SUPREME COURT
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-Appellee.	Supreme Court Case No. _____ Fulton County Superior Court (Schwall, J.) No. 2018CV305433

PETITIONER-APPELLANT MARIA PALACIOS'S APPLICATION FOR LEAVE TO APPEAL

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SUMMARY

This case involving candidate qualifications presents a constitutional question of first impression on which the Georgia Supreme Court's guidance is urgently needed in light of the upcoming elections. The question is: Does Article III, Section 2, ¶ III of the Georgia Constitution, which sets out the "Qualifications of members of [the] General Assembly," require General Assembly candidates to be United States citizens *only at the time of election*, or *for at least two years prior to the election*?

The answer is that candidates only have to be United States citizens at the time of election. The Qualifications Clause reads:

> *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) (emphasis added). As the plain language states, candidates must be "citizens of the United States" "[a]t the time of their election." Petitioner-Appellant Maria Palacios, a candidate for Georgia State House District 29, undisputedly became a United States citizen in 2017. She thus satisfies the United States citizenship requirement.

The Secretary of State disagreed, ignoring the plain text of the Qualifications Clause and issuing a final decision on May 18, 2018, ruling that General Assembly

candidates must be citizens of the United States for at least two years prior to the election. In effect, the ruling imposed a two-year waiting period on new United States citizens. Since Ms. Palacios has not been a United States citizen for two years, the Secretary of State disqualified her as a candidate for the General Assembly.

Ms. Palacios immediately filed a Petition challenging the Secretary of State's final decision before the Fulton County Superior Court (Schwall, J.), naming the Secretary of State as the Respondent. On July 19, 2018, Judge Schwall signed off, without edits, on the draft opinion that the Secretary of State submitted to the Court, holding that General Assembly candidates must be citizens of the United States for at least two years prior to the election and affirming the Secretary's decision. *See* Order (attached to this application). This application for appeal and request for expedited briefing and oral argument followed the very next day on July 20, 2018.

This Court should grant Petitioner's application for leave to appeal for two primary reasons. First, "[r]eversible error appears to exist," as Judge Schwall's ruling ignores the plain text of the Georgia Constitution. Ga. Sup. Ct. Rule 34(1). Second, the "establishment of precedent" is greatly "desirable," as this Court has never addressed the question and because the issue of candidate qualifications has the potential to occur at every election of General Assembly candidates. Ga. Sup.

Ct. Rule 34(2). Newly-naturalized United States citizens are eager to participate in our democracy by seeking the honor of representing their communities in the General Assembly. Resolving this candidate qualifications question of first impression will provide much needed clarity for these potential candidates and will ensure that Georgia voters are not being illegally deprived of the full choice of candidates lawfully available.

In addition, as reflected in the motion filed simultaneously herewith, Petitioner respectfully but urgently requests that the Supreme Court expedite this appeal so that the matter may be resolved at the earliest before August 31, 2018 to ensure efficient dispatch of pre-election materials such as absentee ballots, and at the latest before Election Day on November 6, 2018. The Supreme Court routinely grants requests for expedited appeal in candidate qualifications or other election contest cases under similarly tight timetables. *See, e.g.*, *Handel v. Powell*, 284 Ga. 550, 550 (2008); *Perdue v. Palmour*, 278 Ga. 217, 217 (2004); *Cox v. Barber*, 275 Ga. 415, 416 (2002); *Haynes v. Wells*, 273 Ga. 106, 106 (2000).

If it is impracticable to expedite the appeal on that basis, Petitioner requests, as again set forth in the accompanying motion, that the general election for House District 29 be stayed pending this Court's resolution of the matter. *Cf. City of Greenville v. Bray*, 284 Ga. 641, 642 (2008) (faulting party in candidate qualifications case for failing "to seek a stay of the election prior to the general

election taking place"). If Petitioner is successful on appeal, the voters of Georgia House District 29 deserve the opportunity to vote on whether Ms. Palacios should be their next representative.

Lastly, Petitioner respectfully requests oral argument as set forth in an accompanying filing pursuant to Georgia Supreme Court Rules 50 and 51.

JURISDICTIONAL STATEMENT

This appeal of a decision by the Fulton County Superior Court is made directly to the Georgia Supreme Court (and not the Court of Appeals) because the Supreme Court has "exclusive appellate jurisdiction" in "[a]ll cases of election contest." Ga. Const. Art. VI, § 6, ¶ II(2). Candidate qualifications challenges qualify as "cases of election contest." *Cook v. Bd. of Registrars of Randolph Cty.*, 291 Ga. 67, 71 (2012).

