



05/12/2022

Devin Hamilton, Legal Assistant

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

CHUCK HUFSTETLER,
Petitioner/Challenger,

v.

JEFF LEWIS,
Respondent/Candidate.

Docket No.: 2222386
2222386-OSAH-SECSTATE-CE-8-Beaudrot

INITIAL DECISION

I. INTRODUCTION

Petitioner Chuck Hufstetler (“Challenger”) challenges the qualification of Respondent Jeff Lewis (“Lewis”) to be a candidate for Georgia State Senate District 52 in the general primary election on May 24, 2022.

The sole basis for the challenge to Lewis’s qualifications in this case (the “Challenge”) is O.C.G.A. § 21-5-9.1, as amended by SB 120, which was passed on March 1, 2022, and signed by the Governor on March 2, 2022. This section states: “No person who has served or is serving as a member of the General Assembly shall be eligible to qualify to seek election or reelection to the General Assembly until and unless all fines and fees owing to the commission have been paid, all disclosure reports due have been filed, and all outstanding taxes have been paid.

The parties submitted a Joint Stipulation of Facts dated April 18, 2022, (the “Stipulation”) which was filed on April 19, 2022. The Court conducted an evidentiary hearing in this matter on April 19, 2022. Challenger appeared through counsel, Carey A. Miller, Esq. Lewis appeared personally and was represented at the hearing by S. Lester Tate, III, Esq. Lewis was the sole witness at the hearing.

On May 10, 2022, following the hearing in this matter, but prior to entry of this decision, Lewis filed an affidavit (the “Lewis Affidavit”) stating he had filed his delinquent reports. A

printout purportedly showing the Georgia Government Transparency and Campaign Finance Commission’s record of said filings was attached thereto. Challengers objected to the admission or consideration of the Lewis Affidavit as untimely as the record in this matter was closed pursuant to OSAH Rule 26 (Ga. Comp. R. & Regs. 616-1-2-.26) and it was not the subject of a proper motion for the admission of additional evidence after the closing of the record under OSAH Rule 25 (Ga. Comp. R. & Regs. 616-1-2-.25). After a video conference hearing on the issue of whether the Lewis Affidavit could be admitted and become part of the record in this matter on May 12, 2022, the Court sustained Challenger’s objections to its admission.¹ As a result, the Lewis Affidavit was not admitted and did not become part of the record for consideration in this matter.

Based on the facts contained in the Stipulation and the evidence presented at the hearing, the Court concludes that Lewis is not qualified to be a candidate for Georgia State Senate, District 52.

II. FINDINGS OF FACT.

1. Lewis’s full name is Walter Jeffrey Lewis. (Stipulation ¶1).
2. Lewis was a member of the House of Representatives of the Georgia General Assembly prior to and during the 2007–2008 regular legislative session. (Stipulation ¶2).
3. Lewis’s service in the House of Representatives ended following the conclusion of the 2007–2008 regular legislative session. (Stipulation ¶3).
4. Lewis maintained a campaign committee in support of his pursuit and retention of office in the House of Representatives under the name “the Committee to Elect Jeff Lewis” (the

¹ During the video conference, Lewis, through counsel, contended the Court should take judicial notice of the Lewis Affidavit and attached printout pursuant to O.C.G.A. § 24-2-201. The Court finds that it cannot take notice of the Lewis Affidavit or the attachment as O.C.G.A. § 50-13-15(4) and OSAH Rule 18 (Ga. Comp. R. & Regs. 616-1-2-.18) require that such notice be taken either before or during the evidentiary hearing.

“Lewis House Committee”). The Lewis House Committee last filed a campaign contribution disclosure report with the Georgia Government Transparency and Campaign Finance Commission (“the Commission”) on December 28, 2012 (the “2012 Report”). (Stipulation ¶4).

5. The 2012 Report indicated that the Lewis House Committee had a \$75,124.81 net balance on hand, including \$72,253.41 in investments (the “Investments”). The Investments, at the time of the 2012 Report, were held in the name of the Lewis House Committee with the institution/person: Edward Jones/Olen Suire, One South Gilmer Street, Cartersville, Georgia 30120, Account Number 326-13554-1-0. (Stipulation ¶5).
6. Lewis filed paperwork to qualify as a candidate for State Senator in District 52 on or about March 7, 2022. (Stipulation ¶6).
7. As of March 7, 2022, and continuing through the date of the hearing in this matter on April 19, 2022, neither the Lewis House Committee nor Lewis filed a Campaign Contribution Disclosure Report with the Commission since the filing of the 2012 Report. (Stipulation ¶7; Testimony of Mr. Lewis.).
8. As of March 7, 2022, and continuing through the date of the hearing on April 19, 2022, neither the Lewis House Committee nor Lewis filed any other reports, including but not limited to a termination report, indicating the status of the Investments or cash on hand remaining in the Lewis House Committee’s accounts as disclosed in the 2012 Report. (Stipulation ¶8; Testimony of Mr. Lewis).
9. As of April 1, 2022, the Commission has entered no order, adjudication or other finding assessing fines, fees or penalties against the Lewis House Committee or Lewis or adjudicating them deficient in filing or failing to file reports. (Stipulation ¶9).

