well before September 18, 2018. We sincerely apologize to the Court for this oversight.

PROCEDURAL HISTORY

The procedural posture of this matter is set forth in the Secretary of State's Final Decision. *See* Petition, Exhibit A. As the decision recounts, on March 8, 2018, Ms. Palacios qualified to be a candidate for the Democratic Party nomination for the Georgia House of Representatives District 29. On March 14, an elector in the district, Ryan Sawyer, filed a written challenge with the Secretary of State arguing that because Ms. Palacios became a United States citizen in 2017, she did not satisfy the requirement of being a citizen of the state for at least two years. An administrative hearing was scheduled for May 2, 2018, both parties did not appear, and an initial decision was issued recommending that the Secretary of State's Office disqualify Ms. Palacios as a candidate. Ms. Palacios thereafter obtained counsel, who submitted a brief to the Secretary of State's Office on May 7, 2018, *see* Petition, Exhibit C; Mr. Sawyer submitted a response letter on May 17, *see* Petition, Exhibit D; and Ms. Palacios submitted a reply brief that same day, *see* Petition, Exhibit E. Both parties advanced only legal arguments concerning the meaning of "citizen of a state," and neither party raised any disputed issues of fact or sought a factual hearing. The following day, on May 18, 2018, the Secretary of State issued the final decision disqualifying Ms. Palacios, relying without discussion on a lone Attorney General's opinion from 1984. *See* Petition, Exhibit A.

Two days later, Ms. Palacios filed the instant Petition seeking to reverse that decision. The original complainant below, Ryan Sawyer, then filed an Unopposed Motion to Intervene, and Petitioner followed with the instant motion.[5]

[5] O.C.G.A. § 9-11-56 provides that a party "may" file a motion for summary judgment "at any time after the expiration of 30 days from the commencement of the action." Thirty days have not passed here, but O.C.G.A. § 9-11-6 provides that "the parties, by written stipulation of counsel filed in the action, may extend the period" by which "an act is . . . allowed to be done at or within a specified time." As of the

FACTS

As the Secretary of State's final decision acknowledged, there are no disputed issues of fact. *See* Exhibit A at 3. It is undisputed that Ms. Palacios became a United States citizen in 2017, and no one has disputed that Ms. Palacios has lived in Georgia and intended to remain in Georgia since 2009.[6]

ARGUMENT

This Court has the power to "reverse" the decision of a Secretary of State concerning candidate qualifications "if substantial rights of the appellant have been prejudiced[7] because the . . . decisions of the Secretary of State are" "in violation of the Constitution or laws of this state" or "[a]ffected by other error of law." O.C.G.A. § 21-2-5(e); (e)(1); (e)(4). When there is no factual issue and the question on review is purely legal, this Court does not defer to the Secretary of State's legal conclusions, because courts "have the ultimate authority to construe statutes." *Handel v. Powell*, 670 S.E.2d 62, 65 (Ga. 2008) (upholding reversal of Secretary of State's legal conclusion in candidate qualification decision where the parties "acknowledged there was no factual issue").[8] As such, this matter is capable of resolution on summary judgment. *See Black v. Bland Farms, LLC*, 774 S.E.2d 722, 727 (Ga. App. 2015) ("A party is entitled to summary

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filing of this memorandum, the parties are actively negotiating in good faith a stipulated joint motion to set an expedited briefing schedule allowing for this accelerated motion practice.

[6] In the proceedings below, Ms. Palacios submitted evidence to show that she has lived in Georgia and intended to remain there since 2009. *See* Petition, Exhibit C. The elector who initially challenged her qualifications did not dispute this evidence in his response. *See* Petition, Exhibit D.

[7] The disqualification of a candidate constitutes prejudice of a substantial right. *See Handel v. Powell*, 670 S.E.2d 62, 65 n.3 (Ga. 2008).

[8] The standard of review here is "virtually identical to the standard of review provided in the Administrative Procedure Act, O.C.G.A. § 50-13-19(h) . . . ." *Handel*, 670 S.E.2d at 65.

judgment if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.").

As discussed below, the Secretary of State's legal conclusion that Ms. Palacios did not satisfy the Georgia Constitution's durational state citizenship requirement is both "in violation of the Constitution or laws of this state" and/or "[a]ffected by other error of law." O.C.G.A. § 21-2-5(e)(1); (e)(4). First, "citizen of a state" has traditionally meant a resident or domiciliary of the state without any connotation of United States citizenship. Second, the one-page 1984 Attorney General Opinion upon which the Secretary of State relies is unpersuasive and defies logic. Third, the Court should reject the Secretary of State's interpretation of "citizen of a state" because it would render the separate clause requiring United States citizenship completely superfluous. Accordingly, the final decision should be reversed. *See, e.g.*, *Handel v. Powell*, 670 S.E.2d 62 (Ga. 2008) (upholding reversal of Secretary of State's final decision concerning candidate qualifications based on an error of law).

I. "CITIZEN OF A STATE" HAS TRADITIONALLY MEANT RESIDENCY OR DOMICILE, WITHOUT A UNITED STATES CITIZENSHIP REQUIREMENT

"Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified." *Gazan v. Heery*, 187 S.E. 371, 378 (Ga. 1936). The sole legal question in this case is whether Ms. Palacios has legally satisfied the Georgia Constitution's requirement that she be a "citizen[] of the state for at least two years" "[a]t the time of their election" (here, November 6, 2018). Ga. Const. Art. I, § 1, ¶ 7. The relevant provision of the Georgia Constitution provides, in full, that:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2 ¶ 3(b). (There is no dispute that Ms. Palacios has satisfied the "citizens of the United States" requirement of this provision, which only requires that she be a United States citizen at the time of election.)

The formulation "citizens of the state" is an old one, dating back in the Georgia Constitution since at least 1877,[9] and although counsel for Ms. Palacios was unable to locate a Georgia court decision interpreting this phrase, the highest courts from at least 11 states have long interpreted this phrase to mean resident or domiciliary (meaning a resident who intends to remain, *Handel v. Powell*, 670 S.E.2d 62, 63 (Ga. 2008)) based on the traditional meaning of the "citizen of a state" phrase, regardless of whether the individual was a United States citizen. Notably, neither the original challenger to Ms. Palacios's candidacy nor the Secretary of State's office (nor the Attorney General's opinion upon which it relies) have cited a single court decision from anywhere, including in Georgia, that have disagreed with these cases.

For example, in a case virtually identical to this one, the highest court in Maryland concluded that the Maryland Constitution's durational state citizenship requirement simply required that the candidate be a domiciliary of Maryland during that time regardless of whether they were a United States citizen. *See Crosse v. Bd. of Supervisors of Elections of Baltimore City*, 221 A.2d 431, 433-36 (Md. 1966).[10] There, the Maryland Constitution required that candidates for Sheriff be "above the age of twenty-five years and at least five years preceding his

[9] When locating this constitutional provision on Westlaw, Westlaw indicates that prior versions of this clause date back to 1877. Looking at the 1877 Georgia Constitution reveals that the "citizens of this state" formulation has remained unchanged since that time. *See* Ga. Const. (1877), Art. III, § VI, ¶ 1 ("The Representatives shall be citizens of the United States who have attained the age of twenty-one years, and who shall have been citizens of this state for two years . . . ."), *found at:* https://bit.ly/2K340Lz.

[10] The highest court in Maryland is called the Court of Appeals.

election, a citizen of the State." The high court surveyed various out-of-state cases and concluded that "citizen of the State" "was meant to be synonymous with domicile." *Id.* at 435. Importantly, it added that the candidate did *not* need to be a United States citizen in order to be a citizen of the state, explaining that historically, both before and after the civil war, "it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." *Id.* at 433. Thus, it concluded, "citizenship of the United States is not required, even by implication, as a qualification for this office," *id.* at 435.

The interpretation of "citizen of the state" as being synonymous with residency or domiciliary without connotation of United States citizenship is consistent with the way in which the phrase "citizen of the state" was traditionally used, including around the time of the 1877 Georgia Constitution. Thus, as early as 1863, the Supreme Court of Arkansas observed that "[t]he word 'citizen' is often used in common conversation and writing, as meaning only an inhabitant, a resident of a town, state, or county, *without any implication of political or civil privileges*." *McKenzie v. Murphy*, 1863 WL 444, at *4 (Ark. 1863) (emphasis added). Accordingly, the durational state citizenship requirement for electors in Arkansas meant "nothing else than to [be] a resident of the state for that time, [or] an inhabitant." *Id.*[11] The Supreme Court of North Dakota similarly observed in the electoral context that "[t]he words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors mean substantially the same thing." *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 564-

[11] Many of these older cases cited here were decided during the ugly period when only white males were allowed to vote and hold office, and some cases cited here were also decided during times of slavery. Nonetheless, there is no reason why these cases' traditional interpretation of state citizenship should not hold today, especially as it is consistent with the Georgia Supreme Court's command to give a "liberal construction in favor of those seeking to hold office," *Gazan*, 187 S.E. at 378, and indeed promotes democratic participation of those like Ms. Palacios who recently became United States citizens.

65 (N.D. 1935). So widespread was this understanding that the highest courts of Alabama, Colorado, and New York have all arrived at similar conclusions even outside the electoral context. *See Smith v. Birmingham Waterworks Co.*, 16 So. 123, 125-26 (Ala. 1894) ("citizens of Birmingham" "has the same meaning and operation as 'inhabitant'"), *overruled on other grounds by City of Montgomery v. Smith*, 88 So. 671 (Ala. 1921); *Sedgwick v. Sedgwick*, 144 P. 488, 490 (Colo. 1911) (fact that Colorado "had long been in good faith his genuine home and domicile, . . . made him a citizen of the state"); *Union Hotel Co. v. Thompson Hersee*, 34 Sickels 454, 461 (N.Y. 1880) ("citizens of Buffalo" can mean "an inhabitant" or "permanent resident").[12] None of these cases insisted on United States citizenship as a prerequisite.

Other high courts have also confirmed that one does not have to be a citizen of the United States in order to be a citizen of a state. For example, the Supreme Court of Ohio clarified this distinction as early as 1841, explaining, "When we speak of a citizen of the United States, we mean one who was born within the limits of, or has been naturalized by the laws of, the United States," but when "we speak of a person of a particular place, . . . we mean nothing more by it than that he is a resident of that place." *State ex rel. Owens v. Trustees of Sec. 29, Delhi Tp.*, 1841 WL 43, at *3 (Ohio 1841). The Supreme Court of Michigan, relying on this traditional meaning, later adopted that same distinction. *See Bacon v. Bd. of State Tax Comm'rs*, 85 N.W. 307, 309-10 (Mich. 1901) (quoting citizenship distinction language from *Owens* and concluding, "We think the legislature intended to use the word 'citizen' as synonymous with 'inhabitant,' or 'resident'"). The Supreme Court of Texas also clarified around the time of the 1877 Georgia Constitution that being a "citizen of Texas" "is not to be taken in a restricted sense as designating only the native-born or naturalized citizen, but in its general acceptation and meaning as

[12] The highest court in New York is called the Court of Appeals.

descriptive of the inhabitants . . . .” *Cobbs v. Coleman*, 1855 WL 4942, at *3 (Tex. 1855). The highest courts of Wisconsin and West Virginia have also held that United States citizenship is not necessary for state citizenship. *See Vachikinas v. Vachikinas*, 112 S.E. 316, 317, 318 (W.Va. 1922) (“citizen of this state” includes individuals who are “bona fide residents domiciled in the State,” even where the individuals “never applied for or bec[a]me naturalized citizens of the United States”); *In re Wehlitz*, 1863 WL 1069, at *3 (Wis. 1863) (“Under our complex system of government there may be a citizen of a state who is not a citizen of the United States”).

Lower courts from Missouri, Rhode Island, and Pennsylvania have also arrived at similar conclusions. *See Stevens v. Larwill*, 84 S.W. 113, 117-18 (Mo. App. 1904) (interpreting “citizen of Tennessee,” observing that “[t]he words ‘inhabitant,’ citizen’ and ‘resident’ mean substantially the same thing, and one is an inhabitant, resident, or citizen of the place where he has his domicile or home.”); *Gomes v. Pub. Utils. Comm’n*, 1981 WL 390992 (Superior Ct. R.I. 1981) (need not be United States citizen to be a “citizen resident within this state”); *Powell Estate*, 71 Pa. D. & C. 51, 59 (Pa. Orphans’ Ct. 1950) (state citizenship means either residency or domicile). To be sure, there is some division in the courts over whether state citizenship means residency or domiciliary, the latter of which requires an intent to remain, *see id.* (surveying cases), but regardless of which definition applies, Ms. Palacios’s circumstances undisputedly satisfy either requirement.

The considerable weight of judicial authority persuasively establishes that the traditional meaning of “citizen of a state” has only meant either “resident” or “domiciliary” of the state without a United States citizenship requirement. Because Ms. Palacios undisputedly satisfies this two-year residency or domiciliary requirement, this Court should reverse the Secretary of State’s final decision.

II. THE 1984 ATTORNEY GENERAL'S ONE-PAGE OPINION IS UNPERSUASIVE AND ILLOGICAL

Rather than grappling with any of these authorities, citing any other cases to the contrary, or providing any meaningful reason to justify departing from the traditional meaning of "citizen of the state," the Secretary of State's final decision rests solely on a one-page Attorney General opinion from 1984 which opines that "A person must be a citizen, either natural born or naturalized, of the United States and must reside within this state in order to be a citizen of the State of Georgia." 1984 Ga. Op. Atty. Gen. 122 (attached as Exhibit B to the Petition). The opinion, in turn, also fails to cite any judicial authority, but instead rests on the following chain of reasoning: First, it noted that both the Georgia Constitution and the United States Constitution provide that all United States citizens are automatically considered citizens of the state in which they reside. *See* Petition, Ex. B (citing Ga. Const. art. I, § 1, ¶ VII ("[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state"); U.S. Const. Amend. XIV, § 1 ("[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside")). Thus, it concluded, all citizens of the state must at least be United States citizens. That was the beginning and the end of its analysis. This, too, was the essence of the argument advanced by Proposed Intervenor-Respondent Mr. Sawyer. *See* Petition, Exhibit D.

As the Secretary of State acknowledges, Petition, Ex. A at 4, Attorney General opinions are not binding on the courts and are at most considered persuasive authority. *See, e.g.*, *Moore v. Ray*, 499 S.E.2d 636, 637 (Ga. 1998) (declining to adopt Attorney General's opinion, which is "not binding on the appellate courts"). And here, the Attorney General's opinion is not persuasive because it fails basic logic. If we say that "all cars are vehicles," it does not automatically follow that "all vehicles must be cars." Similarly, just because all United States

citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens. Indeed, none of the above cited cases post-dating the Fourteenth Amendment have found that the Fourteenth Amendment's automatic conferral of state citizenship to United States citizens somehow meant that one had to be a Untied States citizen in order to be a citizen of a state. To the contrary, "Both before and after the Fourteenth Amendment to the federal Constitution, it has not been necessary for a person to be a citizen of the United States in order to be a citizen of his state." *Crosse*, 221 A.2d at 433.

It is notable that not even the Secretary of State's final decision labors to defend the Attorney General's one-page opinion. Though Ms. Palacios pointed out the illogical nature of the above reasoning in a reply brief submitted to the Secretary of State's Office, *see* Petition, Exhibit E, the final decision fails to address it. Indeed, the final decision does not even explain why the Attorney General's opinion is persuasive at all, instead adopting it wholesale. This is perhaps because the Secretary of State's Office, as an executive branch agency, considers itself compelled to follow the opinions of the Attorney General, who is the "legal adviser of the executive branch." O.C.G.A. § 45-15-3(4). *See* Petition, Ex. A at 4 ("*In keeping with the Attorney General opinion*, I find that it is necessary to be a U.S. citizen in order to be a 'citizen of this state.'" (emphasis added)).

This Court, of course, is not so bound. Even if there were any logical basis to support the Attorney General's opinion—and the Secretary of State has not proffered any—this Court should decline to follow it, and instead adhere to the traditional interpretation of "citizen of a state" that has been recognized by courts around the country for well over a century.

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III. THE SECRETARY OF STATE'S INTERPRETATION OF "CITIZEN OF A STATE" WOULD RENDER ANOTHER CLAUSE SUPERFLUOUS

Though the above is sufficient for this Court to grant Petitioner's motion for summary judgment, the Secretary of State's interpretation of "citizen of a state" should also be rejected because it would render another clause in the same provision superfluous. "Established rules of constitutional construction prohibit [courts] from any interpretation that would render a word superfluous or meaningless." *Gwinnett Cnty. Sch. Dist. v. Cox*, 710 S.E.2d 773, 779 (Ga. 2011); *see also Handel*, 670 S.E.2d 62, 66 (Ga. 2008) (rejecting Secretary of State's interpretation of statute in candidate qualifications challenge where interpretation would render another part of the statute "meaningless").

Both the Secretary of State and the Proposed Intervenor-Respondent insist that the two-year "citizen of a state" durational requirement necessarily requires that the candidate be a citizen of the United States for at least two years leading up to the election. *See* Petition, Ex. A at 4; Petition, Ex. D at 3 ("Ms. Palacios must have been a United States citizen **and** a resident of Georgia for at least two years from the date of the November 6, 2018 General Election, i.e., since at least November 6, 2016." (emphasis in original)). But if this is true, then the separate clause requiring that the candidate be a "citizen of the United States" "[a]t the time of the election" would be superfluous.

The provision at issue reads as follows:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2 ¶ 3(b). Broken down, the candidate must therefore be:

> (1) "citizens of the United States" "[a]t the time of their election";
> (2) "at least 21 years of age" "[a]t the time of their election";
> (3) "citizens of this state for at least two years" "[a]t the time of their election"; and

(4) "legal residents of the territory embraced within the district from which elected for at least one year" "[a]t the time of their election".

If "citizens of this state" requires that the candidate be a "citizen of the United States," as the Secretary of State argues, then satisfying Clause #3 means the candidate must be a United States citizen for at least two years leading up the election. If that is true, then Clause #1—requiring that candidates be United States citizens only on the day of the election—would be completely superfluous, because Clause #3 would necessarily have already required that under the Secretary of State's interpretation. In other words, being a United States citizen for at least two years leading up to the election (Clause #3, under the Secretary of State's interpretation) necessarily means you are a United States citizen *at the time* of the election (Clause #1). Because the Secretary of State's interpretation of Clause #3 would render Clause #1 superfluous, it should be rejected. The traditional definition of "citizens of a state" removes that interpretive problem.

CONCLUSION

For centuries, courts around the country have recognized that "citizen of a state" means someone who is either a resident or a domiciliary of that state, without requiring Untied States citizenship. The Georgia Constitution requires that candidates for the State House of Representatives be citizens of the state for at least two years at the time of the election. Because Petitioner Maria Palacios has undisputedly been both a resident and domiciliary of the State of Georgia since 2009, she satisfies that legal requirement. The Secretary of State's legal conclusion to the contrary are both "in violation of the Constitution or laws of this state" and/or "[a]ffected by other error of law." O.C.G.A. § 21-2-5(e)(1); (e)(4).

For these reasons, this Court should grant Petitioner's motion for summary judgment and reverse the Secretary of State's final decision.

This 23rd day of May, 2018.