The final judgment and order affirming the Secretary of State's disqualification of Ms. Palacios was entered on July 19, 2018 and is attached hereto (hereinafter "Order"). The instant application and request for expedited review was submitted the very next day on July 20.

FACTS AND PROCEDURAL HISTORY

Petitioner Maria Palacios became a United States citizen in 2017. Admin. Record (Exhibit A) at 51. This is the only relevant fact and is not in dispute.

The brief procedural history is as follows. On March 8, 2018, Ms. Palacios declared her candidacy for Georgia State House District 29. *Id.* at 13. On March 14, 2018, an elector in her district, Ryan Sawyer, challenged her qualifications on the basis that she had not been a United States citizen for two years. *Id.* at 10-11. Pursuant to the procedures set forth in O.C.G.A. § 21-2-5, the Administrative Law Judge ("ALJ") scheduled a hearing, where neither party appeared. *Id.* at 25. On that basis, on May 2, 2018, the ALJ recommended that Ms. Palacios be disqualified. *Id.* at 25-27. Ms. Palacios subsequently obtained counsel and appealed the ALJ's decision to the Secretary of State. *Id.* at 28-32. On May 18, 2018, the Secretary of State disqualified Ms. Palacios. *Id.* at 49-52. On May 21, 2018, Ms. Palacios appealed the Secretary's decision to the Fulton County Superior Court (Schwall, J.) by filing a Petition naming the Secretary of State as the Respondent. *See* Petition (Exhibit B). Mr. Sawyer then intervened on the side of Respondent. After briefing, *see* Briefs (Exhibit C), on July 19, 2018, Judge Schwall affirmed the Secretary's decision by accepting without edits the Secretary's proposed order. This application for appeal followed.

ARGUMENT

As discussed below, the trial court erred as a matter of law by holding that Article III, Section 2, ¶ III of the Georgia Constitution requires General Assembly candidates to be United States citizens for at least two years prior to the election,

when the clause plainly requires that candidates only be "citizens of the United States" "[a]t the time of their election," and no more.

Because "[r]eversible error appears to exist," Ga. Sup. Ct. Rule 34(1), the Supreme Court should grant Petitioner's application for leave to appeal. The Supreme Court should also grant the application because "[t]he establishment of a precedent is desirable." Ga. Sup. Ct. Rule 34(2). Resolving this appeal will answer an important constitutional question of first impression that will have a direct impact on our democracy.

In addition, Petitioner respectfully but urgently requests that the Supreme Court expedite any appeal so that it may be resolved at the earliest by August 31, 2018 to ensure efficient dispatch of pre-election materials such as absentee ballots, but that the Court resolve the matter no later than Election Day on November 6, 2018. In the alternative, Petitioner requests a stay of the general election for House District 29 until this appeal is resolved.

I. PETITIONER'S APPLICATION FOR LEAVE TO APPEAL SHOULD BE GRANTED

A. Reversible Error Exists Because the Court Below Ignored the Plain Text of the Georgia Constitution

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[1] 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). In reviewing conclusions of law in candidate qualifications challenges, this Court "make[s] an independent determination as to whether the interpretation of the administrative agency [here, the Secretary] correctly reflects the plain language of the [constitution] and comports with the legislative intent." *Handel v. Powell*, 284 Ga. 550 (2008).

Reversible error exists because, in imposing a two-year waiting period for new United States citizens to run for the General Assembly, the court below ignored the plain text of the Georgia Constitution.

The sole legal question at issue in this case is whether Article III, Section 2, ¶ III of the Georgia Constitution, which sets out the "Qualifications of members of [the] General Assembly," requires General Assembly candidates to be United States citizens *only at the time of election*, or *for at least two years prior to the election*.

The Qualifications Clause reads:

> 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

[1] The disqualification of a candidate constitutes prejudice of a substantial right. *See Handel v. Powell*, 284 Ga. 550, 553 n.3 (2008).

> 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).[2]

The plain language is clear. Candidates must be "citizens of the United States" "[a]t the time of their election." Petitioner, a candidate for Georgia State House District 29, undisputedly became a United States citizen in 2017. She thus satisfies the United States citizenship requirement.