10. At the hearing, Lewis testified that Commission personnel advised him he was not required to continue filing reports once he was no longer seeking elective office. He was unable to identify the Commission staff member with whom he spoke. (Testimony of Mr. Lewis).
11. Section 4 of the last report filed by Lewis under the caption “Period for which you are Reporting,” in the column under the heading of “My Non Election Year,” states “Persons leaving office with excess funds until such funds are expended as provided in the Act.” (Exhibit P-1).

III. CONCLUSIONS OF LAW

1. A candidate for State office must meet all constitutional and statutory requirements for holding the office he or she seeks. O.C.G.A. § 21-2-5(a).
2. Pursuant to Code Section 21-2-5(b), either the Secretary of State or a qualified elector residing in a state legislative district may challenge a candidate’s qualifications to hold office. In this case, Challenger, who is the incumbent from Senate District 52 and an elector from Senate District 52, challenges Lewis’s qualifications.
3. Lewis has the burden of proving that he is qualified to be a candidate for Senate District 52. *See Haynes v. Wells*, 273 Ga. 106, 108-09 (2000). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).
4. The parties agree that the sole basis for the Challenge in this case is O.C.G.A. § 21-5-9.1—the “transparency requirement”—which states that “[n]o person who has served or is serving as a member of the General Assembly shall be eligible to qualify to seek election or reelection to the General Assembly until and unless ... all disclosure reports due have been filed[.]”

5. As defenses to Challenger’s petition in this matter, Lewis urges three grounds:
 - i. O.C.G.A. § 21-5-9.1 is unconstitutional under the doctrine of doctrine of “Expressio Unius Est Exclusio Alterius.” Because Georgia Constitution Article III, § II, Para. III provides no authority for the General Assembly to establish additional qualifications, in contrast to Ga. Const. Art. VI, § VII, Para. II, the doctrine of “Expressio Unius Est Exclusio Alterius” is triggered. *See Copeland v. Home Grown Music, Inc.*, 358 Ga. App. 743, 748–49(2021);
 - ii. O.C.G.A. § 21-5-9.1 is unconstitutional under Article I, § 9, Clause 3 of the United States Constitution which states: “No bill of attainder or ex post facto law shall be passed” and Article 1, § 1, Paragraph X of the Georgia Constitution which provides: “No bill of attainder, ex post facto law, retroactive law, or laws impairing the obligation of contract or making irrevocable grant of special privileges or immunity shall be passed.” as a Bill of Attainder;
 - iii. As applied to Lewis, O.C.G.A. § 21-5-9.1 must be construed narrowly to avoid the issue of its potential unconstitutionality. *See generally In the Interest of M.F.* 298 Ga. 138 (2015).
6. Challenger argues that Lewis’s failure to file his disclosure reports cannot be cured by the any delinquent filings made after closing of the record in this matter at the conclusion of the hearing held on April 19, 2022.
7. The stipulated facts show that as of March 7, 2022, and continuing through the date of the hearing in this matter on April 19, 2022, neither the Lewis House Committee nor Lewis

had filed a Campaign Contribution Disclosure Report with the Commission since the 2012 Report. (Stipulation ¶7). Similarly, as of March 7, 2022, and continuing through April 19, 2022, neither the Lewis House Committee nor Lewis had filed any other reports, including but not limited to a termination report, indicating the status of the Investments or cash on hand remaining in the Lewis House Committee's accounts as disclosed in the 2012 Report. (Stipulation ¶8).


8. An administrative law judge at the Office of State Administrative Hearings (“OSAH judge”) is not permitted to invalidate or decline to follow a statute based upon a finding that it is unconstitutional. An OSAH judge is, however, permitted to develop the record as to relevant issues of constitutional validity and make findings of facts as to those issues. Ga. Comp. R. & Regs. 616-1-2-.22(3). Any constitutional objections that cannot be addressed by the undersigned are preserved and may be considered by the Secretary of State in his decision to accept or reject this Initial Decision, and by reviewing courts on appeal.
9. Lewis's objections that the transparency requirement of O.C.G.A. § 21-5-9.1 is unconstitutional under either of the constitutional challenges noted above and briefed in Lewis's filings in this matter are therefore preserved and may be considered by the Secretary of State in his decision on this challenge and any appeal. Likewise, Challenger's arguments with respect to Lewis's contentions on these issues are also noted and likewise preserved for consideration by the Secretary of State and on any appeal.
10. The stipulated facts and testimony at the hearing establish that Lewis had not made the requisite filings as of the date of his qualification filing nor had he cured such delinquency by the time of the hearing in this matter and the closing of the record in this

matter. By the express language of the statute, Lewis was not, therefore “eligible to qualify to seek election” when he qualified to run for State Senator District 52.

IV. DECISION

Accordingly, based upon the above Findings of Facts and Conclusions of Law, Respondent is not qualified to be a candidate for State Senator, District 52.

SO ORDERED, this 12th day of May, 2022.



Charles R. Beaudrot
Administrative Law Judge



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