Respectfully submitted,

/s/ Sean J. Young

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

Respondent-Appellee Kemp's Combined Brief in Support of his Cross-Motion for Summary Judgment and in Opposition to Petitioner-Appellee's Motion for Summary Judgment

Respondent-Appellee Brian P. Kemp, sued in his official capacity as Georgia Secretary of State ("the Secretary"), respectfully submits this Brief in Support of his Cross-Motion for Summary Judgment and in Opposition to the Motion for Summary Judgment filed by Petitioner-Appellant Maria Palacios ("Petitioner"):

INTRODUCTION

This case seeks judicial review under O.C.G.A. § 21-2-5(e) of a final decision by the Secretary which determined that Petitioner did not satisfy the constitutional requirements to hold office in the Georgia House of Representatives. The Secretary ruled that Georgia citizenship requires that one be a citizen of the

United States. Because the Petitioner did not become a United States citizen until 2017, she could not, therefore, satisfy the constitutional requirement in Article III of the Qualifications Clause of the Georgia Constitution that she be a "citizen of this state for at least two years." Petitioner's position is that it is not necessary to be a United States citizen in order to be "citizen of this State" and argues that mere residency in the State for more than two years is sufficient to satisfy the qualification requirement in the Georgia Constitution.

The Secretary's interpretation of "citizen of this State" as requiring United States' citizenship is reasonable, consistent with legislative intent, and should be affirmed. Although there are no Georgia cases that address the meaning of the constitutional language "citizens of this State," a plain reading of the Georgia Constitution makes clear that United States citizenship is required in order to be a Georgia citizen. Article I, § 1, ¶ 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. 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 contains 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 was 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 legislative history to the constitutional language also supports the correctness of the Secretary's determination. Earlier versions of the Qualifications Clause in the Georgia Constitution had used the term "inhabitant" of this state to set forth the 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 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" as synonymous with "citizenship." Moreover, the historical context of the 1868 Constitution, which was drafted shortly after the Civil Water 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 language in numerous Georgia statutes defines state citizenship as necessarily encompassing citizenship in the United States, and these statutes were pre-existing when the modern Constitutions were adopted and ratified. 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 as expressed in many longstanding Georgia statutes.

The Secretary's determination that Petitioner is not qualified to be a candidate in the Georgia State House of Representatives is reasonable, consistent with legislative intent, and entitled to deference by this Court. The Petition for Review should be denied, and the Secretary's decision should be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Maria Palacios is a candidate for the Georgia State House of Representatives to represent House District 29. [R. 3-4].[1] On March 14, 2018, citizen Ryan Sawyer, the intervenor in this litigation, submitted to the Georgia Secretary of State a challenge to the qualifications of Ms. Palacios to hold the office based upon the fact that Ms. Palacios had not become a United States citizen until 2017. [R. 10]. Mr. Sawyer's challenge contended that because Ms. Palacios

[1] Citations are to the administrative record for the decision under review, which was filed on May 29, 2018.

was not a citizen of the United States until 2017, she could not satisfy the constitutional requirement that she have been a "citizen of this State for at least two years." [*Id.*]

The matter was referred to the Office of State Administrative Hearings ("OSAH"). [R. 8-12]. A hearing was held on May 2, 2018 in *Sawyer v. Palacios*, OSAH-SECSTATE-CE-1835339-69 [R. 23], and Petitioner (the Respondent in the OSAH action) failed to appear. [R. 25]. Because Ms. Palacios did not appear at the hearing, the Administrative Law Judge ("ALJ") ruled that Petitioner had failed to satisfy her evidentiary burden of demonstrating that she was qualified to hold office. [R. 25-27]. Ms. Palacios subsequently obtained counsel and appealed the ALJ's Initial Decision to the Secretary of State.

Ms. Palacios submitted a legal brief to the Secretary in opposition to the challenge to her candidacy setting forth her legal position that citizenship in the United States was not required in order to be "a citizen of this State" under the Qualifications Clause in the Georgia Constitution. [R. 28-32]. Mr. Sawyer submitted a letter brief in opposition to Ms. Palacios brief. [R. 38-46], and Ms. Palacios filed a Reply Brief. [R. 47-48].

After fully considering the legal positions advanced by both parties, the Secretary issued a Final Decision on May 18, 2018 [R. 49-52], concluding that "it is necessary to be a U.S. citizen in order to be a 'citizen of this state'" and that Ms.

Palacios did not, therefore, satisfy the constitutional requirement that she have been a citizen of this state for at least two years prior to the election. [R. 52].

Petitioner then filed a timely appeal in this Court on May 21, 2018 seeking judicial review of the Secretary's decision pursuant to O.C.G.A. § 21-2-5(e). [May 21, 2018 Petition]

STANDARD OF REVIEW

"O.C.G.A. § 21-2-5 provides the standard of review a superior court is to employ when reviewing a decision by the Secretary of State on a challenge to a candidate's qualifications." *Handel v. Powell*, 284 Ga. 550, 552 (2008). Review shall be conducted by the court without a jury and is confined to the administrative record. O.C.G.A. § 21-2-5(e).

O.C.G.A. § 21-2-5 provides for a deferential standard of review, which the Georgia Supreme Court has described as "virtually identical to that provided in the Administrative Procedure Act." *Id.* Under this standard, the Court may not substitute its judgment for that of the Secretary on questions of fact, and factual findings will be sustained under the "any evidence" standard. While legal questions are reviewed *de novo*, the Georgia Supreme Court has instructed that in determining the soundness of the agency's legal conclusions, courts must afford "great weight and deference" to "'the interpretation of a statute by an administrative agency which has the duty of enforcing or administering it." *Center*

for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736, 741 (2008) (internal citations omitted).

While this case turns on a question of constitutional, and not statutory, construction, O.C.G.A. § 21-2-5(a) requires that candidates satisfy the statutory and constitutional qualifications for holding office, and O.C.G.A. § 21-2-5(c) imposes a duty on the Secretary to determine if a candidate meets those qualifications. Thus, this question of constitutional interpretation relates directly to the Secretary's statutory duty to administer and enforce O.C.G.A. § 21-2-5.

Petitioner mischaracterizes the holding in *Handel* when she cites this case for the proposition that no deference is owed to the Secretary's legal interpretations. [Pet. Br. at 5]. To the contrary, after citing to APA precedent, the Supreme Court in *Handel* specifically stated that "judicial deference *is* afforded an agency's interpretation of statutes it is charged with enforcing or administering . . ." *Handel*, 284 Ga. at 553 (emphasis added). The portion of the decision cited by Petitioner merely notes that an agency's legal interpretation is "not binding on the courts" and will be rejected when it is erroneous. *Id.*

ARGUMENT

I. The Secretary Correctly Determined That Petitioner Was Not Qualified to Seek Public Office in the House of Representatives Because She Was Not a "Citizen of this State" for Two Years.

Every candidate for public office must satisfy the constitutional and statutory qualifications for holding the office sought. O.C.G.A. § 21-2-5(a). The General Assembly has authorized the Secretary to make the determination as to whether a candidate is qualified to seek and hold office. O.C.G.A. § 21-2-5(c). In exercising his statutory responsibility to rule on the merits of the challenge to Petitioner's qualifications brought by Intervenor Ryan Sawyer, the Secretary was required to interpret the meaning of the phrase "citizen of the state" in the Qualifications Clause of the Georgia Constitution, which provides that:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, *shall have been citizens of this state for at least two years*, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. 1983, Art. 3, § 2, ¶ 2(b) (emphasis added).

The outcome of this qualifications challenge rests on the answer to one legal question that has never been addressed by the Georgia courts: Must an individual be a citizen of the United States in order to be a "citize[n] of this state" for purposes of the Qualifications Clause in the Georgia Constitution? It is undisputed that Petitioner did not become a United States citizen until 2017 [R. 28], and thus

would fail to satisfy the requirement that she be a "citizen of the state for at least two years" if United States' citizenship were required in order to be "a citizen of this state." As discussed below, the Secretary correctly determined that an individual cannot be a Georgia citizen unless and until he or she becomes a citizen of the United States, and, therefore, Petitioner was properly disqualified for failure to satisfy the constitutional requirement that she be a "citizen of this state for at least two years."

A. The Plain Language of the Constitution Shows that United States Citzenship Is Required In Order to Be a "Citizen of this State."

Petitioner argues that "citizens of this state" should be interpreted to be synonymous with the terms "residents" or "domiciles," without a United States citizenship requirement [Pet. Br. at 10]; however, the constitutional drafters specifically used the term "resident" with respect to the fourth qualification requirement in the Qualifications Clause -- that one must be a "resident of the territory embraced within the district from which elected for at least one year" – but deliberately used the different word "citizens" to describe the third qualification requirement that candidates must be state citizens for at least two years. The fact that the legislature used the word "resident" in the same clause with the word "citizen" makes clear that the legislature did *not* consider citizenship and residency to be synonymous. If the legislature had wanted to require residency or domicile within the State for two years, it could have said so, as it did with

regard to the district residency requirement. Instead, it used the different term "citizen."

It is well established that courts "must honor the plain and unambiguous meaning of a constitutional provision." *Blum v. Schrader*, 281 Ga. 238, 239 (2006). "'Where the natural and reasonable meaning of a constitutional provision is clear and capable of a 'natural and reasonable construction,' courts are not authorized to either read into or read out that which would add to or change its meaning.'" *Id.* (internal citations omitted). Application of this rule demonstrates that Petitioner's preferred words "resident" or "domicile" cannot be substituted for the legislature's decision to use the term "citizens of this state."

While the Qualifications Clause itself does not define "citizens of this state," other provisions in the Constitution do make clear what is meant by this phrase. Article I, § 1, ¶ 7 of the Constitution, entitled "Protection of Citizens," was enacted at the same time as the current version of the Qualifications Clause (as part of the 1877 Constitution), and it states clearly that:

> *All citizens of the United States, resident in this state, are hereby declared citizens of this state*; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.

Ga. Const. 1983, Art. 1, § 1, ¶ 7 (emphasis added). This provision thus provides a clear definition of the constitutional term "citizens of this state": It is a person who

is *both* a United States citizen *and* a resident in this state. And, again, as was the case with the Qualifications Clause, the juxtaposition of the term "citizen" and "resident" in this provision demonstrates that the legislature did not intend "citizen" to be synonymous with resident.

"It is a basic rule of construction that a statute or constitutional provision should be construed 'to make all its parts harmonize and to give a sensible and intelligent effect to each part, as it is not presumed that the legislature intended that any part would be without meaning.'" *Gilbert v. Richardson*, 264 Ga. 744, 747-748 (1994) (internal citations omitted). Applying this rule of constitutional construction means that the language in the Qualifications Clause in Article 3 must be read in harmony with the definition of "citizens of this state" set forth in Article 1. This is particularly true here, given that the two provisions were added to the Constitution at the same time, and, therefore, the framers presumably intended "citizens of this state" in Article III to be consistent with how that term was simultaneously defined in Article 1. *See Olevik v. State*, 302 Ga. 228, 236 (2017) ("broader context in which [constitutional] text was enacted may [] be a critical consideration.")

Moreover, Petitioner's argument that "citizens of this state" in Article 1 should be interpreted as a non-exhaustive definition, with citizens of other nations also potentially falling within the scope of "citizens of this state" [Pet. Br. at 2] is

illogical and internally inconsistent. First, it would make little sense for the framers to "declare" what constitutes only a *subset* of "citizens of this state" while saying nothing about a second undeclared group of "citizens of this state," who are not United States citizens. Secondly, the second sentence of the provision, in which the legislature is authorized to enact "such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship," makes no sense if "citizens of this state" were defined to include persons who are not United States citizens because non-United States citizens are not entitled to the full enjoyment of the rights and privileges of citizenship.

B. The Changes to the Georgia Constitution Show That the Framers Intended That Georgia Citizens Must Also Be Citizens of the United States.

An examination of the historical changes to the Georgia Constitution demonstrates that the framers intended that the constitutional term "citizens of this State" be interpreted as requiring United States citizenship. Petitioner notes correctly that the current language in the Qualifications Clause was adopted as part of the 1877 Constitution [Pet. Br. at 7]; however, Petitioner fails to discuss the pre-1877 versions of the Georgia Constitution, which also contained versions of the Qualifications Clause. In fact, the term "citizens of this State" first appeared in the 1868 Georgia Constitution, which replaced the 1865 Constitution. As discussed below, an examination of the earlier versions of the Qualifications

Clause makes clear that the framers intended that the phrase "citizens of this State" to encompass United States citizenship as a requirement of state citizenship.

The Georgia Supreme Court has stated that "there are few principles of Georgia law more venerable than the fundamental principle that a constitutional provision means today what it meant at the time that it was enacted." *Olevik*, 302 Ga. at 235. In order to determine what is meant by the phrase "citizen of this State," it is thus necessary to examine the historical context to understand the framers' intent when they drafted the language. *See Kolker v. State*, 260 Ga. 240, 243 (1990) ("In placing a construction on a constitution or any clause or part thereof, a court should look to the history of the times and examine the state of things existing when the constitution was framed and adopted, in order to ascertain the prior law, the mischief, and the remedy.")

The Constitutions adopted prior to the 1868 Constitution did not use the term "citizens of this State" in their Qualifications Clause. Instead, they used the different term "inhabitant" of the State and also imposed a separate requirement that candidates have been United States citizens for a specific period of time. For example, the Qualifications Clause in the Constitution of 1789 states as follows:

> No person shall be a member of the House of Representatives who shall not have attained the age of twenty-one years, *and have been seven years a citizen of the United States, and two years an inhabitant of this State*; and shall be an inhabitant of that county for which he shall be elected, and have resided therein three months

> immediately preceding his election; and shall be possessed in his own right of two hundred acres of land, or other property to the amount of one hundred and fifty pounds.

Ga. Const. 1789, Art. I, § 7 (emphasis added). Thus, in order to be qualified to serve in the Georgia House of Representatives under the 1789 Constitution, one was required to be: 1) at least 21 years of age; 2) a United States citizen for seven years; 3) an inhabitant of Georgia for two years; 4) an inhabitant of the county for three months; and 5) in possession of specified material means.

The next adopted Constitution, the Constitution of 1798, was similar. Like the earlier Constitution, it also required that candidates be at least 21 years of age and have been United States citizens for seven years. Also, like the 1789 Constitution, it used the term "inhabitant" of the State, and increased the time of inhabitancy from two years to three years.[2] 1798 Ga. Const. Art. I, § 8.

The next two Georgia Constitutions, the Constitutions of 1861 and 1865, were adopted during and immediately after the Civil War, respectively. The Qualifications Clauses in those Constitutions dropped the property ownership requirements and set forth four requirements: A candidate was required to be at least 21 years of age; 2) a citizen of the United States (or the Confederate States with respect to the 1861 Constitution); 3) an inhabitant of this State for three years;

[2] The 1798 Constitution also differed from its predecessor by changing the language "inhabitant of that county" to "having resided in the county" and also made changes to the property requirements, such as substituting dollars for pounds.

and 4) a resident of the county to be represented for one year. Thus, these versions of the Constitution required national citizenship (i.e., being a citizen of the United States or, in the case of the 1861 Constitution, the Confederate States), but they eliminated the 7-year durational requirement for such citizenship while retaining the three-year State "inhabitancy" requirement and the one-year county "residency" requirement.

It is against this historical backdrop that the framers drafted the 1868 Constitution, which is the precursor to the current language. The 1868 Constitution was the first Constitution to use the phrase "citizens of this State" in the Article III Qualifications Clause, and it is also the first constitution to adopt the precursor to the clause currently found in Article I, § 1, ¶ 7 that defines what is meant by "citizens of this State."

While the previous four Constitutions had consistently used the word "inhabitant" to describe the state residency requirement for holding office in the House of Representatives, the 1868 Constitution notably replaced that term with the current "citizens of this State":

> The representatives shall be citizens of the United States who have attained the age of twenty-one year, and who, after the first election under this constitution, shall have been *citizens of this State for one year*, and for six months resident of the counties from which elected.

Ga. Const. 1868, Art. III, § 3, ¶ 3 (emphasis added). Simultaneously with this change, the 1868 Constitution also added a new section in Article I to define this new term "citizens of this State" as "[a]ll persons born or naturalized in the United States and resident in this State":

> *All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State*, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due enjoyment of the rights, privileges, and immunities guaranteed in this section.

Ga. Const. 1868, Art. I, § 2 (emphasis added). These two provisions, when read together, thus make clear that the framers sought to require *more* than mere residency or inhabitancy in the State to be qualified to serve in the House of Representatives: It was necessary to also be *a citizen* of this state, which was defined to mean "born or naturalized in the United States, and resident in this State."

If the framers considered "citizen of this state" to be synonymous with "resident" or "domicile," as Petitioner contends, then there would have been no reason for them to have changed the constitution to replace "inhabitant of this State" with "citizen of this State," nor would they have needed to add a new clause defining "citizen of this State." The framers were obviously aware of the term

"inhabitant" because it had appeared in multiple prior constitutions. They were also clearly familiar with the term "resident" since they had consistently used that term to determine the county residence requirement and in the new Article I definition of "citizen of this State," i.e., "born or naturalized in the United States, and *resident* in this State." The term "citizen" was thus meant to convey something different than residency, inhabitancy, or domicile.

Because United States citizenship is necessary to be a "citizen of this state," the 1868 Constitution was necessarily imposing a requirement that a person must be a United States citizen for one year to qualify for office in the House of Representatives. However, this was not a new concept because as discussed above, the Qualifications Clauses in the 1789 and 1798 Constitutions required United States citizenship for seven years. *See McKnight v. Decatur*, 200 Ga. 611, 615-616 (1946) (interpreting amendment to 1877 Constitution in light of language contained in 1868 Constitution)

That the framers intended to require United States citizenship as a necessary component of Georgia citizenship is also evidenced by the addition of a new section in the 1868 Constitution that specifically affirmed loyalty to the United States as a critical piece of Georgia citizenship:

> *The State of Georgia shall ever remain a member of the American Union; the people thereof are a part of the American nation; every citizen thereof owes paramount allegiance to the Constitution and Government of the*

> *United States*, and no law or ordinance of this State, in contravention or subversion thereof, shall every have any binding force.

Ga. Const. 1868, Art. I, § 33 (emphasis added). Given that the Civil War was a recent event in 1868, it is likely that the drafters added this language to emphasize that Georgia citizens were once again loyal citizens of the United States. While this particular provision was subsequently omitted from the next version of the Constitution enacted in 1877, its inclusion in the 1868 Constitution provides insight into the mindset of the framers when the 1868 Constitution was drafted and reveals their view that United States citizenship was a critical facet of Georgia citizenship. *See Olevik v. State,* 302 Ga. at 235 ("We interpret a constitutional provision according to the original public meaning of its text, which is simply shorthand for the meaning the people understood the provision to have at the time they enacted it.")

The next Constitution in Georgia was the Constitution of 1877, which, with respect to the provisions at issue here, made largely semantic changes to the language in the 1868 Constitution. Whereas Article I of the 1868 Constitution defined "citizens of this State," as "[a]ll persons born or naturalized in the United States, and resident in this State," the 1877 Constitution adopted the current similar phrase that "citizens of this State" are "all citizens of the United States, resident in this State . . ." Ga. Const. 1877, § 1, ¶ XXV. The Qualifications Clause in Article

III of the 1877 Constitution retained the requirement in the 1868 Constitution that candidates be "citizens of this State" and "residents of the county," but doubled the durational requirements to require two years of state citizenship and one year of county residency, which are the modern durational requirements. Ga. Const. 1877, Art. III, § 6, ¶, 1.