Notwithstanding this plain language, Judge Schwall's order ruled that candidates must be United States citizens for at least two years prior to the election. The order hinged on the proposition that "United States citizenship is required in order to be a Georgia citizen." Order at 3. Since the Qualifications Clause requires that candidates be "citizens of the state for at least two years," the lower court reasoned that all candidates must also be United States citizens for at least two years.

This ruling is reversible error for at least three independent reasons: (i) the order below violates the Surplusage Canon and inserts legal requirements not found in the Georgia Constitution; (ii) the order's reasoning hinges on logical fallacies and is otherwise meritless; and (iii) the order's erroneous and anomalous

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[2] The qualifications for members of the State Senate, set out in subsection (a), are identical with respect to citizenship.

interpretation of "citizen of this state" is historically unprecedented, conflicting with the high court rulings of at least 11 other states. Indeed, to the knowledge of undersigned counsel, no court in this country has ever taken the position adopted by the Superior Court in this matter, and opposing counsel has yet to point to one.

i. The lower court order violates the Surplusage Canon and would insert legal requirements not found in the Georgia Constitution

This ruling constitutes reversible error because it runs headlong into the Surplusage Canon, which states that "every word and every provision is to be given effect . . . . None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." A. Scalia & B. Garner 174, *Reading Law: The Interpretation of Legal Texts* (2012). "Established rules of constitutional construction prohibit [courts] from any interpretation that would render a word superfluous or meaningless." *Gwinnett Cty. Sch. Dist. v. Cox*, 289 Ga. 265, 271 (2011); *see, e.g.*, *State v. Randle*, 298 Ga. 375, 377 (2016) (rejecting interpretation that would "almost always" make another provision meaningless, rendering that provision "largely superfluous"). A flawed legal interpretation may be rejected on this basis alone. *See, e.g.*, *Handel v. Powell*, 284 Ga. 550, 554 (2008) (rejecting Secretary of State's interpretation of statute in candidate qualifications challenge because interpretation would render another part of the statute "meaningless").

If the two-year "citizens of the state" provision of the Qualifications Clause contained a hidden United States citizenship requirement, as the court below ruled, that would render the separate, independent United States citizenship provision completely superfluous. In other words, there would be no need to require candidates to be "citizens of the United States" "[a]t the time of their election" if there already existed a hidden requirement that candidates be United States citizens for at least two years prior to the election. That flawed interpretation essentially deletes text out of the Qualifications Clause 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.

And in the course of two different rounds of briefing below, neither the Secretary of State nor the Respondent-Intervenor were able to come up with a single scenario in which their flawed interpretation would not render the United States citizenship provision largely, if not entirely, superfluous. This is reversible error.

Alternatively, the lower court's interpretation is also erroneous because it also *adds language* to the Qualifications Clause, engrafting a two-year durational period to the United States citizenship requirement where none existed before, as indicated by the underlined text:

> At the time of their election, the members of the House of Representatives shall be citizens of the United States **for at least two years**, 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.

This Court "can not add a line to the law," *State v. Fielden*, 280 Ga. 444, 448 (2006), much less the Georgia Constitution, *see Smith v. Baptiste*, 287 Ga. 23, 36 (2010) (rejecting interpretation which "add[ed] a word that does not appear" in the Georgia Constitution). Had the drafters intended to include such a durational requirement as to United States citizenship, they plainly would have done so, just as they did with respect to the state citizenship requirement.

Whether by making other provisions superfluous or by adding language that does not exist, the lower court's ruling does violence to the text of the Georgia Constitution and must be reversed.

ii. The lower court order's reasoning hinges on logical fallacies and is otherwise meritless

Without addressing the glaring problem of the Surplusage Canon—a defect that alone warrants reversal—the order below provides three reasons for construing "citizens of the state" as including a hidden United States citizenship requirement. All are meritless.

First, the order turns to Article I, Section 1, ¶ VII of the Georgia Constitution, which provides, "All citizens of the United States, resident in this

state, are hereby declared citizens of this state." Since all United States citizens are declared to be citizens of the state, the order reasons, all citizens of the state must be United States citizens. Order at 3.

However, just because all United States citizens are declared to be citizens of the state does not mean that all citizens of the state must be United States citizens. For example, if we say that "all cars are declared to be vehicles" under the law, it does not mean that "all vehicles must be cars." Similarly, to take an example from other court decisions, if we say that "reasonable doubt makes you hesitate to act; therefore, if you hesitate to act, you have reasonable doubt[,] [t]hat is like saying, 'Pneumonia makes you cough; therefore, if you cough, you have pneumonia.'" *Paulson v. State*, 28 S.W.3d 570, 572 (Tex. Crim. App. 2000).

