

**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. \_\_\_\_\_**

(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.<sup>1</sup>

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, ¶

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<sup>1</sup> 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.<sup>2</sup>

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<sup>2</sup> 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<sup>[3]</sup> 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

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<sup>3</sup> 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,<sup>4</sup> 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.

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<sup>4</sup> 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).<sup>5</sup> 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

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<sup>5</sup> 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.*<sup>6</sup> 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”).<sup>7</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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 acceptance 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 United 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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# **EXHIBIT A**

**IN THE OFFICE OF THE SECRETARY OF STATE  
STATE OF GEORGIA**

**RYAN SAWYER,**

**Petitioner,**

**v.**

**MARIA PALACIOS,**

**Respondent.**

**Docket Number:**

**1835339-OSAH-SECSTATE-CE-6-  
Beaudrot**

**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.



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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**

RYAN SAWYER,

Docket No.: 1835339

1835339-OSAH-SECSTATE-CE-6-Beaudrot

VS.

Respondent.

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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup>

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<sup>2</sup> 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,<sup>3</sup> 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.

<sup>3</sup> 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");<sup>4</sup>
- *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 acceptance 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

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<sup>4</sup> 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,<sup>5</sup> 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,

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<sup>5</sup> 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#



Birthdate PA Category

Sex  
F



Country of Origin  
Mexico  
CA# 09/23/19  
Residence Expires 09/14/09




C1US A0607469010SRC0926951107<<  
8911218F1909236MEX<<<<<<<<<1  
PALACIOS<<MARIA<DEL<ROSARIO<<<

USA

Georgia

DL NUMBER *Yolanda Diaz* 12/18/9



*Maria D. Palacios*

LIMITED-TERM  
DRIVER'S LICENSE



DL NO.  
CLASS C  
MARIA D  
PALACIOS

DOB  
EXP 04/11/2018

GAINESVILLE, GA 30501-7557  
HALL  
Restrictions A  
Iss 12/02/2014

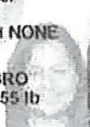
End NONE

Sex F  
Hgt 5'-02" Wgt 155 lb

Eyes BRO

DD: 218524044290054308




URGENT MEDICAL INFORMATION ON REVERSE







**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		PAYMENT INFORMATION:  Single Application Fee: \$680.00 Total Balance Due: \$0.00	
18 00003840			
			
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 <i>A Guide to Naturalization</i> (M-476). USCIS also has a free booklet to help study for the naturalization test. Ask about <i>Learn About the United States: Quick Civics Lessons</i> 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 ( <a href="http://www.uscis.gov">www.uscis.gov</a> ). 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  
syoung@acluga.org

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.<sup>1</sup> 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 Administrative 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

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<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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.<sup>4</sup>

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.

---

<sup>4</sup> 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: WHELCHER  
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**



**For Android**

From the Secretary of State website, [www.sos.ga.gov](http://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](http://www.mvp.sos.ga.gov/MVP), download the GA Votes app or contact your local registrar's office.



**For Apple**

# EXHIBIT B



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 PEARHAVEN LN  
(Street Number) (Street)

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

my post office address is 4347 PEARHAVEN LN GAINESVILLE GA 30504

my telephone number is \_\_\_\_\_ 6788973153  
(Business) (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; my date of birth is 989;  
(Circuit, District, or Post if Applicable)

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 to be held on the 22 day of May, 2018;  
(Primary)

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

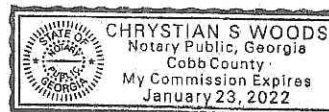
I understand that any false statement knowingly made by me in this Declaration of Candidacy and Affidavit will subject me to criminal penalties as provided by law and I hereby request you to cause my name to be placed on the ballots to be used in such primary election as a candidate for the nomination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

Maria Del Rosario Palacios  
(Signature of Candidate)

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

Chapman S. Woods  
(Notary Public)

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:

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**



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

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