By keeping the provision in Article I defining "citizens of this State" to encompass United States' citizenship, the framers of the 1877 Constitution, however, made clear that they were not changing the requirement in the 1868 Constitution that Georgia citizens must be United States citizens. This language has been adopted with no change by three subsequent Constitutions (Constitutions of 1945, 1976, and the current 1983 version).

C. Numerous Statutes Also Make Clear that a Citizen of Georgia Must Be a United States Citizen.

The Georgia Supreme Court has instructed that "[a] constitutional provision must be presumed to have been framed and adopted *in light of and understanding of prior and existing laws and with reference to them*. Constitutions, like statutes, are properly to be expounded in the light of conditions existing at the time of their adoption." *Kolker*, 260 Ga. at 243 (emphasis added). This awareness of "prior and existing law" is not limited to common law or judicial interpretations, but also extends to statutory and constitutional law. *Thompson v. Talmadge*, 201 Ga. 867, 885-886 (1947).

Application of this established principle of constitutional construction demonstrates that "citizens of this State" must necessarily also be United States citizens because numerous statutes exist that express the General Assembly's clear and longstanding view that Georgia citizens must be United States citizens. For example, O.C.G.A. § 1-2-2, entitled "Categories of natural persons," sets forth three categories of persons:

> (1) Citizens;
> (2) Citizens of the United States, but not of this state; and
> (3) Aliens.

O.C.G.A. § 1-2-2. The first category of person necessarily refers to "citizens" who are *both* citizens of Georgia and citizens of the United States because the second category refers to citizens of the United States, who are *not* "citizens of this state" (i.e., United States citizens who are citizens of other states), thus making clear that the first category must refer to citizens of this state who *are* United States citizens. The third category of persons includes *all* aliens, which are defined in O.C.G.A. § 1-2-11(a) as "the subjects of foreign governments who have not been naturalized under the laws of the United States." Notably, there is no fourth category for "aliens who are citizens of Georgia."

Another statutory provision, O.C.G.A. § 1-2-3 ("Duration of citizenship") also makes clear that citizens of Georgia must also be citizens of the United States. It states that "[u]ntil citizenship is acquired elsewhere, *a citizen of this state*

continues to be a citizen of this state and of the United States." O.C.G.A. § 1-2-3 (emphasis added). The legislative use of the word "continues" makes clear that a citizen of this State must be necessarily be a United States citizen; otherwise, there would be no citizenship to be continued.

The statute setting forth the requirements for reacquisition of citizenship by expatriated persons also reveals that United States citizenship is an essential component of Georgia citizenship. It states that if a person is expatriated and "acquires citizenship under some foreign power, he and his descendants who go with him for the purpose of residence may become citizens of this state again only *after meeting the residence requirements and taking the oath of allegiance required of other foreigners as a condition to becoming a citizen of the United States by Section 1448 of Title 8 of the United States Code*." O.C.G.A. § 1-2-5 (emphasis added). Thus, under this statute, a United States citizen who chooses to expatriate cannot become a citizen of this State unless or until her or she complies with federal requirements to obtain United States citizenship. Mere residency in Georgia is insufficient.

O.C.G.A. § 1-2-6 entitled "Rights of Citizens Generally" provides further evidence that the Georgia legislature intended the term "citizen of this State" to refer to United States' citizens. It sets forth nine enumerated rights of citizens, including "the right of the elective franchise" [O.C.G.A. § 1-2-6(a)(4)], a provision

that would make no sense if "citizens" were defined to included persons who are not United States citizens, given that United States citizenship is required in order to be eligible to vote.

Prior versions of these statutes clarifying the meaning of "citizen" were first enacted in 1863, and the current versions of the statutes have not been amended since 1933. Thus, the prior versions of these laws were in effect when the 1868 and 1877 Constitutions were adopted, and the current laws were in effect at the time of the adoption of the last three Constitutions in 1945, 1976 and 1983 (the current Constitution). Therefore, under the established rules of constitutional construction, it is presumed that the legislature was aware of these statutes and that its use of the term "citizens of this state" in the Constitution is consistent with the pre-existing statutory law defining Georgia citizenship. *Thompson v. Talmadge*, 201 Ga. at 886-887 ("[It appears that the language in this present Constitution about which this controversy arose had its meaning declared by legislative construction prior to its incorporation in the Constitution . . .")

D. Petitioner's Contrary Arguments Lack Merit.

Petitioner's Brief in Support of her affirmative motion makes several meritless arguments in support of her claim that a Georgia citizen need not be a United States citizen, each of which is addressed below.

1. The Secretary Reasonably Relied on the AG Opinion.

Petitioner criticizes the Secretary's decision for citing to a 1984 Attorney General opinion [Pet. Exh. B], which had also concluded that United States citizenship is required in order to be a citizen of Georgia, and suggests that the Secretary felt "compelled to follow the opinions of the Attorney General . . ." [Pet. Br. at 12]. The Secretary cited to the opinion because it provided persuasive authority in support of his position. Consideration of the AG opinion and citation to it in his decision was especially reasonable here, given the lack of any Georgia case law directly on point.

Petitioner argues that the AG opinion "fails basic logic" in its interpretation of the language in Article I defining "citizens of this State" on grounds that "just because all United States citizens are considered citizens of the State, it does not mean that all citizens of the state must be United States citizens." [Pet. Br. at 2]. Petitioner attempts to elucidate her point by analogizing it to the fact that even if "all cars are vehicles, it does not automatically follow that all vehicles must be cars." [Pet. Br. at 2, 11]. The Secretary agrees that a state *could*, in the exercise of its sovereignty, confer state citizenship on persons who are not United States citizens; however, a state is not required to do so, and Georgia has chosen to define state citizenship as requiring United States citizenship. Nor is the Secretary's interpretation contrary to Petitioner's car/vehicle analogy: All Georgia citizens are

United States citizens, but not all United States citizens are Georgia citizens. Georgia citizens are a subset of United States citizens, just as cars are a subset of vehicles.

2. The Rule Against Surplusage Does not Apply.

Petitioner argues that the Secretary's interpretation of "citizens of this State" renders the first requirement in the Qualifications Clause – that candidates be United States citizens – superfluous on grounds that if Georgia citizens have to be United States citizens, there would be no need to delineate United States citizenship as a separate requirement. [Pet. Br. at 13-14]. While Petitioner is correct that the Secretary's interpretation necessitates United States citizenship as a requirement of state citizenship, meaning that one would have to be a United States citizen in order to be a citizen of Georgia, the inclusion of United States citizenship is not superfluous language because the United States and the State are separate sovereigns, and federal and state citizenship are *different* and carry different requirements, rights, and privileges. Georgia citizens are a subset of United States citizens, but the two types of citizenship are not the same, and the terms are thus not redundant.

Moreover, the rule against surplusage is simply one of many rules of statutory construction that becomes necessary only when the legislative meaning and intent is not evident based on a plain reading of the statute. The "golden rule

of statutory construction" takes priority over the other rules and requires courts to "follow the literal language of the statute 'unless it produces contradiction, absurdity, or such an inconvenience as to insure that the legislature meant something else.'" *Telecom USA v. Collins*, 260 Ga. 362, 363 (1990). As set forth above, the plain reading of Article 1, § 1, ¶ 7 states that "citizens of this State" are "citizens of the United States [who are] resident in this state." Petitioner's argument implicitly asks this Court to read in language to include "citizens of other countries who are resident in this state." The Secretary's interpretation produces no "contradiction" or "absurdity," nor does it create "such an inconvenience as to insure that the legislature meant something else." *Id.*

To the contrary, as discussed above, the Secretary's interpretation is consistent with the framers' intent at the time they drafted the constitutional language. The framers' decision to replace "inhabitant of this State" with "citizen of this State" provides unequivocal evidence that the legislature did not consider "citizens" and "inhabitants" to be the same thing. Furthermore, the fact that Article III, § 2, ¶ 2(b) (the Qualifications Clause) and Article I, § 1, ¶ 7 (provision defining "citizens of this State") were added to the 1868 Constitution simultaneously in the aftermath of the Civil War -- at a time when the framers also thought it necessary to specifically emphasize that Georgia "citizens" are "a part of the American nation" who "owe paramount allegiance to the Constitution and

Government of the United States" [Ga. Const. 1868, Art. I, § 33] -- evidences a clear legislative intent to require that Georgia citizens also be United States citizens. Finally, the existence of numerous Georgia statutes that define "citizen" as necessarily encompassing United States citizenship provides further evidence that the constitutional language "citizens of this State" was meant to require United States citizenship.

3. The Case Law Relied Upon by Petitioner Is Distinguishable.

Petitioner cites a number of cases from other jurisdictions as allegedly showing that "'citizen of a state' has traditionally meant residency or domicile without a United States citizenship requirement." [Pet. Br. at 10]. Quite to the contrary, the cases cited by Petitioner actually make clear that the term "citizen" can mean very different things depending on the context in which the word is used and that in the political context, "citizen" may *not* be synonymous with "resident," "inhabitant" or "domicile."

Before specifically addressing the cases cited by Petitioner, it is important to note as a threshold matter that cases from other jurisdictions are of limited value in this case because each State is free to make its own rules regarding the requirements for conferring state citizenship. Thus, as noted above, a State could legitimately exercise its sovereign authority to allow foreigners to be state citizens, but is not be required to do so.

The United States Supreme Court has explained that "'exclusion of aliens from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the community's process of self-definition. Self-government, whether direct or through representatives, begins by defining the scope of the community of the governed and thus of the governors as well: Aliens are by definition those outside of this community." *Bernal v. Fainter*, 467 U.S. 216, 221 (1984) (internal citations omitted). Under this important principle, the State of Georgia has a sovereign right to self-define the scope of its "community of the governed and governors," and, therefore, Georgia can limit state citizenship to United States citizens whereas a different state may choose to define its citizenry more broadly to include foreign nationals.

With that significant caveat in mind regarding the persuasiveness of cases from other jurisdictions, Petitioner's cases nonetheless do not stand for the broad proposition that "citizen" is equivalent to "resident" or "domicile" even in those jurisdictions. Instead, the cases cited by Petitioner emphasize the importance of *context* in determining the meaning of "citizen" and specifically note that "citizen" can require more than mere inhabitancy, particularly when used in the political context. For example, Petitioner cites to the Michigan Supreme Court's decision in *Bacon v. Board of State Tax Comm'rs*, 126 Mich. 22 (1901) for its holding that that its legislature had intended the word "citizen" to be synonymous with

"inhabitant" or "resident" as it appeared a tax statute; however, the court also made clear that "citizen" had different meanings in different contexts and specifically noted that "the political sense" of citizen was different from the non-political sense at issue in the tax statute:

> *Here a question is raised as to the meaning of the word 'citizen' as used in this connection. That this word does not always mean one and the same thing is clear*. Thus we speak of a person as a citizen of a particular place, when we mean nothing more by it than he is a resident of that place. When we speak of a citizen of the United States, we mean one who was born within the limits of, or has been naturalized by the laws of, the United States. It can hardly be believed that the legislature, in using the word 'citizen' in this statute, intended to make a distinction between native or naturalized citizens and resident aliens. *We think it was not intended by the legislature to limit the word to persons who are actually citizens in a political sense. A liberal construction must be given to the tax laws for public purposes*.

Bacon, 126 Mich. at 29 (emphasis added). This language makes clear the Michigan court's interpretation of "citizen" as being synonymous with "resident" was limited to the context of tax legislation, which is broadly construed for public policy reasons, and that the court was *not* addressing the meaning of "citizen" in a political context.

Similarly, the West Virginia case of *Vachikinas v. Vachikinas*, 91 W. Va. 181 (1922), cited by Petitioner for the proposition that "citizens of this state" includes individuals who are not citizens of the United States [Pet. Br. at 10], addressed the question whether persons who were not United States citizens could

sue for divorce in West Virginia courts. In holding that they could, the West Virginia's highest court, however, made clear that its holding was limited to the divorce and property disposition context and would *not* apply to the political context, involving the "powers of government and the participation therein," "the privileges of government," and "the rights of sovereignty":

> [W]e are referred to section 3, article 2 of our Constitution providing that "All persons residing in this state, born, or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of this state." *It will be observed that this provision occurs in the article of the Constitution which relates to or defines the State, that is, the territory, and in whom the powers of government and the participation therein by representation or otherwise could under the Constitution be exercised only by citizens thus defined. But was it intended to exclude all others, not citizens entitled to vote and hold office, from the courts and thus deprive them, though residing in the state and county under treaty powers or otherwise, of any place to vindicate their rights of person or property?* We hardly think so. In section 5 of the same article of the Constitution it is provided: "No distinction shall be made between resident aliens and citizens as to the acquisition, tenure, disposition, or descent of property." *By providing who are to be regarded as citizens, with the privileges of government, we do not think it was intended by the Constitution to say that other residents of this State are not to be regarded as citizens with rights not pertaining to sovereignty*.

Vachikinas, 91 W. Va. at 184 (emphasis added).

The other cases cited in Petitioner's lengthy string citation are similar. Their analysis of the meaning of "citizen" occurs in completely different contexts, such as property disposition (*Cobbs v. Coleman*, 14 Tex. 594 (Tex.), *McKenzie v.*

Murphy, 24 Ark. 155 (1863)), divorce (*Sedgewick v. Sedgewick*, 50 Col. 164 (1911)), licensing (*Gomes v. PUC*, 1981 R.I. Super. LEXIS (Sup. Ct. RI, 1981)) and contract disputes (*Smith v. Birmingham Waterworks Co.*, 104 Ala. 315 (1893), *United Hotel Co. v. Hersee*, 79 N.Y. 454 (1879)).

Moreover, Petitioner's cited cases have all agreed that "the particular meaning of the word 'citizen' is frequently dependent on the context in which it is found, and the word must always be taken in the sense which best harmonizes with the subject matter in which it is used." *Powell Estate*, 1950 Pa. Dist. & Cnty. Dec. LEXIS 414 (Common Pleas Ct., 1950). *Accord. Union Hotel v. Hersee*, 79 N.Y. at 461. In fact, the *Powell Estate* case, cited by Petitioner for the proposition that "state citizenship means either residency or domicile" [Pet. Br. at 10] actually said that "'citizen' is *not* necessarily synonymous with, or an alternative for 'inhabitant' or 'resident,' and in some cases the distinction is important." *Powell Estate*, 1950 Pa. Dist. & Cnty. Dec. LEXIS 414 at * 13 (emphasis added).

Petitioner places particular emphasis on the case of *Crosse v. Bd. of Supervisors of Elections of Baltimore City*, 243 Md. 555 (1966) in which Maryland's highest court interpreted "citizen of this state" in a provision in Maryland's constitution addressing the qualifications for sheriff as not requiring Untied States citizenship. While Maryland is certainly free to extend state citizenship to persons who are not United States citizens and the decision could be

distinguished on that basis alone, the *Crosse* decision appears limited to the factual context that the case involved the office of sheriff, a position which the Court specifically described as "ministerial in nature" under the Maryland Constitution. *Crosse*, 243 Md. at 561. *See also Sheriff of Baltimore City v. Abshire*, 44 Md. 256, 264, n.7 (1979) ("Whatever may have been the power and grandeur of the office of sheriff, it has eroded with the passage of time so that in the words of the Court of Appeals, the office is 'under our constitution . . . ministerial in nature; a sheriff's function and province is to execute duties prescribed by law.' [citing *Crosse*]. In Baltimore City, for the most part, that means process serving.")

The United States Supreme Court has recognized that state laws requiring United States citizenship are subject to strict scrutiny when they relate to "clerical or ministerial" positions that do not go to "the heart of representational government." *Bernal*, 467 U.S. at 225. Thus, the fact that *Crosse* involved a qualification for a ministerial office that "for the most part means process serving" [*Sheriff of Baltimore City*, 44 Md. at 264, n.7] may have played a role in the court's analysis and certainly distinguishes it from this case involving qualifications to be a state legislator. The Maryland court specifically noted in *Crosse* that United States citizenship *would* be required to qualify as a candidate for governor, judge, or Attorney General because the Maryland Constitution

required those offices to be held by "qualified voters, and therefore, by necessary implication, citizens of the United States." *Crosse*, 243 Md. at 561.

Finally, it should be noted that only one month after the *Crosse* decision was handed down, Maryland's highest court made clear that "resident" and "citizen" were *not* synonymous in a challenge to a candidate's qualifications for governor: "[W]hile the words 'citizen' and 'resident' as used in some contexts may be synonymous, as they were held to be in *Crosse* . . . it is apparent that the citizenship and residential requirements of the constitutional provision under consideration are not synonymous, nor are the requirements interchangeable." *Secretary of State v. McGucken*, 244 Md. 70, 74 (1966).

Clearly, then, while authority from other jurisdictions is of limited value given each state's sovereign right to define its own requirements for citizenship, the cases cited by Petitioner do not demonstrate any "traditional" consensus that citizenship is equivalent to residency or domicile. To the contrary, these cases make clear that the term "citizen" has different meanings depending upon the context in which the term appears. A political context going to the heart of representational government and self-definition of the citizenry is very different from a context involving property, taxation, or the ability to sue for divorce.

CONCLUSION

For all of the foregoing reasons, the Secretary of State's Final Decision should be affirmed. His interpretation of the constitutional language "citizens of this State" is reasonable and reflects the legislative intent that Georgia citizens must also be citizens of the United States.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the foregoing **Respondent-Appellee Kemp's Combined Brief in Support of his Cross-Motion for Summary Judgment and in Opposition to Petitioner-Appellee's Motion for Summary Judgment** via the Odyssey e-file system and by e-mailing an electronic copy in PDF format, pursuant to agreement by counsel to receive filings electronically, to the following counsel of record:

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This 13th day of June, 2018.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MARIA PALACIOS, Petitioner, v. BRIAN P. KEMP, in his official capacity as the Secretary of State of Georgia, Respondent, And RYAN SAWYER, Intervenor.	)	Civil Action File No. 2018CV305433 (Administrative Docket Number: 1835339- OSAH-SECSTATE-CE-6-Beaudrot)

INTERVENOR'S CONSOLIDATED BRIEF IN SUPPORT OF HIS CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Respondent-Intervenor Ryan Sawyer files this Consolidated Brief in Support of his Cross-Motion for Summary Judgment and Response in Opposition to Petitioner's Motion for Summary Judgment. As addressed more fully below, the Court should deny Petitioner Maria Palacios' Petition to Reverse Secretary of State' Final Decision ("Petition") because Petitioner will not be a citizen of Georgia for at least 2 years prior to the November 2018 General Election, as required by Article III, Section 2, Paragraph III(b) of the Georgia Constitution.

INTRODUCTION

For the past 150 years, the Georgia Constitution has required members of the Georgia House of Representatives to be "citizens of this State" for a period of time prior to their election. Beginning with the 1868 Georgia Constitution, "The representatives shall be citizens of the United States who . . . shall have been ***citizens of this State for one year***, and for six months resident of the counties from which elected." 1868 GA. CONST. Art. III, § II, ¶ III (emphasis added). Under the 1877 Georgia Constitution, the state citizenship requirement for members of the Georgia House of Representatives expanded to two years. See 1877 GA. CONST. Art. III, § VI, ¶ I ("The Representatives shall be citizens of the United States . . . who shall have been ***citizens of this state for two years***, and for one year residents of the counties from which elected") (emphasis added). The two-year Georgia citizenship requirement for members of the Georgia House of Representatives remains today. See GA. CONST. Art. III, § 2, ¶ III(b).