This is a classical logical fallacy sometimes known as "affirming the consequent" or assuming that the converse is true. As another court has explained, "Consider the following syllogism: (1) If A is true, then B is true. (2) B is true. (3) Therefore, A is also true. The conclusion that A is true does not logically follow from the premises." *In re Stewart Foods, Inc.*, 64 F.3d 141, 145 n.3 (4th Cir. 1995). That is the exact fallacy that the court below has committed here: (1) If you are a United States citizen living in Georgia, then Article I declares you to be a citizen of the state. (2) You are a citizen of the state. (3) Therefore, you are a United States citizen. However, the conclusion that you are a United States citizen

does not logically follow from the fact that someone is a citizen of the state, as there may be citizens of the state who are not United States citizens. Indeed, the text of the Qualifications Clause itself refutes this idea; it expressly contemplates someone *first* becoming a citizen of the state and then, after two or more years, later becoming a United States citizen.[3]

Second, the lower court order looks back to the 1868 Georgia Constitution, when the term "citizen of this state" was first introduced. It observed that because the prior iteration of the phrase was "inhabitant of this state," the framers must

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[3] The caselaw is abound with examples of courts rejecting this logical fallacy. *See, e.g.*, *In re Stewart Foods, Inc.*, 64 F.3d 141, 145 n.3 (4th Cir. 1995) (if a debtor rejects a contract, then a general unsecured claim exists, but just because a general unsecured claim exists does not mean that the debtor must have rejected a contract); *City of Green Ridge v. Kreisel*, 25 S.W.3d 559, 563-64 (Mo. Ct. App. 2000) ("Kreisel's argument commits the logical fallacy of 'affirming the consequent.' . . . The mere fact that a purpose of zoning ordinances is to regulate public safety does not mean that all ordinances which regulate health and safety are zoning ordinances."); *Briggs v. Univ. of Detroit-Mercy*, 22 F. Supp. 3d 798, 802 (E.D. Mich. 2014) ("Plaintiff argues what amounts to 'where there's smoke there's fire.' That argument turns out to be a fallacious one, however: affirming the consequent. Fire can indeed cause smoke, but sometimes there is nothing more than smoke, or it is from a different source."); *Gilliam v. Nev. Power Co.*, 488 F. 3d 1189, 1196 n.7 (9th Cir. 2007) (rejecting argument because it "rests on the logical fallacy of affirming the consequent. While Nevada Power Company must report 'wages and salary' on Box 1 of the federal Form W-2, not all amounts reported in Box 1 on the federal Form W-2 must be 'wages and salary.'"); *Blake v. Gonzales*, 481 F.3d 152, 162 (2d Cir. 2007) (recognizing "'the logical fallacy inherent in reasoning that simply because all conduct involving a risk of the use of physical force also involves a risk of injury then the converse must also be true'" (citation omitted)).

have changed the term from "inhabitant of this state" to "citizen of this state" in order to require candidates not only to live in Georgia for a period of time but also to be United States citizens for a period of time before the election.

This reasoning is tautological. It assumes that "citizen of this state" requires United States citizenship, which is the very proposition it is trying to prove. Just because the framers changed "inhabitants of this State" to "citizens of this state" does not mean that they intended "citizens of this state" to include a United States citizenship component. This is especially the case where, as here, the Qualifications Clause in the 1868 Constitution *already contained a separate United States citizenship requirement*, just as it does today. *See* 1868 Ga. Const. Art. III, § 3, ¶ III ("The representatives *shall be citizens of the United States* who have attained the age of twenty-one years, and who, after the first election under this constitution, *shall have been citizens of this State for one year* . . ." (emphasis added)). In changing the term "inhabitants of this State" to "citizens of this State," the framers plainly did not intend to incorporate a hidden requirement that candidates be United States citizenship for a period of time. Another provision in the same clause of the 1868 version already said that candidates needed only to be United States citizens, without a durational requirement. Just as it says today.