In order to avoid the clear text of the Georgia Constitution, Petitioner is attempting to have the Court redefine what it means to be a citizen of this state so that she can meet the constitutional requirements to be eligible to run for State Representative in the 2018 General Election. Petitioner argues that a "citizen of this state," as used in Article III, Section 2, Paragraph III of the Georgia Constitution, is any person who resides in Georgia. However, the Georgia

Constitution expressly states, "All citizens of the United States, resident in this state, are hereby declared citizens of this state." GA. CONST. Art. I, § I, ¶ VII. Georgia statutory and case law also indicate that citizens of Georgia are United States citizens who reside in this state, rather than everyone residing in this state, as Petitioner suggests. See O.C.G.A. § 1-2-6(a)(4) (the rights of a citizen of Georgia include "the right of the elective franchise"); see also White v. Clements, 39 Ga. 232 (1869).

Ms. Palacios ignores the plain language of the Georgia Constitution, statutory law passed by the Georgia General Assembly over 150 years ago, and an 1869 decision of the Georgia Supreme Court, instead relying on nonbinding case law from other states. Ms. Palacios did not obtain the right to vote – either in federal or state elections – until she became a United States citizen in 2017. GA. CONST. Art. II § 1 ¶ II. Regardless of the authority relied upon by the Secretary of State, his decision to disqualify Ms. Palacios as she has not been a "citizen of this state" for two years is consistent with Georgia law. O.C.G.A. § 21-2-5.

FACTUAL BACKGROUND

As acknowledged by Petitioner, the facts at issue are not in dispute. The General Election for House District 29 is November 6, 2018. On March 8, 2018, Maria Palacios filed a sworn Declaration of Candidacy and Affidavit ("Declaration") with the Democratic Party of Georgia to qualify as a candidate for

House District 29. In her Declaration, Ms. Palacios swears that she has been a legal resident of the State of Georgia for 8 consecutive years. Ms. Palacios does not dispute the fact that she became a citizen of the United States less than a year ago – in June 2017 – and under Georgia law, she did not obtain the right to vote in Georgia until that time. GA. CONST. Art. II § 1 ¶ II.

Mr. Sawyer timely challenged Ms. Palacios' qualifications based on her failure to meet the two-year Georgia citizenship requirement. On May 2, 2018, Administrative Law Judge Beaudrot (the "ALJ") held a hearing on Mr. Sawyer's challenge to Ms. Palacios's candidacy qualifications. While Ms. Palacios received notice of the hearing, she failed to appear. That same day, the ALJ issued a decision finding that Ms. Palacios failed to meet the qualifications to be a candidate for the office of State Representative for House District 29. On May 7, 2018, Ms. Palacios, through the American Civil Liberties Union Foundation of Georgia, Inc. (the "ACLU"), filed opposition to the ALJ's decision, asserting a candidate running for office in Georgia only must be a citizen of the United States at the time of election. On May 17, Mr. Sawyer responded to Ms. Palacios's opposition. On May 18, 2018, Secretary Kemp issued a Final Decision, affirming the ALJ's determination that Ms. Palacios failed to meet the candidate qualifications for Georgia House of Representatives District 29 (the "Final Decision").

On May 21, Ms. Palacios filed her Petition to reverse Secretary of State's Final Decision, claiming "citizen of this state" mean residency or domicile.

ARGUMENT AND CITATION TO AUTHORITY

I. SUMMARY JUDGMENT STANDARD.

"Summary judgment is appropriate when there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law." Britt v. Kelly & Picerne, Inc., 258 Ga. App. 843 (2002); O.C.G.A. § 9-11-56(c). In her Motion for Summary Judgment, Petitioner recognizes the material facts are not in dispute. As such, this matter is ripe for summary determination.

II. THE FINAL DECISION IS CONSISTENT WITH GEORGIA LAW.

The Georgia Election Code requires 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. § 21-1-5(a). The Georgia Constitution establishes the qualifications to hold a seat in the General Assembly. In relation to the Georgia House of Representatives, the Georgia Constitution provides:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been

> legal residents of the territory embraced within the district from which elected for at least one year.

GA. CONST. Art. III, § 2, ¶ III(b) (the "Candidate Qualification Provision"). Thus, the Georgia Constitution sets forth four clear requirements that a person must meet at the time of election to qualify to be a member of the Georgia House of Representatives: (1) be a citizen of the United States; (2) be at least 21 years old; (3) be a citizen of Georgia for at least two years; and (4) be a legal resident of the district from which elected for at least one year. While Ms. Palacios attempts to craft her own definition of what it means to be "citizens of this state," Georgia law supports the Final Decision's conclusion that U.S. citizenship is required to be a Georgia citizen.

A. Under Georgia law, the term "citizen of this State" requires U.S. citizenship.

Relying on case law from jurisdictions outside the State of Georgia, the crux of Ms. Palacios's challenge is that the term "citizens of this state" means a resident or domiciliary of this state, without regard to such person's status as a United States citizen.[1] Georgia law makes clear that to be a citizen in this State requires more.

[1] Petitioner solely relies on court decisions outside the state of Georgia, which are considered non-binding, secondary authority and "will be followed only in the event this court considers them sound and compatible with the orderly and fair development of the law of this state." Rice v. State Farm Fire & Cas. Co., 208 Ga. App. 166 (1993).

Petitioner claims that the **effect** of reading the phrase "citizens of this state" to require U.S citizenship renders the U.S. citizenship requirement as mere "surplusage." This interpretation, however, ignores the plain language of the Candidate Qualifications Provision. The Candidate Qualifications Provision distinguishes between the terms citizen and resident, noting a candidate must be a United States and a Georgia "***citizen***" but only a "***legal resident***" of the district. "Where the legislature uses certain language in one part of the statute and different language in another, the Court assumes different meanings were intended…When interpreting a statute, a presumption exists that the legislature did not intend to enact meaningless language." Pandora Franchising, LLC v. Kingdom Retail Group, LLLP, 299 Ga. 723, 728 (2016). The differing language in the Candidate Qualifications Provision must be given meaning, and to define "citizen" to only mean "resident" would ignore these differences, rendering them meaningless. [2]

The plain language of other provisions in the Georgia Constitution further supports this interpretation. Article I Section 1 Paragraph VII of the Georgia Constitution defines what it means to be a Georgia citizen: "All ***citizens*** of the ***United States***, resident in this state, ***are hereby declared citizens of this state***." (emphasis added). Thus, an individual is not considered to be a Georgia citizen

[2] Language in other constitutional provisions passed the same year as the Candidate Qualifications Provision further supports this conclusion. Article II Section 1 Paragraph II of the Georgia Constitution, which establishes voter qualifications, distinguishes between an individual who is a citizen from one who is a resident, noting an individual, among other things, must be "a United States **citizen**" and "a **resident** of Georgia as defined by law" to be entitled to vote. GA. CONST. Art. II § 1 ¶ II.

with full rights and protections under the law until they are also a United States citizen. See also U.S. Const. Amend. XIV, § 1 ("all persons born or naturalized in the United States…are citizens of the United States and of the State wherein they reside").

Demonstrative of the fact that the framers of the Georgia Constitution were well aware of the distinction between a "citizen of this state" and a "resident" is that prior to the 1868 Georgia Constitution, State Representatives were not required to be "citizens of the State" to be eligible for office. Under the 1865 Georgia Constitution, "No person shall be a Representative who shall not . . . be a citizen of the United States, and have been for three years an ***inhabitant of this State***, and for one year a resident of the County which he represents." 1865 GA. CONST. Art. II, § III, ¶ 2 (emphasis added). Nearly a century earlier, the 1777 Georgia Constitution provided, "The representatives shall be chosen out of the residents in each county, who shall have ***resided at least twelve months in this State***, and three months in the county where they shall be elected . . ." 1777 GA. CONST. Art. VI (emphasis added). Against this backdrop, beginning with the 1868 Georgia Constitution, the framers of the Georgia Constitution have required State Representatives to be "citizens of the State" to be eligible for office. Had the framers of the Georgia Constitution intended "citizens of this state" to mean

"residents of this state," the history of the Candidate Qualifications Provision shows that they knew how to do so.

Ms. Palacios attempts to dismiss the clear language in the Georgia Constitution, claiming that "just because all United States citizens are considered citizens of the state, it does not mean that all citizens of the state must be United States citizens." (Mem. of Law in Supp. of Pet'r's Mot. for Summ. J. at 2.) Setting aside the differing language within the Candidate Qualifications Provision, Petitioner's argument ignores the plain meaning of the term "citizen." When interpreting a constitutional provision, this Court must construe such provision "in the sense in which it was understood by the framers and the people at the time of its adoption." Olevik v. State, 302 Ga. 228, 236 (2017) (citing Collins v. Mills, 198 Ga. 18 (1944) (quotations omitted)). "In determining the original public meaning of a constitutional provision, we consider the plain and ordinary meaning of the text, viewing it in the context in which it appears and reading the text in its most natural and reasonable manner." Id. Black's Law Dictionary defines the term "citizen" as "***[s]omeone who, by either birth or naturalization***, is a member of a political community, owing allegiance to the community and being ***entitled to enjoy all its civil rights and protections***; a member of the civil state, entitled to all its privileges. CITIZEN, Black's Law Dictionary (10th ed. 2014) (emphasis added). This definition is distinct from the term "resident" which is defined as "1.

Someone who lives in a particular place. 2. Someone who has a home in a particular place…***a resident is not necessarily a citizen or domiciliary***." RESIDENT, Black's Law Dictionary (10th ed. 2014) (emphasis added). The plain meaning of the terms "citizen" and "resident" make clear that those words are not, as Petitioner suggests, interchangeable.

The plain language of the Candidate Qualifications Provision distinguishes between an individual who is a "citizen" and one who is a "legal resident." That distinction must be given meaning and should be respected. Other constitutional provisions support this conclusion, and the Secretary of State's determination that to be a citizen of Georgia for two years requires Ms. Palacios to be a United States citizen residing in Georgia for two years is consistent with Georgia law.

B. Petitioner's definition of "citizen of this State" conflicts with Georgia law.

In addition to the clear definition provided under the Georgia Constitution, Georgia statutory law further defines what a "citizen of this state" is, noting a Georgia citizen has "***without limitation***" the following rights:

> (1) The right of personal security;
> (2) The right of personal liberty;
> (3) The right of private property and the disposition thereof;
> (4) The ***right of the elective franchise***;
> (5) The right to hold office, unless disqualified by the Constitution and laws of this state;
> (6) The right to appeal to the courts;
> (7) The right to testify as a witness;

(8) The right to perform any civil function; and
(9) The right to keep and bear arms.

O.C.G.A. § 1-2-6(a) (emphasis added). Code Section 1-2-6 predates Article III Section 2 Paragraph III(b) of the Georgia Constitution. And, when read in conjunction with Article II Section 1 Paragraph II of the Georgia Constitution, it confirms that an individual is not a Georgia citizen until they are also a United States Citizen because they cannot vote in Georgia (and obtain all rights to citizenship) until U.S citizenship is obtained. Ms. Palacios did not obtain the right to vote here in Georgia until she became a naturalized U.S. citizen in 2017. GA. CONST. Art. II § 1 ¶ II. As such, she cannot be considered a "citizen of this State" until she obtained the right to vote, falling one year short of the qualification to be a member of the State House of Representatives. See O.C.G.A. § 1-2-6.

In determining the meaning of constitutional text, Georgia courts must look to "the body of pre-enactment decisions of [the Supreme Court of Georgia] interpreting the meaning" of said language. Olevik, 302 Ga. at 236. Prior to the enactment of the Candidate Qualifications Provision, the Georgia Supreme Court squarely addressed what it means to be a citizen in Georgia in White v. Clements, specifically relying on now Code Section 1-2-6.[3] 29 Ga. 232 (1869). In White, the Supreme Court of Georgia defined a citizen of the State of Georgia as: "one who is

[3] O.C.G.A. § 1-2-6 has existed in some form since 1863, prior to Article III Section 2 Paragraph III(b). Today's version is substantially similar to the version discussed in White v. Clements, and the clause "right to an elected franchise" has remained since that time.

entitled to every right enjoyed by any one, unless there be some affirmative declaration to the contrary." Id. at 261. The Supreme Court noted that the language of (now) O.C.G.A. § 1-2-6 defines what it means to be a citizen of this state. Id. at 262. And, "when [individuals] were recognized as citizens, *ex vi termini*, they became entitled to the exercise of every right not specifically by law denied to them, ***since it was formerly true that they had not these rights, not by virtue of any specific denial, but by virtue of the fact that they were not and could not be citizens***." Id. at 263-64 (emphasis added).

The Supreme Court of Georgia's decision in White confirms that "citizens of this State" means more than "resident" or "domiciliary." An individual does not obtain the status of "citizen of Georgia" until he or she has obtained all the rights enumerated under O.C.G.A. § 1-2-6 (which includes the right to vote), unless otherwise prohibited by law (e.g. disenfranchisement of felons). The White decision, which was issued prior to the enactment of the Candidate Qualifications Provision, defines what it means to be a "citizen of this State," and there is a strong presumption that the framers intended this term to be consistent with "its definitive interpretation." Olevik, 302 Ga. at 236. The framer's decision must be respected.

The Georgia Constitution, statutory law and case law all make plain that Ms. Palacios was not a citizen of Georgia until she became a U.S. citizen, acquiring all rights afforded to Georgia citizens – including the right to vote. She

only obtained her U.S. citizenship until June 2017, failing to meet the two-year requirement for Georgia citizenship under the Candidate Qualifications Provision. Thus, this Court should affirm the Secretary's Final Decision to disqualify her.

Respectfully submitted this 13th day of June, 2018.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing **INTERVENOR'S CONSOLIDATED BRIEF IN SUPPORT OF HIS CROSS-MOTION FOR SUMMARY JUDGMENT AND RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT** on all parties by electronically filing it with the Clerk of the Court using the Odyssey eFileGA system, and via email to counsel for the parties addressed as follows:

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This 13th day of June, 2018.

/s/ Vincent R. Russo
Vincent R. Russo

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)

PETITIONER'S CONSOLIDATED REPLY BRIEF

In Support of Petitioner's Motion for Summary Judgment and in Opposition to both Respondent-Appellee's and Respondent-Intervenor's Cross-Motions for Summary Judgment

ARGUMENT

Petitioner Maria Palacios is a qualified candidate for the House of Representatives under the traditionally accepted meaning of the term "citizen of the state," as set forth in several high court decisions issued during the relevant time period. Respondent-Appellee Brian P. Kemp ("Respondent Kemp") and Respondent-Intervenor Ryan Sawyer ("Respondent-Intervenor") (collectively, "Respondents") do not dispute that the traditional meaning of state citizenship has referred to residents or domiciliaries of a state without requiring United States citizenship, but they ask this Court to depart from this traditional definition to rule that the two-year durational "citizen of the state" requirement implicitly requires United States citizenship, a potentially unprecedented ruling that may be the first in this nation's history.

Under the proper standard of review, this Court is called upon to make "an independent determination as to whether the interpretation of the administrative agency correctly reflects the plain language of the [constitutional provision] and comports with the legislative intent." *Handel v. Powell*, 284 Ga. 550, 553 (2008) (citation and quotations omitted). In addition, "Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified." *Gazan v. Heery*, 183 Ga. 30, 42 (1936).

Given that the traditional definition of "citizen of the State" does not include a United States citizenship component, and in light of the "liberal construction" which must be applied when construing the Qualifications Clause, the text of the Georgia Constitution and the legislative history behind the 1868 Constitution would have to be overwhelmingly clear that Georgia has chosen to depart from this traditional meaning in order for Respondents' interpretation to be correct. They are not.

Petitioner's argument below makes the following points. First, Respondents fail to demonstrate how their proposed interpretation correctly reflects the plain language of the Georgia Constitution. Unable to dispute that the traditional understanding of "citizen of the state" did not include a United States citizenship component, Respondents cling to Article I, Section 2 of the 1868 Constitution, which "hereby declared" that native-born persons were state citizens. But this provision simply clarified following the Civil War that such persons (namely, African Americans) were entitled to the privileges of state citizenship.[1] *See* Webster's Dictionary (1865)

[1] Prior versions of the Georgia Constitution may be found at: http://georgiainfo.galileo.usg.edu/topics/government/article/constitutions.

("declare" means "[t]o make . . . an open and explicit avowal").[2] Clarifying what subset of persons belongs to a category is not the same as definitively excluding all others from that category. *See infra* Part I.

Second, Respondents fail to demonstrate how their proposed interpretation comports with the intent of the framers of the 1868 Constitution. As the Georgia Supreme Court itself explained the year after the 1868 Constitution's formation, the framers—overwhelmingly elected by African Americans—declared native-born persons to be entitled to the privileges of state citizenship in order to "guarantee[] and secure[] to persons of color the right to hold office" following the Civil War, *White v. Clements*, 39 Ga. 232, 258 (1869) (discussing Article I, Section 2), which is the same reason the analogous provision in the Fourteenth Amendment was passed, *see Elk v. Wilkins*, 112 U.S. 94, 101 (1884). Nothing in *White* suggests that the framers were concerned with preventing newly-naturalized United States citizens like Petitioner Maria Palacios from holding office or *restricting* the privileges of state citizenship in any way. *See infra* Part II.

Third, Respondents rely extensively on statutory language, but none of the statutes cited by Respondents actually define the specific term "citizen of the State." *See infra* Part III.

For the reasons set forth below, this Court should grant Petitioner's motion for summary judgment, deny Respondents' cross-motions for summary judgment, and reverse the Secretary of State's final decision.

[2] The 1865 edition of Webster's Dictionary is found at: https://archive.org/details/americandictiona00websuoft. The viewer page is found at: https://archive.org/stream/americandictiona00websuoft#page/n11/mode/2up.

I. RESPONDENTS' PROPOSED DEFINITION DOES NOT CORRECTLY REFLECT THE PLAIN LANGUAGE OF THE 1868 GEORGIA CONSTITUTION

The Qualifications Clause provides, in full, that:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States, shall be at least 21 years of age, shall have been citizens of this state for at least two years, and shall have been legal residents of the territory embraced within the district from which elected for at least one year.

Ga. Const. Art. III, § 2 ¶ 3(b). Since 1868, the Qualifications Clause has required that candidates be "citizens of this state" for a set period of time,[3] while also requiring that candidates be a "citizen of the United States" at the time of election. As discussed below, Respondents' proposed definition does not correctly reflect the plain language of the 1868 Constitution: A) Respondents do not dispute that the traditional definition of "citizen of the state" did not include a United States citizenship component; B) Respondents fail to establish how Article I, Section 2's declaration that all United States citizens are citizens of the state somehow excludes all others from the benefits of state citizenship; C) Respondents do not seriously dispute that their proposed definition would render the separate "United States citizenship" provision superfluous; and D) Respondents' reliance on the separate "residency" provision of the Qualifications Clause is unavailing.

A. Respondents do not dispute that the commonly understood meaning of "citizen of the state" did not include a United States citizenship component

Petitioner's moving brief presented numerous court decisions during the relevant time period establishing that the commonly understood definition of "citizen of the state" referred generally to residents or domiciliaries of the state without in any way suggesting that the term

[3] In Petitioner's moving brief, Petitioner asserted that the phrase "citizens of this state" dated back to the 1877 Georgia Constitution based on Westlaw research. As Respondents correctly point out, the phrase actually dates to the 1868 Georgia Constitution.

was widely considered to include a United States citizenship component. Indeed, several cases expressly disavowed it. (Pet. Br. at 6-10.) Respondents' briefs fail to point to a single case from anywhere in the country specifically holding that the term "citizen of a State" was commonly understood to require United States citizenship, whether in the context of candidate qualifications or otherwise. As such, they cannot dispute that the traditional definition of "citizen of the state" has never included a United States citizenship component.

Respondent Kemp attempts at length to distinguish those cases by making the unremarkable observation that "citizen" can mean some variation between "resident" or "domiciliary" depending on the context (Resp. Kemp Br. at 26-32), a point Petitioner has never disputed (*see, e.g.*, R. 48). This is immaterial in this case. The sole basis for the Secretary of State's final decision is his flawed interpretation that "citizen of the state" *requires United States citizenship*, and yet he is unable to point to a *single case* from anywhere in the country at any time in this nation's history establishing that this was the common understanding of "citizen of the state." Where ever "citizen of the state" might fall in the spectrum between "residency" and "domiciliary," no one disputes that Petitioner Palacios satisfies that definition.

Failing to find any cases to support his novel proposition, Respondent Kemp puts forward a cryptic, inchoate assertion at the end of his brief that "a political context going to the heart of representational government and self-definition of the citizenry is very different from a context involving property, taxation, or the ability to sue for divorce." (Resp. Kemp Br. at 32.) Yet he does not explain how that different "political context" justifies interpreting "citizen of this State" to incorporate a United States citizenship requirement, in departure from any traditional understanding of that term. If Respondent Kemp is suggesting that only United States citizens should be allowed to run for office (a principle also unsupported by any citations to caselaw), the

Qualifications Clause already captures that sentiment by requiring that candidates be "citizens of the United States" "at the time of their election," which Petitioner Palacios undisputedly satisfies. Given that "[w]ords limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office," *Gazan v. Heery*, 183 Ga. 30, 42 (1936), Respondent Kemp must put forward something far more substantive if he wishes to overcome the traditional meaning of the term.

Respondent Intervenor takes a different tack. Rather than attempting to wrestle with this overwhelming weight of judicial authority, he asserts that the "plain meaning of the term 'citizen'" can be easily found—in the 2014 edition of Black's Law Dictionary. (Resp. Intervenor Br. at 9.) But pointing to the general definition of "citizen" does not specifically answer what it meant to be a "citizen *of the state*." The entire purpose of this dispute is to ascertain what it means to be a citizen *of the state* versus a citizen *of the United States*, not what "citizen" generally means in a vacuum. Nor does the 2014 edition of Black's Law Dictionary shed any light on what "citizen of the state" meant in the 1800's, while the judicial authority cited by Petitioner does. *See Olevik v. State*, 302 Ga. 228, 235 (2017) ("a constitutional provision means today what it meant at the time that it was enacted").[4]

Respondent Intervenor then claims to have found the definition of "citizen of the state" in a passage from *White v. Clements*, 39 Ga. 232, 261 (1869), which stated, "A citizen of a State is one who is entitled to every right enjoyed by any one, unless there be some affirmative declaration to the contrary, by some authority clothed with the power, under our form of

[4] The "citizen" entry in the 1865 edition of Webster's Dictionary also does not specifically define "citizen of the state," though it tends to lend support to Petitioner's position, because it appears to distinguish between "U.S." citizenship and other kinds of citizenship. While U.S. citizenship is defined as "any native born or naturalized person . . . [*U.S.*]," "citizen" is also defined separately as "[a]n inhabitant in any city, town, or place," without any mention of a United States citizenship requirement.

government, to make the exception." (Resp. Intervenor Br. at 11-12.) But this passage hardly establishes that "citizen of a State" requires United States citizenship; indeed, nothing in *White* purports to resolve that question. The purpose of this passage, and indeed, of the entire opinion, was to reiterate that the privileges of state citizenship (particularly those that extended to African Americans) need not be expressly enumerated, and that those privileges (particularly the right to hold public office) may only be revoked by express denial. *See generally White*, 39 Ga. at 242-61. This had nothing to do with limiting state citizenship to United States citizens.

B. Article I, Section 2's "declar[ation]" that native-born United States citizens are entitled to the privileges of state citizenship does not mean that all state citizens must be United States citizens

Unable to resist the traditional definition of "citizen of this state," Respondents next argue that whatever "citizen of the state" might have meant in other states, the meaning of "citizen of the state" was different *in Georgia* because Article I, Section 2 of the 1868 Georgia Constitution for the first time "hereby declared" that residents born or naturalized in the United States were state citizens and entitled to the privileges of state citizenship. Ga. Const. 1868, Art. I, § 2. (Resp. Kemp Br. at 10-12; Resp. Intervenor Br. at 7-9, 11-12.) The 1868 constitutional provision reads in full:

> All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due enjoyment of the rights, privileges, and immunities guaranteed in this section.

Ga. Const. 1868, Art. I, § 2.

The plain meaning of this provision does not establish that all state citizens must be United States citizens. The dictionary definition of "declare" at that time meant "[t]o make . . . an open and explicit avowal." Webster's Dictionary (1865). Clarifying that United States citizens

are a subset of state citizens does not mean that state citizens can only be United States citizens. Petitioner's analogy thus continues to hold: just as "declaring" or clarifying that all cars are vehicles does not mean that all vehicles must be cars, "declaring" or clarifying that all United States citizens are citizens of this State does not mean that all citizens of this State must be United States citizens. (And this declaration was necessary because, as discussed *infra* Part II., the framers of the 1868 Constitution urgently needed to make clear after the Civil War that native-born individuals—newly-freed African Americans in particular—were equally entitled to the privileges of state citizenship.)

C. Respondents' proposed definition renders the separate United States citizenship requirement superfluous

Respondents' briefs also fail to meaningfully dispute that their proposed definition would render the separate United States citizenship requirement in the Qualifications Clause completely superfluous. Indeed, their error extends to past versions of the Constitution as well: even as they trace the legislative history of the Qualifications Clause over the course of the last century and a half (*see, e.g.*, Resp. Kemp Br. at 12-19), they repeatedly insist that state citizenship has always contained a hidden United States citizenship component, ignoring the glaring fact that *all these prior versions of the Qualifications Clause all contained a separate United States citizenship requirement*. Adopting Respondents' proposed interpretation not only renders the current United States citizenship requirement superfluous, adopting Respondents' proposed historical interpretation of "citizen of this state" renders *all prior versions* of the separate United States citizenship requirement superfluous as well. *See, e.g.*, Ga. Const. 1868, Art. III, § 3, ¶ 3 ("The representatives shall be citizens of the United States . . . who, after the first election under this constitution, shall have been citizens of this State for one year"); Ga. Const. 1877, Art. III, § 6, ¶ 1 ("The Representatives shall be citizens of the United States . . . who shall have been citizens of

this State for two years"); Ga. Const. 1945, Art. III, § 6, ¶ 1 ("The Representatives shall be citizens of the United States . . . who shall have been citizens of this State for two years"); Ga. Const. 1976, Art. III, § 3, ¶ 2 ("The Representatives shall be citizens of the United States . . . who shall have been citizens of this State for two years"); Ga. Const. (current), Art. III, § 2 ¶ 3(b) ("At the time of their election, the members of the House of Representatives shall be citizens of the United States, . . . [and] shall have been citizens of this state for at least two years").

Respondent Kemp argues that "the inclusion of United States citizenship is not superfluous language because the United States and the State are separate sovereigns, and federal and state citizenship are *different*" (Resp. Kemp Br. at 24) but this seems to be a non-sequitur. Petitioner does not dispute that the United States and the State are separate sovereigns and in fact *insists* that "federal and state citizenship are *different*," which is why the Qualifications Clause addresses them separately. But if state citizenship already requires United States citizenship, as Respondents erroneously argue, then there is no point in the Qualifications Clause requiring United States citizenship when it already requires state citizenship. Respondent Intervenor, for his part, does not really engage this glaring issue at all. (Resp. Intervenor Br. at 7 (disputing that their interpretation renders the United States citizen clause superfluous, then pivoting to a different argument about whether citizenship is synonymous with residency).)

Unable to dispute that their interpretation has violated the rule against surplusage, Respondent Kemp goes on to argue, tautologically, that the rule simply "[d]oes [n]ot [a]pply" because Respondent Kemp's proposed interpretation of the text is "plain[ly]" correct. (Resp. Kemp Br. at 24-25.) Petitioner's point, however, is that Respondent Kemp's proposed interpretation is *incorrect* precisely *because* it renders another clause in the provision meaningless. That is the exact reason why the Georgia Supreme Court rejected the then-

Secretary of State's proposed interpretation in *Handel v. Powell*, 284 Ga. 550 (2008), and that is the same reason why this Court should reject the Secretary of State's proposed interpretation in this case. *See id.* at 554 ("A statute must be construed 'to give sensible and intelligent effect to all [its provision and to refrain from any interpretation which renders any part of the statute meaningless'" (quoting *R.D. Brown Contractors v. Bd. of Ed. Of Columbia Cnty.*, 280 Ga. 210, 212 (2006)); *see also Gwinnett Cnty. Sch. Dist. v. Cox*, 289 Ga. 265, 271 (2011) ("Established rules of constitutional construction prohibit [courts] from any interpretation that would render a word superfluous or meaningless.").

D. The traditional meaning of "citizen of the state" is not limited to "residency"

Lastly, Respondents observe that the word "resident" is also used in the Qualifications Clause (requiring that candidates be "legal residents of the territory embraced within the district for at least one year") and they argue that state citizenship thus cannot mean residency. (Resp. Kemp Br. at 9-10; Resp. Intervenor Br. at 7-9.) But as Petitioner argued in her reply brief below (R. 48), interpreting "citizens of this state" to require that someone be a "domiciliary"—which has traditionally meant something more than residency, i.e., "a permanent place of abode" or "actual residence and the intention to remain," *Handel v. Powell*, 284 Ga. 550 (2008)—easily resolves this alleged difficulty.[5] Respondents' definition, on the other hand, would render the "United States citizen" provision completely superfluous.

[5] In *Handel v. Powell*, 284 Ga. 550 (2008), the Georgia Supreme Court explained that O.C.G.A. 21-2-217 later incorporated the domiciliary requirements into the definition of residency for purposes of determining candidate qualifications. That case, however, involved candidate qualifications for the Georgia Public Service Commission, which are set out by *statute*. *See* O.C.G.A. § 46-2-1. The candidate qualifications at issue here, however, are set forth in the *Constitution*, and the General Assembly does not have the power to change the definitions of constitutional qualifications absent express constitutional authority to do so. *See White*, 39 Ga. at 265 ("if the *Constitution* prescribes a qualification for an officer, it by necessary implication denies to the Legislature the power to fix new and other qualifications." (emphasis added)).

For these reasons, Respondents' proposed interpretation does not "correctly reflect[] the plain language of the [constitutional provision]." *Handel*, 284 Ga. at 553.

II. RESPONDENTS' PROPOSED INTERPRETATION DOES NOT COMPORT WITH THE FRAMERS' INTENT

Respondents' proposed interpretation also fails to "comport[] with the legislative intent." *Handel*, 284 Ga. at 553. As discussed below: A) the Georgia Supreme Court established in *White v. Clements*, 39 Ga. 232 (1869) that the framers' intent behind the 1868 Constitution was focused on ensuring that newly-freed African Americans would obtain the benefits of state citizenship, and nothing in their discussion supports Respondents' speculation that the framers wanted to *restrict* the benefits of state citizenship; and B) Respondents' reliance on legislative history—namely, the replacement of the term "inhabitant" with "citizen"—does not conclusively prove that the framers intended a change in definition, as opposed to merely clarifying that African Americans can indeed run for office.

A. Nothing in *White v. Clements* suggests that the framers intended to restrict the benefits of state citizenship, as Respondent Kemp speculates

Respondent Kemp speculates that Article I, Section 2 declared that native-born and naturalized individuals were entitled to the privileges of state citizenship, to somehow "emphasize that Georgia citizens were once again loyal citizens of the United States" (Resp. Kemp Br. at 18; *see generally id.* at 12-19), and carried out that intent by forcing all preexisting state citizens to become United States citizens in order to enjoy the privileges of state citizenship. Rather than rely on Respondent Kemp's speculation, this Court should instead turn to the explanation of legislative intent already provided by the Georgia Supreme Court, which Respondent Kemp fails to cite, and which bears no resemblance whatsoever to Respondent Kemp's speculation.

One year after the 1868 Constitution was formed, the Georgia Supreme Court issued a decision explaining that the primary purpose of the 1868 Constitution, and of Article I, Section 2 in particular, was to ensure that the benefits of state citizenship (including the right to run for office) extended to those born in the United States—namely, newly freed African Americans. *See White v. Clements*, 39 Ga. 232, 258 (1869). Pointing specifically to Article I, Section 2, the Supreme Court stated, "it is very plain . . . that the Constitution of 1868 guarantees and secures to persons of color the right to hold office." *Id.* After surveying the historical record, the Supreme Court "concluded . . . that when the Convention of 1868 declared that all persons born in the United States, resident in this State, were citizens of this State, they intended to say that the persons enumerated were declared to possess among their rights, 'the right to hold office,' and that each of them was entitled to exercise the right . . . ." *Id.* at 262-63. Put concisely: "the Convention of 1868 declare[d] persons of color 'citizens.'" *Id.* at 263. Indeed, all three Justices on the Georgia Supreme Court contemporaneously interpreted Article I, Section 2 as expanding the privileges of state citizenship to include African Americans, rather than imposing some kind of limitation on state citizenship. *See id.* at 271 ("The Constitution struck out the word white [in the Code], and made all persons born or naturalized in the United States, and resident in this State, citizens, without regard to race or color.") (Brown, C.J., concurring); *id.* at 273-74 ("The Constitution of this State, declares that: 'All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State . . . .' From . . . the adoption and ratification of the Constitution of this State, in 1868, the defendant became (notwithstanding his color and African blood) a citizen of the United States, and of this State, and is entitled to have all the privileges or immunities of a citizen.") (Warner, J., dissenting).

Clarifying and guaranteeing this privilege for African Americans was imperative after the Civil War. Indeed, "[n]early three-fourths of those who voted for delegates to the [1867] Convention were blacks" after white confederate-holdouts refused in protest to participate in the formation of the Constitution, *id.* at 251-52, and those delegates thus sought to "form a government for the guarantee and security" of the rights attendant to state citizenship that were previously denied to African Americans, *id.* at 253. This was also consistent with the intent behind the nearly-identical provision in the Fourteenth Amendment. *See* U.S. Const. Amend. XIV § 1 ("[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."). As the United States Supreme Court has explained:

> The main object of the opening sentence of the fourteenth amendment was to settle the question, upon which there had been a difference of opinion throughout the country and in this court, as to the citizenship of free negroes, and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the state in which they reside.

Elk v. Wilkins, 112 U.S. 94, 101 (1884).

The Georgia Supreme Court's definitive explanation of the purpose behind Article I, Section 2—to clarify and ensure that the privileges of state citizenship extended to African Americans—does not support Respondents' lopsided argument that Article I, Section 2 somehow *imposed* a United States citizenship requirement on state citizens.

Respondent Kemp, who fails to discuss *White*, argues that "it would make little sense for the framers to 'declare' what constitutes only a *subset* of 'citizens of this state' while saying nothing about a second undeclared group of 'citizens of this state.'" (Resp. Kemp Br. at 12.) But read in light of the framers' purpose as described in *White*, it makes perfect sense. It was imperative for the framers to declare that African Americans, a "subset" of citizens of this state,

were entitled to the rights and privileges of state citizenship after the Civil War. There was no need to "declare" that "a second undeclared group of 'citizens of this state,'"—namely, white people—were entitled to those privileges. That proposition has never been questioned in this nation's history, so there was no need to clarify it.

Respondent Kemp also asserts that the clause authorizing the legislature to enact "such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship," Ga. Const. 1868, Art. I, § 2, makes no sense if citizens of this state included non-U.S. citizens, "because non-U.S. citizens are not entitled to the full enjoyment of the rights and privileges of citizenship." (Resp. Kemp Br. at 12.) But Respondent Kemp is misquoting Article I, Section 2 of the 1868 Constitution. It does not contain the phrase "due to such citizenship." Rather, it provides:

> All persons born or naturalized in the United States, and resident in this State, are hereby declared citizens of this State, and no laws shall be made or enforced which shall abridge the privileges or immunities of citizens of the United States, or of this State, or deny to any person within its jurisdiction the equal protection of its laws. And it shall be the duty of the General Assembly, by appropriate legislation, to protect every person in the due enjoyment of the rights, privileges, and immunities guaranteed in this section.

Ga. Const. 1868, Art. I, § 2. So there is no purchase to this argument.

The "due to such citizenship" phrase exists in the *current* version of Article I, Section 2 of the Georgia Constitution, and thus sheds no light on what the framers intended in 1868. In any event, even the current clause nowhere says, as Respondent Kemp asserts, that state citizens are only entitled to the privileges of *United States* citizenship:

> All citizens of the United States, resident in this state, are hereby declared citizens of this state; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship.

Ga. Const. Art. I, § 1, ¶ 7. "Such citizenship" in the current Constitution is clearly referring to the privileges of *state* citizenship since the last reference to citizenship before "such citizenship" is to state citizenship, not United States citizenship as Respondent Kemp suggests. The provision simply states that all *state* citizens are entitled to the full enjoyment of the rights and privileges of *state* citizenship. There is nothing suggesting that state citizens are only limited to the benefits of United States citizenship.

By focusing on expanding the privileges of state citizenship to African Americans, the framers of the Constitution of 1868 simply did not address the question of whether state citizenship privileges should be *limited*, i.e., to United States citizens. Indeed, nothing in the Georgia Supreme Court's extensive discussion of the Constitution of 1868 in *White v. Clements* even hints at such a historical intent.

B. The framers did not replace "inhabitant" with "citizen" in the 1868 Constitution to restrict the right to run for office

Respondents also point to legislative history, arguing because the Qualifications Clause in Article III of the 1868 Georgia Constitution replaced the requirement found in all prior versions of the Constitution that candidates be an "inhabitant of the State," with the requirement that they be "citizens of the State," the framers must have intended to restrict the right to run for office, i.e. that state citizenship must mean something *more* than some kind of residency. (Resp. Kemp Br. at 13-19; Resp. Intervenor Br. at 8-9.) This argument fails for similar reasons.

As a preliminary doctrinal matter, the mere fact that one term is replaced with another does not preclude the possibility that both terms have similar meanings, because the use of different legislative language may reflect a *clarification* of meaning rather than a *change* in meaning. *See, e.g., Nuci Phillips Mem. Found., Inc. v. Athens-Clarke Cnty. Bd. of Tax Assessors*, 288 Ga. 380, 384 (2010) (change in legislative language was intended to "clarify," not "change"

the previous meaning in light of legislative history). It is thus entirely possible that "inhabitant" and "citizen" would have similar meanings; indeed, the 1865 edition of Webster's Dictionary expressly includes as one of the definitions of "citizen," "[a]n inhabitant in any city, town, or place."