Third, the order cites various Georgia statutes and conclusorily claims that their predecessor versions, which existed at the time that "citizens of this state"

was put into the 1868 Georgia Constitution, "make[] clear that state citizenship necessarily requires United States citizenship." Order at 4 (citing O.C.G.A. §§ 1-2-2, 1-2-3, 1-2-5, and 1-2-6). But while these statutes refer to citizens in different contexts, none of them specifically define the term "citizen of this state," much less specify that citizens of this state can only be United States citizens. In any event, what the phrase "citizen of this state" may mean in one context adopted under different circumstances may have a different meaning as set forth by the drafters in the Qualifications Clause. And that meaning cannot possibly include a United States citizenship requirement since the Qualifications Clause already has a separate and independent United States citizenship provision.

iii. The lower court order's erroneous interpretation of "citizen of this state" is historically unprecedented, departing from the high court rulings of 11 other states

Lastly, the lower court's order may be the first court decision in this Nation's history that has interpreted "citizen of this state" as including a hidden United States citizenship requirement. Moreover, the decision of the court below flies in the face of the common understanding of the phrase back in the 1800s when this language was first adopted into Georgia's Constitution. *See Olevik v. State*, 302 Ga. 228, 235 (2017) ("[T]here 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."). While no Georgia case has

clearly defined the term "citizen of this state,"[4] the highest courts of 11 other states, in decisions dating back to the 1800s, have interpreted this phrase. Tellingly, no court has interpreted "citizens of the state" to include a United States citizenship requirement. Instead, each and every decision has interpreted the phrase to mean something akin to someone who is domiciled in the state.[5] During the proceedings below, Respondents could not cite a single court decision from anywhere in this country, or at any time in this Nation's history, that has interpreted "citizen of this

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[4] In *White v. Clements*, 39 Ga. 232, 261 (1896), the Supreme Court 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 government, to make the exception." However, this definition does not specifically answer the question presented here.

[5] *See Crosse v. Bd. of Supervisors of Elections of Baltimore City*, 221 A.2d 431, 433-36 (Md. 1966) (in candidate qualifications context, holding that "citizen of the State" "was meant to be synonymous with domicile"); *McKenzie v. Murphy*, 24 Ark. 155, 159 (Ark. 1863) (in candidate qualifications context, holding 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*."); *State ex rel. Sathre v. Moodie*, 258 N.W. 558, 564-65 (N.D. 1935) (in elector qualifications context, holding that "[t]he words 'inhabitant,' 'citizen,' and 'resident,' as employed in different constitutions to define the qualifications of electors mean substantially the same thing."); *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 party "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").

state" to include a United States citizenship requirement. This silence speaks volumes.

Indeed, a number of these cases expressly disavow that "citizen of this state" includes a United States citizenship component. For example, in *Crosse*, the highest court of Maryland explained, "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"; the court further noted that "citizenship of the United States is not required, even by implication, as a qualification for this office," 21 A.2d at 433, 435. Other courts have held similarly.[6]

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[6] *See State ex rel. Owens v. Trustees of Sec. 29, Delhi Tp.*, 11 Ohio 24, 27 (Ohio 1841) ("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."); *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'"); *Cobbs v. Coleman*, 14 Tex. 594, 597 (Tex. 1855) ("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 . . . ."); *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*, 16 Wis. 443, 446 (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").

Of course, Georgia is not obligated to adopt the traditional definition of "citizen of this state" commonly understood at the time if the Georgia Constitution clearly says otherwise. But as shown above, it does not. Whatever the precise contours of the meaning of "citizen of this state" as it is used in the Qualifications Clause—and that question may be left for another day[7]—it most certainly does *not* contain a hidden United States citizenship requirement since another provision in the Qualifications Clause already addresses the requirements for United States citizenship. The Qualifications Clause simply requires that candidates be "citizens of the United States" "[a]t the time of their election" and no more. Ms. Palacios undisputedly satisfies that requirement.

For these reasons, this Court should grant Petitioner's application for appeal and reverse the lower court's ruling.

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[7] The sole basis for the candidate qualifications challenge below was whether Petitioner satisfied the United States citizenship requirement of the Qualifications Clause given that she became a United States citizen less than two years ago. Out of an abundance of caution, Petitioner nonetheless submitted documents proving that Ms. Palacios has made her permanent home here in Georgia since at least 2009, and was thus unquestionably a domiciliary of Georgia for well over two years. *See* Admin. Record (Exhibit A), 34-36. The Secretary of State has never disputed this fact.