Here, Respondents have failed to demonstrate that a radical change in candidate qualifications was intended, rather than a clarification. As discussed above, the primary purpose of the 1868 Constitution was to *clarify* that African Americans are indeed qualified to hold office, rather than effectuate any major change in qualifications. *See White*, 39 Ga. at 258 ("it is very plain . . . that the Constitution of 1868 guarantees and secures to persons of color the right to hold office."); *see generally id.* at 252-59 (1868 Constitution did not grant *new* rights to African Americans but clarified those rights following the Civil War). Accordingly, to remove any ambiguity over whether "persons of color [have] the right to hold office," *id.* at 258, it would make sense to not only declare in Article I that African Americans are "citizens of this State" as discussed above, but also to clarify in the Qualifications Clause itself that such "citizens of this State" can run for public office. By specifically using the term "citizen of this State" in Article III's candidate qualification provision, the framers were able to ensure consistency of meaning with prior versions of the Constitution by using a term that was roughly synonymous with "inhabitant," while also directly linking the privilege of running for office with the expansion of state citizenship rights in Article I. Such a belt-and-suspenders approach would help eliminate any ambiguity over whether African Americans could run for office and is consistent with the Georgia Supreme Court's explanation of the framers' intent.

Even if replacing "inhabitant" with "citizen" was intended to effectuate a *change* in meaning as opposed to a mere clarification, nothing in the Georgia Supreme Court's extensive

discussion of 1868 Constitution's historical context suggests that its framers—elected overwhelmingly by African Americans—sought to *restrict* the pool of those qualified to hold office, or that they were deeply concerned about newly-naturalized United States citizens like Petitioner Maria Palacios running for office. They had more important things on their mind following the Civil War, such as "guarantee[ing] and secur[ing] to persons of color the right to hold office." *White*, 39 Ga. at 258. Thus, if the amendment changed anything, it *expanded* the pool of applicants qualified to run for office, rather than restricting it. *See id.* at 259 (to the extent the 1868 Constitution changed anyone's rights, it expanded the rights of African Americans).

For these reasons, Respondents have failed to establish that by replacing the term "inhabitant" with "citizen" in Article III of the 1868 Constitution, the framers clearly intended to depart from the traditional meaning of "citizen of this State" and to inject a new United States citizenship requirement into the meaning that was unheard of at the time. The framers were focused on guaranteeing the rights of newly freed slaves, not with restricting the pool of who may seek elected office.

III. NONE OF THE STATUTES CITED BY RESPONDENTS DEFINE "CITIZEN OF THE STATE"

Respondents also point to statutory language to shore up their proposed interpretation, but none of those statutes actually define the term "citizen of the state." Respondents' arguments in support of their reliance on these statutory provisions are meritless, and cannot overcome the traditional meaning of "citizen of the state."

A. Not all "citizens" are entitled to the default rights enumerated in O.C.G.A. § 1-2-6 if those rights, such as the right to vote, have been restricted elsewhere

Both Respondents rely on O.C.G.A. § 1-2-6, which enumerates the "rights of citizens," and they argue that because one of those enumerated rights includes the "right of the elective

franchise," then state citizens must obviously be United States citizens, since only United States citizens can vote. (Resp. Kemp Br. at 21-22; Resp. Intervenor Br. at 10-11.)

First, Respondents' argument is flawed because the General Assembly cannot change the meaning of the Georgia Constitution—and especially not the Qualifications Clause—absent the express authority to do so. As the Georgia Supreme Court expressly held in *White*, 39 Ga. at 265, "if the Constitution prescribes a qualification for an officer, it by necessary implication denies to the Legislature the power to fix new and other qualifications." (emphasis added)); *see also id.* at 262 ("If the right in question be one guaranteed in the Constitution of the State, then an Act of the Legislature cannot deny it.").

Second, as a textual matter, it is not clear whether, by enumerating the "rights of citizens," O.C.G.A. § 1-2-6 lists the "rights of citizens *of this State*," or whether it lists the "rights of citizens *of the United States*." This ambiguity is illustrated in *White*, where the Georgia Supreme Court discussed the then-version of O.C.G.A. § 1-2-6 (Section 1648 of the Code at the time), remarking that it is a "clear definite specification of certain rights . . . that covers the state, of the rights of citizens *in this country*." *White*, 39 Ga. at 262 (emphasis added). Respondents do not point to any Georgia Supreme Court decision specifically holding that the "citizens" described in O.C.G.A. § 1-2-6 are "citizens of this state" as opposed to "citizens of the United States."

Third, even if O.C.G.A. § 1-2-6 clearly enumerates the rights of "citizens of this state" as opposed to "citizens of the United States," *White* directly contradicts Respondents' argument that all citizens of the state ultimately have all the rights listed in O.C.G.A. § 1-2-6, including the right to vote. As *White* explains, the predecessor of O.C.G.A. § 1-2-6 only delineates the

baseline level of rights that all citizens inherently have, but that those rights may be subsequently restricted by other statute (if the Constitution allows it). As the Supreme Court explained:

> this definition of the word ['citizen' as set forth in the predecessor version of O.C.G.A. § 1-2-6] is one that harmonizes completely with the exact state of the actual rights of citizens, as they are enjoyed, and always have been enjoyed, in America. [But] *[i]t does not say that all these enumerated rights are enjoyed by all citizens*, that every citizen has them, and that every citizen has a guaranteed right to their enjoyment. . . . A citizen is one who, *unless it is otherwise expressly provided by law*, is entitled to the rights mentioned [in the predecessor of O.C.G.A. § 1-2-6].

White, 39 Ga. at 292 (emphasis added).

The Georgia Supreme Court even specifically refutes Respondents flawed argument that all state citizens must have the right to vote, explaining, "[i]nfants and women are citizens, and they have, in none of our States, the right to vote; nay, they are denied by law many civil rights." *White*, 39 Ga. at 260-61. Thus, there mere fact that O.C.G.A. § 1-2-6 includes the right to vote among its listed benefits does not mean that *all* state citizens have that benefit, if it has been restricted by some other law. And here, the right to vote enumerated in O.C.G.A. § 1-2-6 *has* been validly restricted by another law: O.C.G.A. § 21-2-216(a), which provides, "No person shall vote in any primary or election held in this state unless such person shall be . . . A citizen of this state *and of the United States*" (emphasis added). Because the right to vote has been validly restricted by another law to adults and United States citizens, it is entirely possible for "citizens of the state" to include people, such as infants and non-United States citizens, who do not have the right to vote.[6]

[6] Furthermore, if "citizen of this state" implicitly included a United States citizenship requirement as Respondents suggest, O.C.G.A. § 21-2-216(a)'s requirement that an elector be a "citizen of this state" *and* "of the United States" would have been superfluous, since someone who is a citizen of the state would have already been a citizen of the United States.

For these reasons, Respondent Intervenor's discussion of *White* and his conclusion that one does not become a "citizen of Georgia" until "he or she has obtained all the rights enumerated under O.C.G.A. § 1-2-6" (Resp. Intervenor Br. at 11-12) is also incorrect. O.C.G.A. § 1-2-6 does not purport to list the nine rights that someone must "obtain" in order to *become* a "citizen of this state," but as *White* teaches, it lists the "rights" that citizens have by default but may be circumscribed by other laws. O.C.G.A. § 1-2-6 does not establish that "citizens of this state" requires United States citizenship.

B. Respondent Kemp's reliance on other statutes is misplaced, since they do not expressly define "citizen of this state"

While Respondent Intervenor's statutory arguments are limited to O.C.G.A. § 1-2-6, Respondent Kemp goes further, citing O.C.G.A. §§ 1-2-2; 1-2-3; and 1-2-5, arguing that prior versions of those laws existed at the time of the 1868 Constitution, and concluding that those statutes elucidate that "citizens of the state" must include a United States citizenship component. (Resp. Kemp Br. at 19-21.) But none of those statutes expressly define what it means to be a "citizen of the state," so they cannot shed light on what the specific term "citizen of the state" must have meant in 1868, and they certainly cannot overcome the presumption in favor of interpreting candidate qualifications liberally. Nor does Respondent Kemp point to any court decisions interpreting such statutes as establishing a clear definition of that term. These arguments can be rejected on this basis alone.

In any event, Respondent Kemp's reliance on these statutes is misplaced. These statutes either illustrate that "citizens of this state" can include non-U.S. citizens, supporting Petitioner's argument; or they simply shed no light on the precise question at issue here.

Respondent Kemp argues that the categories of natural persons set forth in O.C.G.A. § 1-2-2 unequivocally establish that the general term "citizens" must mean "citizens of this state,"

which in turn must exclude "aliens." But even if the provisions contain the speculative definitions proposed by Respondent Kemp, these categories do not purport to apply in every context and, more importantly, do not purport to define specifically the term, "citizen of the state."

Respondent Kemp argues that O.C.G.A. § 1-2-3 necessarily defines "citizen of this state" as requiring United States citizenship because it provides that "a citizen of this state continues to be a citizen of this state *and* of the United States" unless the person acquires citizenship elsewhere. But that provision does not mean that all citizens of this state must be United States citizens. In *Southern Ry. Co. v. Goodman*, 259 Ga. 339, 340 (1989), the Georgia Supreme Court expressly relied on this provision to hold that unless citizenship is acquired elsewhere, all "Georgia citizens" have the right to appeal to the court. Obviously, the right to appeal to the courts is not limited to United States citizens. That provision could easily be interpreted as a catch-all that ensure that citizens of the state do not lose any state citizenship privileges *or* any United States citizenship privileges—if they have them—unless they acquire citizenship elsewhere.

Respondent Kemp lastly turns to O.C.G.A. § 1-2-5, which requires expatriated citizens to swear the same oath of allegiance to the United States that is "required of other foreigners as a condition to becoming a citizen of the United States" after "meeting the residence requirements" if they want to "become citizens of this state again," and he argues that United States citizenship is thus an "essential component" of state citizenship. But that would only be true for expatriated persons under this statute. The provision does not purport to set out the state citizenship requirements for *all persons*. And in the case of expatriated persons, it makes sense to require them to expressly swear allegiance to the United States to doubly ensure their loyalty, since they

had previously renounced their citizenship status and sworn allegiance elsewhere. Furthermore, if "citizens of this state" inherently included a United States citizenship requirement, then there would be no point in expressly requiring expatriated persons to swear the same oath of allegiance as other foreigners seeking to become United States citizens, since the requirements for becoming a citizen of the state, which allegedly require United States citizenship, generally would have already been well known. If anything, O.C.G.A. § 1-2-5 implies that non-expatriated persons may become citizens of the state simply by "meeting the residence requirements," consistent with the traditional definition of state citizenship.

Petitioner does not suggest that these statutes clearly establish that "citizens of this state" means something akin to residency or domiciliary, only that they are susceptible to differing interpretations and most certainly do not unequivocally establish the definition Respondents advance. But ambiguous statutory language is insufficient to justify departing from the well-established traditional definition of "citizen of this state," which courts throughout the United States have long recognized do not include a United States citizenship component.

CONCLUSION

For centuries, courts around the country have recognized that "citizen of a state" means someone who is either a resident or a domiciliary of that state, without requiring United States citizenship, and Respondents do not dispute this bedrock fact. Instead, Respondents speculate that the 1868 amendments were intended to *restrict* who is entitled to the privileges of state citizenship, but this lopsided speculation is at odds with the Georgia Supreme Court's decision in *White v. Clements*, 39 Ga. 232 (1869), which established that the purpose of the 1868 amendments was to clarify that African Americans are entitled to the same rights and privileges as white people. It made complete sense, therefore, for the framers to "declare" that native-born

individuals like African Americans were entitled to the privileges of state citizenship, and there is nothing to suggest that the delegates were concerned with limiting the right to hold public office in any way, much less define the outer boundaries of what it means to be a "citizen of the state." Respondents also fail to point to any statutes that actually define what it means to be a "citizen of the state," to the extent that statutes can overcome constitutional meaning.

Respondents' proposed interpretation does not "correctly reflect[] the plain language of the [constitutional provision]" or "comport[] with the legislative intent." *Handel v. Powell*, 284 Ga. 550, 553 (2008) (citation and quotations omitted). Considering the "liberal construction" that this Court must apply to "[w]ords limiting the right of a person to hold office," *Gazan v. Heery*, 183 Ga. 30, 42 (1936), this Court should adhere to the traditional definition of "citizen of this state," unless and until the Constitution is amended to specify otherwise.

For these reasons, this Court should grant Petitioner's motion for summary judgment, deny Respondents' cross-motions for summary judgment, and reverse the Secretary of State's final decision.

This 15th day of June, 2018.

Respectfully submitted,

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

The Secretary's Reply Brief in Support of His Motion for Summary Judgment

Respondent-Appellee Brian P. Kemp, in his official capacity as the Georgia Secretary of State ("the Secretary"), respectfully submits this Reply Brief in Support of his Motion for Summary Judgment:

I. The Georgia Constitution Clearly Defines "Citizens of this State" to Require United States Citizenship.

As discussed in the Secretary's opening Brief, the definition of "citizens of this State" was added to Article I of the Georgia Constitution at the same time that the framers changed the language in the Article III Qualification Clause to require that representatives to the Georgia House of Representatives be not simply "inhabitants" of Georgia, but "citizens of this State." [See Resp. Br. 13-19]. The current version of the Article I definition of "citizens of this State," unchanged

since 1877, clearly and unequivocally defines state citizenship as requiring United States citizenship and residency in Georgia: "All citizens of the United States, resident in this state, are hereby declared citizens of this state . . ." Thus, in order to be a "citizen of this State," as the phrase is used in the Georgia Constitution, the framers set forth two unambiguous requirements : 1) United States citizenship; and 2) Georgia residency.

Petitioner's argument implicitly asks this Court to violate the cardinal rule of constitutional construction that judicial construction "must honor the plain and unambiguous meaning of a constitutional provision" [*Blum v. Schrader*, 281 Ga. 238, 239 (2006)] and instead urges that the constitutional language be interpreted with the following italicized words added: "All citizens of the United States, *and citizens of foreign countries*, resident in this state, are hereby declared citizens of this state . . ." However, "where a constitutional provision is capable of a 'natural and reasonable construction,' courts are not authorized to either read into or read out that which would add to or change its meaning." *Id.* (internal citations omitted).

Because the Qualifications Clause in Article III uses the expression "citizens of this State" in its requirement that candidates for State House must be "citizens of this State for at least two years," the meaning of that provision must be interpreted according to the definition that the framers provided in Article I. *Lucas*

v. Woodward, 240 Ga. 770, 774 (1977) ("The different provisions of the constitution are to be construed as in harmony with one another rather than as contradictory.") Petitioner, however, asks this Court to ignore the well-established rule that constitutional provisions must be read together in harmony and instead argues that "citizens of this State," as used in Article III should be interpreted as meaning a "domiciliary" [Pet. Opp. at 10] – a term that appears nowhere in either Article I or Article III.

As discussed below, Petitioner makes a number of meritless arguments in support of her argument that the Constitution should be interpreted not according to its clear terms, but in accordance with her preferred language.

A. Petitioner's Reliance on the "Liberal Construction Rule" Is Misplaced.

Petitioner cites repeatedly to the rule set forth in *Gazan v. Heery*, 183 Ga. 30, 42 (1936) that "[w]ords limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified." [Pet. Opp. Br. at 2, 6, 20, 23]. First, this rule generally applies to the interpretation of *statutes* restricting the rights of persons to seek office, and not to constitutional qualification requirements, which must be strictly adhered to in order to comport with the framers' intent. Moreover, even in the statutory context, the Georgia Supreme Court has stated that "[w]hile words limiting the right of a person to hold

office are to be given a liberal construction in favor of those seeking to hold office . . . [citing *Gazan*], *it does not follow that the courts should give words an unreasonable construction in order to uphold the right of one to hold office*. *Thornton v. McElroy*, 193 Ga. 859, 861 (1942) (declaring candidate to be ineligible based on interpretation of statutory term "freeholder of said county") (emphasis added).

While cases from other jurisdictions are of limited persuasive value in the resolution of this case, given that each sovereign State is free to define for itself what is required in order to be a state citizen, out-of-state authority *can* be useful in its application of common principles of statutory construction, such as the "liberal construction" rule relied upon by Petitioner. The Maryland case of *Abrams v. Lamone*, 398 Md. 146 (2007), which, also involved a candidacy challenge based on a constitutional provision, is particularly instructive. In *Abrams*, the issue was whether Thomas Perez (currently the chairman of the Democratic National Committee) had satisfied the requirement in the Maryland Constitution that the Attorney General have "practiced law in [Maryland] for at least ten years." *Abrams*, 398 Md. at 151. While Perez had been a practicing lawyer for many years at the United States Department of Justice, including practicing federal law in Maryland for 20 years [*Id.* at 151-153, 199], he had only been a member of the

Maryland State Bar for five years, and the issue was whether the constitutional language "practiced law" necessarily required membership in the State Bar.

Like Petitioner here, Perez had cited cases reciting the same language in *Gazan* that "words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office," and had argued that under that principle, he should not be held ineligible, especially because the state's constitution did not specify that membership in the state bar was required, requiring only the "practice of law in the state for 10 years." *Id.* at 179.

Maryland's highest court squarely rejected that argument, stating: "[t]his Court is not persuaded that a liberal construction of [Maryland constitutional provision] is appropriate. *Indeed we have construed eligibility requirements strictly*, *where the language of the constitutional provision is clear*." *Id.* at 180 (emphasis added). The Court stated that "a liberal view of what it means to 'practice law' . . . would go against the intent of the framers and the purpose of the provision as a whole." *Id.*

The meaning of the constitutional language "citizen of this State" in the Georgia Constitution is far clearer than the meaning of the "practice law" provision at issue in the Maryland case because the Georgia Constitution provides a clear definition of "citizens of this State" in Article I. The Article III requirement that legislators be "citizens of this State for at least two years" must be strictly

construed in order to comport with the plain meaning of the words and the framers' intentions that Georgia citizens be United States citizens. United States citizenship is necessary in order to be a "citizen of this State," just as membership in the Maryland Bar was held to be a necessary (albeit unstated) requirement to "practice law" in the State of Maryland.

Finally, it should be noted that the rule of "liberal construction in favor of those seeking office" is designed to protect the *public*, and not the candidate, by providing the public with the benefit of choice of all those candidates "who *are* in law and in fact qualified." *Gazan*, 183 Ga. at 42 (emphasis added). The public interest is obviously not served by allowing candidates on the ballot who are not qualified to hold office, and, therefore, strict construction of clear constitutional eligibility requirements promotes the public interest by insuring that the public will be given the option to choose a *qualified* candidate. The "liberal construction" rule is not appropriate here and cannot be used to circumvent a clearly expressed constitutional requirement.

B. The Framers' Instruction that the Legislature Enact Laws to Protect "Citizens of this State" in the "Full Enjoyment of the Rights, Privileges, and Immunities" of State Citizenship Also Demonstrates That Georgia Citizens Must Be United States Citizens.

A plain reading of the second clause in Article I, underscored below, also demonstrates that "citizens of this State" must be United States citizens:

> All citizens of the United States, resident in this state, are hereby declared citizens of this state; and *it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship*.

Ga. Const. 1983, Art. I, ¶ 7 (emphasis added). Protecting Georgia citizens in the "**full** enjoyment" of their rights, privileges, and immunities necessarily means that Georgia citizens *are* United States citizens because foreign citizens do not enjoy the full rights of state citizenship, such as, for example, possessing the right to vote. The framers conferred the right to vote only upon every person "who is a citizen of the United States and a resident of Georgia . . . who is at least 18 years of age and not disenfranchised by this article . . ." Ga. Const. 1983, Art. II, § 1, ¶ 1. Article II of the Georgia Constitution disenfranchises minors, convicted felons serving sentences, and persons adjudged to be mentally incompetent [Art. II, § 1, ¶ 1; Art. II, § 1, ¶ 3], but notably it does *not* disenfranchise aliens for the obvious reason that foreign citizens are not "citizens of this State" in the first place, thus rendering disenfranchisement unnecessary.

Petitioner's invented definition of "citizens of this State" as including persons who are not United States citizens cannot be squared with the "full enjoyment" language in Article I and, if accepted, would render the Article I "full enjoyment of rights" clause in conflict with Article II's requirement that the right to vote be limited to "United States citizens [who are] resident[s] of Georgia." If foreigners were deemed to be "citizens of this State" in Article I, but then unable to

exercise the right to vote based on the language in Article II, they would *not* be enjoying the full rights and privileges of state citizenship. The only way to harmonize these provisions is to read Article I as it is written: "Citizens of this State" are United States citizens who are also residents of Georgia.

Petitioner makes a number of confused arguments regarding this language. For example, she states incorrectly that the Secretary "misquot[ed]" the 1868 Georgia Constitution by inserting the current version of Article I (i.e., the "full enjoyment of rights, privileges, and immunities due to such citizenship" language) into an alleged quotation of Article I from the 1868 Constitution. [Pet. Opp. at 14]. As set forth in the Secretary's opening Brief at 16, the language in the 1868 version of Article I varied somewhat from the modern version in that the 1868 language instructed the legislature to enact laws "to protect every *person* in the *due* enjoyment of the rights, privileges, and immunities guaranteed in this section." Ga. Const. 1868, Art. I, § 2 (emphasis added).

The Secretary did not misquote the Georgia Constitution – either the current Constitution or the predecessor 1868 version. The quoted language to which Petitioner refers on page 12 of the Secretary's opening brief (under I, A) *is* referring to the current, modern version, which has not changed in relevant part since the 1877 Constitution. The Secretary's legal analysis naturally began with a discussion of the plain meaning of the words in the Constitution, as it exists today,

before turning to a discussion of the legislative history that led to the adoption of the "citizens of this State" provision in the 1868 Constitution. (The discussion of the 1868 Constitution can be found in I, B of the Secretary's Brief.)

Moreover, the change in the Article I language from the 1868 version to the 1877 version (the current language in effect today) makes even clearer that the framers intended Georgia citizens to also be United States citizens. The change replaces "due enjoyment" with the broader "*full* enjoyment," thereby necessarily implicating the right to vote, and the object of the second clause (i.e., the recipient of the protection in the enjoyment of rights) in Article I is no longer "every person," but "them," which refers back to "citizens of this State" in the first clause of the sentence. Thus, the legislature is commanded to enact laws to protect "citizens of this State," not just "persons," and state citizens must be protected in the "full" enjoyment of those rights inherent in citizenry.

Petitioner also misunderstands the Secretary's argument when she states that the Secretary suggests that "such citizenship" in Article I refers to *United States* citizenship. [Pet. Opp. at 15]. The Secretary agrees with Petitioner that "such citizenship" refers to state citizenship, i.e., those persons who are "citizens of this State" as defined in the first clause. However, "*full* enjoyment" of the rights of state citizenship would by necessity include rights of state citizens that are only

conferred upon United States citizens, such as the right to vote, thus demonstrating that "citizens of this State" must be United States citizens.

Petitioner also makes the erroneous argument that that O.C.G.A. § 1-2-6 ("Rights of citizens generally"), which enumerates nine rights of Georgia citizens, including "[t]he right of the elective franchise," has no bearing on the meaning of "citizens of this State" in the Qualifications Clause on grounds that the legislature cannot impose new or different qualifications for office other than those set forth in the Constitution. [Pet. Opp. at 18]. Petitioner is, of course, correct that "if the Constitution prescribes a qualification for an officer," then the legislature cannot impose "new and other qualifications" [*White v. Clements*, 39 Ga. 232, 265 (1869)]; however, O.C.G.A. § 1-2-6 does not establish qualifications for holding office that are contrary or in addition to those set forth in the Constitution. Rather, it responds to the mandate in Article I of the Georgia Constitution that the legislature "will enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship." Ga. Const. 1983, Art. I, § 1, ¶ 7. The statute codifies inherent rights due to state citizens and the fact that the legislature specifically included the right of the franchise as one such right demonstrates that the legislature did not consider foreign citizens to be citizens of Georgia. Moreover, precursors to this statute, which also contained a reference to the right to vote, pre-dated *all* Constitutions with the "citizens of this State"

language in Article I and III, thus demonstrating that the framers were aware of the legislature's understanding of "citizen of this State" as not including foreign nationals and that they adopted that meaning when they used that same language in the Constitution. *Kolker v. State*, 260 Ga. 240, 243 (1990) ("constitutional provision must be presumed to have been framed and adopted in light of and understanding of prior and existing laws and with reference to them.")

Petitioner also argues (apparently in the alternative) that O.C.G.A. § 1-2-6 should be interpreted as enumerating the rights of *United States* citizens. [Pet. Opp. at 18]. This argument plainly lacks merit because under established principles of federalism, the Georgia state legislature is clearly without power to dictate federal law and/or delineate federal rights. O.C.G.A. § 1-2-6 can only be understand as a legislative expression of the rights of *Georgia* citizens under state law.[1]

[1] Petitioner attempts to bolster this weak argument by taking one sentence out-of-context to suggest that the Court in *White v. Clements*, 39 Ga. 232, 261 (1869) was interpreting the statutory precursor to § 1-2-6 as involving the rights of federal citizens. [Pet. Opp. at 18]. To the contrary, the court in *White* made clear that the precursor to O.C.G.A. § 1-2-6, which was Code Sect. 1648, was addressing the rights of Georgia state citizens, and not federal citizens when it stated: "*A citizen of a State is one who entitled to every right* enjoyed by any one, unless there be some affirmative declaration to the contrary, by some authority clothed with the power, under our form of government, to make the exception. And this the definition of the Code of Georgia [sic]. Section 1648 of that Code enacts . . ." (listing enumerated rights, including right to franchise) (emphasis added). This language thus makes clear that the Court considered the statutory precursor to O.C.G.A.

II. The Legislative History to the Adoption of the Constitutional Language Demonstrates That "Citizens of this State" Must Be United States Citizens.

While a plain reading of the Article I definition makes clear that "citizens of this State" must be United States citizens, an examination of the legislative history to the constitutional language also supports the Secretary's interpretation. As fully set forth in the Secretary's opening brief, a significant amount of historical evidence shows that the framers intended "citizens of this State" in Article I and Article III (which must be read together in harmony) as requiring United States citizenship. When faced with this powerful evidence, Petitioner resorts to a number of invalid arguments.

For example, one piece of historical evidence discussed in the Secretary's opening brief is that the framers of the 1868 Constitution made a deliberate decision to change the language in the Qualifications Clause to require that candidates not merely be "inhabitants of this State," but instead "citizens of this State," thus demonstrating that they did *not* consider "inhabitant" to be synonymous with "citizen," as Petitioner urges. [*See* Resp. Br. at 13-17]. In response, Petitioner argues that a change of language can actually "reflect a clarification, rather than a change in meaning," citing the Georgia Supreme Court's decision in *Nuci Phillips Mem. Found v. Athens-Clarke Cnty. Bd. of Tax Assessors*,

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§ 1-2-6 as referring to the rights of "citizens of this State," and not as to federal citizens over which the state legislature would have no authority to establish law or rights.

288 Ga. 380, 384 (2010). [Pet. Opp. at 15]. However, in *Nuci*, the Georgia Supreme Court actually made clear that "when a statute is amended, from the addition of words it may be presumed that the legislature intended some change in the existing law."[2] *Nucci*, 288 Ga. at 383. This "presumption of change" may, however, "be rebutted by evidence that the legislature did not intend a change" [*Id.* at 384], which was the case in the *Nuci* case because there was a preamble to the legislative amendment at issue that specifically stated that it was intended only "to clarify an ad valorum tax exemption." *Id.* at 384.

In contrast, here there is no legislative preamble making clear that the change from "inhabitant of the state" to "citizen of the state" was meant only as a clarification, and not a change in the law. Moreover, Petitioner has offered no evidence to rebut the presumption that a change in the language should be interpreted as a change in the law.

A. The Ordinary Meaning of "Citizen" in 1868 Was Not Synonymous With "Inhabitant."

Petitioner argues that the words "citizen" and "inhabitant" are "roughly synonymous" and states that an 1865 Edition of Webster's Dictionary supports her interpretation because its definition of "citizen" includes "[a]n inhabitant in any

[2] While the rule of construction in that case pertained to a statute, and not a constitutional provision, the Georgia courts have stated that the rules of statutory construction apply equally to construction of constitutional provisions. *De Jarnette v. Hospital Authority of Albany*, 195 Ga. 189, 204 (1942).

city, town, or place." [Pet. Opp. at 16]. However, the 1864 Merriam Webster's Edition[3] contains three definitions of the word "citizen," and two of the three definitions specifically connote issues of sovereignty, political membership, and political rights, thus making clear that "citizen" can have meanings that are very different from "inhabitant":

> CITIZEN, n. [From *city*] 1. A freeman of a city. 2. An inhabitant in any city, town, or place. 3. Any native born or naturalized inhabitant of a country." [Amer.] citizen.

Webster, N. (1864 Ed.). *An American Dictionary of the English Language*.

In fact, in *White v. Clements*, 39 Ga. 232 (1869), the case emphasized by Petitioner in her discussion of the legislative history to the constitutional change, the Georgia Supreme Court discussed the history of the term "citizen," explaining that in the days of the early republics, cities were the primary sovereign entities, and thus the term "citizen" was primarily used to describe a person's relationship to a city. When modern states replaced cities as sovereign entities, the term was then used to describe a person's relationship to a state, and the Court specifically stated that it conveyed entitlement to the State's "privileges [] rights, immunities, and franchises":

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[3] Petitioner may be intending to cite to this 1864 Merriam-Webster Edition because there does not appear to have been a Webster's edition published in 1865. Webster's First Edition was published in 1828 and reprinted in 1841. Merriam-Webster published a reprint of the 1841 Webster's Edition in 1859 and then published a substantially revised version in 1864. *See* "Legal and English Language Dictionaries," State of Oregon Law Library, https://soll.libguides.com

> The republics of the old world were cities, and the word citizen has been usually in human history only applied to inhabitants of cities. As, however, States have, in modern times arisen, and Republics have been established . . . *the people of these Republics have been called citizens for the simple and obvious reason that their relation to State was such as was the relation of citizens to the city. They were a part of its sovereignty – they were entitled to its privileges, its rights, immunities and franchises*.

White, 39 Ga. at 260 (emphasis added). Foreign nationals do not meet this definition of "citizen" because they do not have that relation to the State and are not entitled to all privileges, rights, immunities, and franchises owed to a state's citizens.

Moreover, the Court in *White* specifically rejected Petitioner's argument that "citizen" and "inhabitant" are synonymous by citing to contemporary dictionaries that equated "citizen" with an ability to fully participate in political life through voting. First, the Court cited to a French dictionary, *The Dictionaire L'Academie les Citoyen* as defining a citizen as: "In its strict and rigorous sense, an inhabitant of a city, who, by right, may vote in the public assembly, and is part of the sovereign power." *White*, 39 Ga. at 260. The Court also cited to the definition of "citizen" from the 1828 and 1841 Editions of Webster's Dictionary, which directly contradicts Petitioner's argument that the meaning of "citizen" at the time would have included foreign citizens: A "citizen" is "[t]he native of a city, or an inhabitant who enjoys the freedom and privileges of a city in which he resides – *a*

freeman of a city distinguished from a foreigner, or one not entitled to its franchises." Id. (emphasis added).

These dictionary entries demonstrate that the words "inhabitant" and "citizen" had different meanings when the framers adopted the 1868 Constitution. The framers' decision to replace "inhabitant" with "citizen" thus reflected an intention to make United States citizenship a requirement for being a "citizen of this State" because the word "citizen" conveyed the ability to vote and fully participate in civic life, which in turn required United States citizenship.

By requiring United States citizenship in order to be a Georgia citizen, the framers were necessarily imposing a requirement that a candidate have been a United States citizen for a defined period of time in order to be eligible for membership in the Georgia House of Representatives (1 year in the case of the 1866 Constitution and 2 years in the modern version, first adopted in 1877). However, a desire to impose a durational requirement that candidates have been United States citizens for a certain period as an eligibility requirement to hold state office was not a new concept for the framers because both the 1789 and 1798 Constitutions had required 7 years of United States citizenship as a separate qualification requirement to hold state office. [*See* Resp. Br. at 13-14]. What *was* new is that the 1868 Constitution adopted the first definition of state citizen, and by requiring United States citizenship as a component of that definition, it was

no longer necessary to impose a separate durational requirement in connection with the federal citizenry requirement, as was done with the 1789 and 1798 Constitutions.

Being a state citizen and being a United States citizen are, of course, different types of citizenship involving different sovereigns, carrying different rights and privileges to their respective citizens. Thus, it was appropriate, and not superfluous as Petitioner contends, to retain United States citizenship as a separate qualification requirement, but it was no longer necessary to impose a duplicative durational requirement in connection with federal citizenship because that requirement would be automatically addressed through the requirement that candidates have been citizens of this State for two years.

B. Petitioner Ignores the Clear Language in the 1868 Constitution That the Framers Considered United States Citizenship To Be a Critical Component of Being a Citizen of Georgia.

Tellingly, Petitioner's Brief contains no discussion whatsoever of the important language that the framers added to the 1868 Constitution in § 33 of Article I that provides unequivocal evidence that the framers wanted Georgia citizens to also be United States citizens. This provision, which is also set forth on pages 17-18 of the Secretary's opening brief, stated that: "The State of Georgia shall ever remain a member of the American Union; the people thereof are a part of the American nation; every citizen thereof owes paramount allegiance to the

Constitution and Government of the United States, and no law or ordinance of this State, in contravention or subversion thereof, shall have any binding force." Ga. Const. 1868, Art. I, § 33.

This language drafted in the immediate aftermath of the Civil War provides a powerful affirmation that the framers intended for Georgia citizens to be United States citizens who owe allegiance to the United States. While Petitioner repeatedly argues that all the changes in the 1868 Constitution were designed to address rights and citizenship of the recently freed African American slaves [Pet. Opp. at 2-3, 7,12-15], this language was clearly not directed at the freed slaves, but at white former secessionists, and it clearly informed them that Georgia citizens needed also to be loyal citizens of the United States.

Petitioner's unsupported assertion that the "primary purpose" of the 1868 Constitution was to clarify that African American former slaves were entitled to Georgia citizenship is incorrect. [Pet. Opp. at 12]. The Court in *White* makes clear that the central purpose underlying the drafting of the 1868 Constitution was the need to address a dire situation existing in Georgia after the Civil War where the State "was without any civil machinery to put [] laws in force, or to exercise [] rights, and there arose an absolute necessity to appeal to the people in their sovereign capacity, in order that a new civil organization might be effected." *White*, 39 Ga. at 250. Moreover, the ratification of the 14th Amendment to the

United States Constitution in 1868 had already made it the law of the land that the freed slaves were United States citizens and also derivatively citizens of the States in which they resided, and, therefore, the framers did not need to amend the state Constitution for the limited purpose of making clear that African Americans were Georgia citizens because the 14th Amendment left no doubt on that point. If the framers sole purpose in drafting Paragraph 2 of Article I was to clarify that African Americans residing in Georgia were Georgia citizens, they could have said just that. Instead, the framers chose different language in the 1868 Constitution: "All persons born *or naturalized* in the United States, and resident in this State, are hereby declared citizens of this State . . ." Ga. Const. 1868, Art. 1, § 2 (emphasis added). The addition of the word "naturalized" makes clear that the provision speaks not only to the status of African-Americans, but also to foreign citizens, who would not become "citizens of this State" unless and until they were naturalized.

Furthermore, Petitioner mischaracterizes the holding in *White v. Clements*, 39 Ga. 232 (1869) when she states that the Supreme Court provided the "definitive explanation of the purpose behind Article 1, Section 2 [that it was intended] to clarify and ensure that the privileges of state citizenship extended to African Americans." [Pet. Opp. at 13]. In *White*, the legal issue did not turn on whether African Americans were Georgia citizens because that fact was undisputed. The

Court referred to African Americans as "acknowledged citizens of the State" and stated further that "no body [sic] denies that persons of color are citizens . . ." *White*, 39 Ga. at 241, 244. The *White* case addressed the different question as to whether as citizens, African-Americans could nonetheless be deprived of the inherent rights of citizenry, and the Court answered that question in the negative, affirming that African-Americans citizens were entitled to the full enjoyment of citizenry, including the right to hold public office. *Id.* at 262.

In its lengthy discussion of what is meant by the term "citizen," the Court actually addresses the status of foreign nationals with an analogy to a hypothetical Russian citizen, a discussion which made clear that in the Court's view, this hypothetical Russian would *not* become a citizen of this State, with the rights inherent in citizenry, until he or she were naturalized:

> A naturalized citizen stands upon the footing of other citizens, and he has all the rights that anybody has – unless it is otherwise specially provided by law. By the grant of the State, he has become one of the people, and, ipso facto, his rights stand upon precisely the same foundation as theirs. . . . *The Russian, before naturalization*, was in the same position [as freed slaves before obtaining citizenship] *–his rights were dependent upon the comity of the State, and he had only such as that comity bestowed upon him*. But when by the will of the people, the Russian subject becomes a citizen, ipso facto, his relations change, and he, like other citizens, has every right that is not denied him by affirmative provision.

White, 39 Ga. at 258.

The Court's assertion that a Russian citizen's rights were dependent on the comity of the State reveals that the Georgia Supreme Court in *White* did not consider foreign citizens to be "citizens of this State." In fact, the Court directly compared foreign citizens as occupying the same legal status vis-a-vis the State as that of the freed slaves before they were made state citizens. The reference to comity makes clear that the Court considered foreign nationals to be analogous to citizens of other states, which is consistent with 1-2-11 (in existence in a prior version at the time of the *White* decision), which states that *"[a]liens who are subjects of governments at peace with the United States and this state*, as long as their government remain at peace with the United States and this state, *shall be entitled to all the rights of citizens of other states who are temporarily in this state* . . ." O.C.G.A. §1-2-11 (emphasis added).

III. The Courts from Other Jurisdictions Have *Not* Held That There Is A "Traditional" Meaning of "Citizen" That Is Synonymous With "Resident" Or "Domicile."

Petitioner is wholly incorrect in her assertion that the Respondents "do not dispute that the traditional meaning of state citizenship has referred to residents or domiciliaries of a state without requiring United States citizenship ..." [Pet. Opp. at 1]. To the contrary, the Secretary made very clear in his opening brief that there is no "traditional" consensus as to the meaning of "citizen" because the term is context-driven and can mean different things depending upon how and where it is

used. A political context, such as we have here, involving the interpretation of a Qualifications Clause for holding state office, is completely different from a non-political context involving property rights or taxation. The cases from other jurisdictions cited by Petitioner where "citizen" was held to be synonymous with residency or domicile were virtually all cases involving property disposition, the right to sue for divorce, licensure issues, or contract disputes. They were *not* cases defining the word "citizen" for purposes of exercising political rights related to sovereignty, a distinction specifically emphasized by many of those courts. [*See Bacon v. Board of State Tax Commissioners*, 126 Mich. 22 (1901); *Vachikinas v. Vachikinas*, 91 W. Va. 181 (1922) and other cases discussed in Resp. Br. at 26-32].