B. The Establishment of Precedent Answering this Constitutional Question of First Impression Is Desirable

The Supreme Court should also grant Petitioner's application for discretionary appeal for the independent reason that "the establishment of a precedent is desirable." Ga. Sup. Ct. Rule 34(2). The establishment of precedent is desirable because this case presents a question of first impression, and the issue of candidate qualifications has the potential to occur at every election of General Assembly candidates. Moreover, definitively answering this question is critically important to our democracy. As more newly-naturalized United States citizens eagerly contemplate running for office, they need clarity on whether they can even do so. Answering this question sooner rather than later is also important because some newly-naturalized United States citizens may be deterred from running at all in light of the below ruling. And if the below ruling turns out to be wrong, Georgia voters all around the state will be unconstitutionally deprived of the opportunity to vote on all eligible candidates for the indefinite future.

For these reasons, this Court should grant Petitioner's application for leave to appeal.

II. THIS COURT SHOULD EXPEDITE ANY APPEAL OR ENTER A STAY OF THE ELECTION PENDING APPEAL

As set forth in an accompanying motion, Petitioner also respectfully but urgently requests that this Court expedite this appeal so that the matter may be

resolved at the earliest before August 31, 2018, or at the latest before Election Day on November 6, 2018. In the alternative, Petitioner requests a stay of the House District 29 general election pending this appeal.

During the proceedings below, the parties jointly agreed that it would be ideal if this matter were "definitively resolved" "no later than August 31, 2018," which would "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." Joint Motion for Expedited Briefing Schedule (Exhibit D), 1. Resolving it early would also give Ms. Palacios enough time to meaningfully campaign if the decision below is reversed.

However, if that is not practicable for the Court, Petitioner respectfully requests that any appeal be resolved no later than Election Day on November 6, 2018. The Supreme Court routinely grants requests for expedited appeal in candidate qualifications or other election contest cases under similarly tight timetables, often issuing decisions days before the election at issue. *See, e.g.*, *Handel v. Powell*, 284 Ga. 550, 550 (2008) (expediting appeal and issuing decision on October 30, days before general election); *Perdue v. Palmour*, 278 Ga. 217, 217 (2004) (expediting appeal and issuing decision on July 13, days before the July 20 primary election at issue); *Cox v. Barber*, 275 Ga. 415, 416 (2002) (expediting appeal and issuing decision on August 14, days before the August 20 primary

election at issue); *Haynes v. Wells*, 273 Ga. 106, 106 (2000) (expediting appeal and issuing decision on November 1, days before general election).

If the Court deems it necessary for expediting the appeal, Petitioner-Appellant is also willing to waive the 20-day period provided under Georgia Supreme Court Rule 10 for the appellant to file the first merits brief, and either have the instant application construed as Petitioner-Appellant's initial merits brief, or grant a limited time for Petitioner to reformat any substantive arguments in the instant application into a formal merits brief.

In the alternative, Petitioner requests that the Court stay the general election for Georgia State House District 29 until this appeal is resolved. *Cf. City of Greenville v. Bray*, 284 Ga. 641, 642 (2008) (faulting party in candidate qualifications case for failing "to seek a stay of the election prior to the general election taking place").

For these reasons, Petitioner's request for expedited review or a stay should be granted. If Petitioner is successful on appeal, the voters of Georgia House District 29 deserve the opportunity to vote on whether Ms. Palacios should be their next representative.

III. PETITIONER'S REQUEST FOR ORAL ARGUMENT

As set forth in an accompanying filing, pursuant to Georgia Supreme Court Rule 50(3), Petitioner respectfully requests an opportunity for oral argument given

the importance and unprecedented nature of this case. Pursuant to Georgia Supreme Court Rule 51, Petitioner certifies that opposing counsel for Respondent Secretary of State Brian P. Kemp and Respondent-Intervenor Ryan Sawyer have been notified of Petitioner's intention to seek oral argument and argue the case orally, and that inquiry has been made whether they intend also to argue orally. In response, opposing counsel for both parties have expressed their desire to argue orally.

CONCLUSION

The court below erroneously imposed a two-year waiting period on new United States citizens who wish to be candidates for the General Assembly. The plain text of the Qualifications Clause, however, simply requires that candidates be "citizens of the United States" "[a]t the time of their election." This Court should grant Petitioner's application for leave to appeal because the decision below is erroneous. The resolution of this question of first impression is critical to our democracy.

Petitioner's request for an expedited appeal or a stay, and for oral argument, should also be granted for the reasons provided above.

This 20th day of July, 2018.