Petitioner makes the puzzling comment that the Secretary's Brief attempted to distinguish Petitioner's cases "by making the unremarkable observation that 'citizen' can mean some variation between 'resident' or 'domiciliary,' a point Petitioner has never contested." [Pet. Br. at 5]. The Secretary's discussion of Petitioner's cases in his opening brief contained no discussion concerning the difference between a "resident" and "domiciliary," nor did it attempt to define "citizen" by reference to either of these terms. The critical distinction is not "resident" versus "domicile," but instead, "citizen" in a political context and "citizen" in a non-political context.

Petitioner contends that the Secretary was "cryptic" and "inchoate," with no citations to supporting case law [Pet. Opp. at 5], when he discussed the important distinction between "citizen" in the political context relating to representational government and the sovereign's self-definition of its citizenry and "citizen" in a non-political context involving property rights or the performance of ministerial duties. [Resp. Br. at 27-32]. This is simply incorrect. First, as noted above, Petitioner's own cases from other jurisdictions, discussed in detail in the Secretary's Brief at 27-32, make clear that whether a "citizen" of a State encompasses United States citizenship depends on the context, and to the extent that those cases did equate "citizen" with "resident" without requiring United States citizenship, the courts often emphasized that "citizen" could have a different meaning in a political context.

Secondly, Petitioner's Opposition makes no reference to the United States Supreme Court's decision in *Bernal v. Fainter*, 467 U.S. 216 (1984) (discussed in the Secretary's opening brief at 27 and 31), which emphasizes that States possess sovereign authority to define the scope of their citizenry -- "the community of the governed and governors" -- and can therefore legitimately exclude aliens from "basic governmental processes . . . as a necessary consequence of the community's process of self-definition." *Id.* at 221. "The State may limit its own form of government and limit the right to govern to those who are full-fledged members of

the political community." *Id.* Thus, Georgia, in the exercise of its sovereignty, can choose to require United States citizenship as a requirement for obtaining Georgia citizenship and can also require that persons have been Georgia citizens for at least two years before being eligible to hold office in the State House of Representatives.

CONCLUSION

For all of the foregoing reasons and for the reasons set forth in the Secretary's opening Brief, the Secretary respectfully requests that his Motion for Summary Judgment be granted and that Petitioner's Motion for Summary Judgment be denied. The Secretary's interpretation of "citizen of this State" in the Georgia Constitution as requiring United States citizenship is reasonable, consistent with a plain reading of the language in the Constitution, and supported by the legislative history. Because the Petitioner has not been a United States citizen for at least two years, by definition, she has not been a citizen of this State for two years. The Secretary was, therefore, correct in determining that Petitioner failed to satisfy the qualifications requirements set forth in Article III.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the foregoing **The Secretary's Reply Brief in Support of his Motion for Summary Judgment** via the Odyssey e-file system and by e-mailing an electronic copy in PDF format, pursuant to agreement by counsel to receive filings electronically, to the following counsel of record:

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MARIA PALACIOS, Petitioner, v. BRIAN P. KEMP, in his official capacity as the Secretary of State of Georgia, Respondent, And RYAN SAWYER, Intervenor.	)	Civil Action File No. 2018CV305433 (Administrative Docket Number: 1835339- OSAH-SECSTATE-CE-6-Beaudrot)

INTERVENOR'S REPLY TO
PETITIONER'S CONSOLIDATED RESPONSE

In her reply brief, Petitioner Maria Palacios ("Petitioner") relies on immaterial court decisions from other jurisdictions with mischaracterizations of law, misstatements of intervenor Ryan Sawyer's ("Intervenor" or "Sawyer") arguments, and conclusory statements to urge this Court to grant her motion for summary judgment. For the following reasons, the Court should deny the Petitioner's motion for summary judgment and grant the motions filed by the

Intervenor and Georgia Secretary of State Brian P. Kemp (collectively, "Respondents"), affirming Secretary Kemp's determination that Petitioner does not meet the constitutionally mandated qualifications to be a candidate for State Representative in House District 29.

I. PETITIONER RELIES ON NONBINDING PRECEDENT FROM OTHER STATES WHILE FAILING TO CONSIDER GEORGIA LAW, WHICH DEMONSTRATES UNITED STATES CITIZENSHIP IS A PREREQUISITE TO GEORGIA CITIZENSHIP.

A. Petitioner's Claim that No Authority Exists in Georgia to Find that United States Citizenship is a Prerequisite for Georgia Citizenship Ignores the Plain Text of the Georgia Constitution.

Petitioner fails to consider Georgia law in urging the Court to adopt her reading of the Candidate Qualifications Provision. Petitioner argues that the Court should look beyond the text, caselaw, and legislative history for the Georgia Constitution and adopt the holdings of other state supreme courts. Such an exercise is not only unnecessary, but it is also irrelevant as the interpretations of other state constitutions by courts in other states have no bearing on this Court's interpretation of the Georgia Constitution. The cases relied on by Petitioner are nonbinding decisions carrying no persuasive weight in the interpretation of the Georgia Constitution.

Rather, the text of the Georgia Constitution is instructive to the definition of the word "citizen." Article I Section 1 Paragraph VII of the Georgia

Constitution defines what it means to be a Georgia citizen: "[a]ll citizens of the United States, resident in this state, are hereby declared citizens of this state." Therefore, an individual cannot become a Georgia citizen under the law until they are also a United States citizen. See also U.S. Const. Amend. XIV, § 1 ("all persons born or naturalized in the United States…are citizens of the United States and of the State wherein they reside"). Petitioner fails to address this paragraph of the Georgia Constitution entirely.

Petitioner misreads White v. Clements, 39 Ga. 232 (1869), and attempts to isolate its holding. The White decision is instructive as to what constitutes citizenship while remaining consistent with Georgia law. There, the Court stated that:

> A citizen of a State is one who is entitled to every right enjoyed by any one . . . . Among the rights of citizens are the enjoyment of personal security, of personal liberty, of private property and the disposition thereof, ***the elective franchise, the right to hold office***, to appeal to the Courts, to testify as a witness, to perform any civil function, and to keep and bear arms.

White v. Clements, 39 Ga. at 261 (emphasis added, and citations and quotation marks omitted). Further, Georgia law provides:

> The rights of citizens include, without limitation, the following:
>
> (1) The right of personal security;
> (2) The right of personal liberty;
> (3) The right of private property and the disposition thereof;
> ***(4) The right of the elective franchise;***

(5) The right to hold office, unless disqualified by the Constitution and laws of this state;
(6) The right to appeal to the courts;
(7) The right to testify as a witness;
(8) The right to perform any civil function; and
(9) The right to keep and bear arms.

O.C.G.A. § 1-2-6(a) (emphasis added). Reading White and O.C.G.A. § 1-2-6(a) in conjunction with Article II, Section 1, Paragraph II of the Georgia Constitution, which requires a voter to be a citizen of the United States at the time of registration, Georgia law is clear that one must be a United States citizen to be a Georgia citizen, and decisions from other states are irrelevant.

B. Petitioner's Textual Argument Fails to Follow Its Own Terms.

Petitioner's counter argument that "declared" as it appears in Article I, Section 1, Paragraph VII of the Georgia Constitution means only "to clarify" is nonsensical. In attempting to distinguish the plain text of the Constitution, Petitioner relies on Webster's dictionary for the definition of "declare," which states "[t]o make . . . an open and explicit avowal . . ." (Pet'r's Consol. Reply Br. at 7-8.) Petitioner goes on to create her own definition, inserting the word "clarify" which is noticeably absent from Webster's definition. (See e.g., id at 8 (". . . just as "declaring" ***or clarifying*** that all cars are vehicles does not mean that all vehicles must be cars, "declaring" ***or clarifying*** that all United States citizens are citizens of this State . . ." (emphasis added)).) Using the actual definition cited by the Petitioner, its text supports Respondents' argument that the Georgia

Constitution "makes open and explicit" that citizens of Georgia are United States citizens who also reside in Georgia. Id.; GA. CONST. art. I, §1, ¶ VII.

C. Petitioner Fails to Consider all Scenarios Which Would Not Render the United States Citizenship Requirement Superfluous.

Without specifically responding to Respondents' arguments, Petitioner repeats her argument that requiring United States citizenship to establish Georgia citizenship would, in her view, render the United States citizenship requirement in the Candidate Qualifications Provision superfluous. Petitioner apparently fails to consider a scenario where a candidate for the Georgia House of Representatives is a citizen of Georgia for two years prior to the date of the election and subsequently renounces his United States citizenship. Regardless of the likelihood of such scenario today, renunciation of one's United States citizenship was not an uncommon topic at the time the framers drafted the 1877 Georgia Constitution. See e.g. Expatriation Act of 1868. This further demonstrates the need for the clarity provided by the framers of the Georgia Constitution. Therefore, requiring United States citizenship as a prerequisite to Georgia citizenship does not render the United States citizenship requirement superfluous.

As Petitioner argued in her brief, "[a] statute must be construed 'to give sensible and intelligent effect to all [its] [sic] provision and to refrain from any interpretation which renders any part of the statute meaningless'" (Pet'r's Consol. Reply Br. at 10 (quoting R.D. Brown Contractors v. Bd. of Ed. Of Columbia Cnty.,

280 Ga. 210, 212 (2006)).) By understanding the possible, albeit unlikely, scenario of a candidate renouncing his or her United States citizenship on or after Election Day, Respondents' interpretation of the Candidate Qualifications Provision is consistent with Georgia canons of statutory construction.

II. PETITIONER FAILS TO PROVIDE LEGISLATIVE HISTORY TO SUPPORT HER LEGISLATIVE HISTORY ARGUMENT.

Petitioner makes the bald assertion that the legislature did not intend to change the meaning of the Candidate Qualification Provision in the 1868 Georgia Constitution when it changed the language from reading "inhabitant of the State" to "citizens of the State." (Pet'r's Consol. Reply Br. at 15.) When interpreting a statute, Georgia courts "must presume that the General Assembly meant what it said and said what it meant." Deal v. Coleman, 294 Ga. 170, 172, 751 (2013) (quoting Arby's Restaurant Group, Inc. v. McRae, 292 Ga. 243, 245(1) (2012)). Here, the replacement of "inhabitant" with "citizens," clearly indicates that the legislature intended to create a higher bar for election to the General Assembly. Despite Petitioner's objections to the contrary, it does not matter that the Georgia Supreme Court failed to shed light on this provision in caselaw.

III. PETITIONER MISSTATES RESPONDENTS' ARGUMENT REGARDING O.C.G.A. § 1-2-6.

Petitioner objects to Intervenor's argument that the rights enumerated in O.C.G.A. § 1-2-6 are instructive under the Georgia Constitution. Petitioner failed

to address the crux of Respondent's argument that because United States citizenship is a prerequisite to exercise the right to vote (as well as to enjoy other enumerated rights without adulteration), it is evident the legislature contemplated United States citizenship as a prerequisite of Georgia citizenship. Unlike other limitations on the right to vote such as age and capacity, the requirement that one be a United States citizen is the only defining characteristic which separates those eligible to vote from the general population at large. Likewise, Georgia citizenship hinges on the same requirement since one cannot fully exercise his or her rights under O.C.G.A. § 1-2-6 without United States citizenship.

Ms. Palacios did not obtain the right to vote in Georgia until she became a naturalized U.S. citizen in 2017. Ga. Const. Art. II § 1 ¶ II. As such, she cannot be considered a "citizen of this State" until she obtained the right to vote, falling one year short of the qualification in this election cycle to be a member of the State House of Representatives. See O.C.G.A. § 1-2-6.

Respectfully submitted this 22nd day of June 2018.

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing **INTERVENOR'S REPLY TO PETITIONER'S CONSOLIDATED RESPONSE** on all parties by electronically filing it with the Clerk of the Court using the Odyssey eFileGA system, and via email to counsel for the parties addressed as follows:

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This 22nd day of June 2018.

/s/ Vincent R. Russo
Vincent R. Russo

Fulton County Superior Court
EFILEDLW
Date: 6/28/2018 4:04 PM
Cathelene Robinson, Clerk

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)

PETITIONER'S SUR-REPLY BRIEF

In Support of Petitioner's Motion for Summary Judgment and in Opposition to both Respondent-Appellee's and Respondent-Intervenor's Cross-Motions for Summary Judgment

Petitioner Maria Palacios submits this Sur-Reply Brief to respond to one argument raised by Respondent-Intervenor for the very first time in his final June 22, 2018 reply brief. To recap, Petitioner's moving brief argued that, while the traditional understanding of the term "citizen of the state" "is sufficient for this Court to grant Petitioner's motion for summary judgment, the Secretary of State's interpretation of 'citizen of a state' [as implicitly including a U.S. citizenship requirement] should also be rejected because it would render another clause in the same provision superfluous." (Pet. Br. at 13.) Specifically, Respondents' erroneous interpretation of the "citizens of the state" clause would render superfluous the separate clause explicitly requiring that members of the House be "citizens of the United States" "[a]t the time of their election." (*Id.*; *see also* Pet. Reply Br. at 8-10.)

Respondent-Intervenor now argues that Petitioner allegedly overlooked one scenario in which the U.S. citizenship clause would have a job to do under Respondents' interpretation of the state citizenship clause: "a scenario where a candidate for the Georgia House of Representatives is a citizen of Georgia for two years prior to the date of the election and subsequently renounces his United States citizenship. . . . By understanding the possible, albeit unlikely, scenario of a candidate renouncing his or her United States citizenship on or after Election Day, Respondents' interpretation of the Candidate Qualifications Provision is consistent with Georgia canons of statutory construction." (Resp. Intervenor Reply Br. at 5-6.)

Respondent's proposed scenario, that a candidate renounces their U.S. citizenship "on or after" Election Day may be treated separately as two scenarios: one in which a candidate renounces "after" Election Day, and one in which the candidate renounces "on" Election Day.

Where a candidate renounces their U.S. citizenship "after" Election Day, the U.S. citizenship clause simply does not say anything about this scenario. Nothing in the plain text of the U.S. citizenship clause (or the entire Qualifications Clause for that matter) addresses *any* scenario that occurs *after* Election Day. The U.S. citizenship clause looks at whether the candidate is a United States citizen "[a]t the time of election," not after. If a member-elect of the House of Representatives renounces his United States citizenship *after* he is elected, then nothing in the Qualifications Clause suggests that the member must be immediately kicked out of office (even if most people would think that a good idea). (The subsequent Paragraph, on the other hand, *see* Ga. Const. Art. III, § 2, ¶ 4, specifically addresses conditions for disqualification including after the election.) In other words, Respondent's argument is largely a red herring because the Qualifications Clause simply does not address whether an event after Election Day might disqualify a member of the House of Representatives.

As for the unique possibility that a member-elect renounces their United States citizenship specifically "on" Election Day and not after, the state citizenship clause alone would disqualify that candidate under Respondents' erroneous interpretation of that clause. In that scenario, the candidate would *not* be a U.S. citizen for the two years leading up to *and including* Election Day, failing to satisfy the state citizenship requirement's hidden U.S. citizenship requirement under Respondents' erroneous interpretation of it. The separate U.S. citizenship clause then adds nothing to that analysis and remains superfluous.[1] But even if Petitioner were somehow misunderstanding Respondent-Intervenor's hypothetical, the mere possibility of an extremely unlikely scenario does not defeat the rule against surplusage. *See, e.g.*, *State v. Randle*, 298 Ga. 375, 377 (2016) (rejecting interpretation that would "*almost* always" make another provision meaningless; in other words, erroneous interpretation would render another provision "*largely* superfluous" (emphasis added)); *TRW Inc. v. Andrews*, 534 U.S. 19, 29 (2001) (rejecting interpretation which would render another provision "entirely superfluous in all but the most unusual circumstances"). It strains credulity to argue that the framers of the 1868 Constitution were extremely concerned about winning candidates renouncing their U.S. citizenship specifically on Election Day and chose to address this highly-specific scenario in such a roundabout manner. That would hardly be a "natural and reasonable construction" of the Qualifications Clause. *Blum v. Schrader*, 281 Ga. 238, 239 (2006).

For these reasons, Respondent-Intervenor has failed in his attempts to escape the consequences of the rule against superfluousness. This Court should reverse.

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[1] If "[a]t the time of their election" is interpreted as only requiring that candidates satisfy the qualifications for at least one second on Election Day, then the outcome would be reversed, and someone who renounces their United States citizenship on Election Day would be qualified. But again, under Respondents' erroneous interpretation of the state citizenship clause, the state citizenship clause alone would resolve that scenario, without any help from the separate U.S. citizenship clause.

This 28th day of June, 2018.

Respectfully submitted,

/s/ Sean J. Young

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EXHIBIT D

Fulton County Superior Court
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Date: 5/23/2018 3:14 PM
Cathelene Robinson, Clerk

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

JOINT MOTION FOR EXPEDITED BRIEFING SCHEDULE ON MOTIONS FOR SUMMARY JUDGMENT

This administrative action appeal, filed pursuant to O.C.G.A. § 21-2-5 on May 20, 2018, concerns whether Petitioner Maria Palacios is qualified to be on the general election ballot for Georgia State House District 29 this fall. On May 20, concurrent with the filing, Petitioner filed an Emergency Motion to Stay the Secretary of State's Final Decision pending the outcome of this case. On May 21, Petitioner entered into and filed a Stipulation with Respondent Brian P. Kemp withdrawing the motion for a stay. On May 22, Proposed Intervenor-Respondent Ryan Sawyer filed an Unopposed Motion to Intervene. On May 23, Petitioner filed a Motion for Summary Judgment.

Given the urgency of the matter, and to aid the Court in efficient resolution of this case, Petitioner, Respondent, and Proposed-Intervenor-Respondent (hereinafter "the Parties") now file this Joint Motion for an Expedited Briefing Schedule, in the hopes that the matter may be definitively resolved—including potentially an appeal to the Supreme Court of Georgia—no later than August 31, 2018. Resolving the matter by that date will allow elections officials sufficient time to print final ballots before September 18, 2018, which is the earliest day that a registrar may issue absentee ballots for the November general election. It is not unusual for

courts to expedite candidate qualifications matters sufficiently in advance of the election in question. *See, e.g.*, *Handel v. Powell*, 670 S.E.2d 62, 64 (Ga. 2008); *Cox v. Barber*, 568 S.E.2d 478, 480 (Ga. 2002).

All Parties agree that the public interest strongly favors resolution of this matter as soon as practicable, not only for the elections officials who must print the final ballots well in advance of their issuance on September 18, 2018, but also for the voters (including Proposed Intervenor-Respondent) and candidates who should have sufficient advanced notice of who will be on the general election ballot for House District 29. In addition, all Parties agree that the instant matter turns on a pure question of law, which should facilitate expedited briefing. The Parties are grateful for any efforts this Court might take to expedite resolution of the matter.

Accordingly, the Parties jointly stipulate to, and move that this Court enter, the following briefing schedule with respect to Petitioner's May 23, 2018 Motion for Summary Judgment pursuant to O.C.G.A. § 9-11-6(b):

(1) Respondent and Proposed-Intervenor-Respondent's Opposition Brief to Petitioner's Motion for Summary Judgment and any Cross-Motion(s) for Summary Judgment due on June 13, 2018;

(2) Petitioner's Reply Brief and Opposition Brief to any Cross-Motion(s) for Summary Judgment due on June 15, 2018;

(3) Respondent and Proposed-Intervenor-Respondent's Reply Briefs due on June 22, 2018.

A Proposed Order is attached.

Respectfully submitted,

This 23rd day of May, 2018.

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