Respectfully submitted,

/s/ Sean J. Young

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CERTIFICATE OF SERVICE

This will certify that on July 20, 2018, I did cause to be served upon the parties in this action a true and correct copy of the foregoing and the accompanying lower court ruling by transmitting such copies via electronic mail and by depositing such copy properly addressed and with adequate postage thereon with the United States Postal Service, as follows:

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Attorneys for Respondent-Intervenor Ryan Sawyer

This 20th of July, 2018.

/s/ Sean J. Young

Sean J. Young

Attorney for Petitioner-Appellant

Fulton County Superior Court
EFILEDRM
Date: 7/19/2018 11:01 AM
Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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

Order

This matter is before the Court on a Petition for Review ("Petition") of a final decision by the Secretary of State ("the Secretary") under O.C.G.A. § 21-2-5 finding that Petitioner Maria Palacios ("Petitioner") was not eligible to seek or hold the office of Representative in the Georgia House of Representatives because she does not satisfy the constitutional requirement in Article III, Section 2, Paragraph 3(b) of the Georgia Constitution ("the Qualification Clause") that she have been a citizen of this State for at least two years. Petitioner has appealed the final decision of the Secretary pursuant to O.C.G.A. § 21-2-5. Having considered

the administrative record for the Secretary's final decision and the pleadings filed in the above-captioned action, including the parties' Cross- Motions for Summary Judgment and their supporting briefs, and having heard argument from the parties at a hearing in this matter held on July 18, 2018, this Court hereby AFFIRMS the final decision of the Secretary.

The Secretary's decision held that one must be a citizen of the United States in order to be a Georgia citizen. Because the Petitioner did not become a United States citizen until 2017, the Secretary determined that she did not, therefore, satisfy the constitutional requirement in the Qualifications Clause that she have been a citizen of this State for at least 2 years. The Petitioner has argued that it is not necessary to be a United States citizen in order to be "a citizen of this State" and that Petitioner's residency in the State for more than two years was sufficient to make her a "citizen of this State" for purposes of satisfying the requirement in the Qualifications Clause. The parties filed cross-motions for summary judgment on the dispositive legal issue in this case as to whether United States citizenship is required in order to be "a citizen of this State" under the Qualifications Clause. As discussed below, the Secretary's interpretation of "citizen of this State" as requiring United States citizenship is reasonable, consistent with legislative intent, and should be affirmed.

A plain reading of the Georgia Constitution makes clear that United States citizenship is required in order to be a Georgia citizen. Article I, Section 1, Paragraph 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 in Article III. 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 contain 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 were 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 history of the constitutional language through prior versions of the state constitution also supports the correctness of the Secretary's determination. Versions of the Qualifications Clause in the Georgia Constitution prior to 1868 used the term "inhabitant" of this state to set forth the state 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 at the same time 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" or "resident" as synonymous with the utilized term "citizens of this State." Furthermore, the historical context of the 1868 Constitution, which was drafted shortly after the Civil War 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 use of the word "citizen" in the context of several Georgia statutes, such as O.C.G.A. §§ 1-2-2, § 1-2-3, 1-2-5, and 1-2-6, also makes clear that state citizenship necessarily requires United States citizenship. These statutes or their historical antecedents were in existence when the 1868 Constitution was adopted and ratified and remained in place through the adoption of subsequent constitutions that carried forward the term "citizens of this State." 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 of state citizenship that is expressed in Georgia statutes.

Because the Petitioner has failed to show that the decision of the Secretary of State was affected by error or law, contrary to the Constitution or laws of this State, or subject to reversal based on any of the grounds set forth in O.C.G.A. § 21-2-5(e), the final decision of the Secretary should be affirmed. For all of the foregoing reasons, it is hereby ORDERED, ADJUDGED and DECREED this 18 day of July 2018 that the motions for summary judgment filed by Respondent-Appellant Kemp and Respondent-Intervenor Sawyer are hereby GRANTED; the motion for summary judgment filed by Petitioner is DENIED; and the final decision of the Secretary is hereby AFFIRMED.

Craig L. Schwall

The Honorable Craig L. Schwall
Fulton County Superior Court

Proposed Order submitted by:
/s/Elizabeth A. Monyak
Elizabeth A. Monyak 005745
Senior Assistant Attorney General

DISTRIBUTION LIST

The above and foregoing ORDER was served this 19th day of July, 2018 on the following via eFileGA:

Sean J. Young, Esq.

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