

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

**ROBERT WITTENSTEIN & JILL
VOGIN,**

Petitioners,

v.

CORNEL WEST,

Respondent.

**Docket No.: 2502867
2502867-OSAH-SECSTATE-CE-60-
Malihi**

INITIAL DECISION

Counsel for Petitioners:

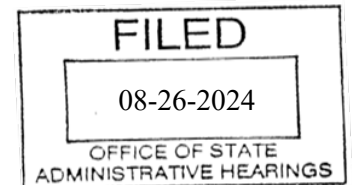
Adam M. Sparks
Jennifer K. Coalson
Krevolin & Horst, LLC

Counsel for Respondent:

Bryan P. Tyson
The Election Law Group

Judge:

Michael Malihi



I. INTRODUCTION

Robert Wittenstein and Jill Vogin (“the Petitioners”) filed this action pursuant to O.C.G.A. § 21-2-5(b) against Dr. Cornel West (“the Respondent”), challenging his qualifications to run as an independent candidate for the office of President of the United States.¹

The Petitioners contend that (1) a number of signatures on the nomination petitions the Respondent submitted to the Georgia Office of Secretary of State are invalid and, consequently, he does not have the 7,500 signatures required for him to qualify for ballot access, and (2) the Respondent is not an “independent” candidate within the meaning of Georgia law.

¹ The Georgia Republican Party, through counsel, submitted a motion to intervene and accompanying brief on Wednesday, August 21, 2024. This motion was submitted to the Court the day before the hearing, after this matter had been pending for approximately one month and both parties had briefed their arguments at length. Given the timing of this motion, as well as the expedited timeframe for issuing the initial decision, granting a motion to intervene at this stage would unduly delay and prejudice adjudication of the rights of the existing parties. O.C.G.A. § 50-13-14. Moreover, the Court is not persuaded that the movant’s interests are not adequately represented. *See id.* Therefore, having read and considered the motion to intervene, it is **DENIED**.

An evidentiary hearing was held on August 22, 2024. Based on the evidence and arguments presented, and for the reasons stated below, the Court concludes that the Respondent has met the qualifications to seek and hold the office for which he is offering.²

II. FINDINGS OF FACT

1. The Petitioners are, and at all times material to this action have been, registered voters and eligible electors domiciled in DeKalb County, Georgia. (Stipulation of the Parties).
2. The Respondent is attempting to qualify for the ballot in Georgia as an independent candidate only and is not associated with a registered political body in Georgia. (Stipulation of the Parties).
3. The Respondent submitted a nomination petition with approximately 24,000 signatures to the Office of the Secretary of State. (Exs. P-21, P-26, R-6; Testimony of Messner, Tr. 65: 22-24).
4. Of the signatures submitted by the Respondent on his nomination petition, the Secretary of State verified and accepted 8,075 signatures from Georgia electors in the Secretary's initial review of the petition. (Stipulation of the Parties).
5. At the hearing, the Petitioners introduced the testimony of Benjamin Messner. Mr. Messner is the founder of New River Strategies, a consulting firm. (Ex. P-21; Testimony of Messner). He was retained by Clear Choice Action on July 25, 2024, to supervise the analysis of the nomination petition the Respondent submitted to the Office of the Secretary of State. (*Id.*).
6. Mr. Messner supervised a team of analysts that reviewed the Respondent's nomination petition. (Ex. P-21; Testimony of Messner). Although he extensively reviewed the data that the team produced based on its review of the nomination petition, he did not himself conduct an

² It is worth emphasizing that this case concerns the qualifications of the Respondent himself as an independent candidate. The qualifications of the Respondent's electors are discussed in *Vogin v. Al Bari et al.*, Docket No. 2502870-OSAH-SECSTATE-CE-33-Malihi.

examination of the nomination petition. (Testimony of Messner, Tr. 68: 9-25).

7. Mr. Messner's team received seven (7) PDF files containing the nomination petition on August 13, 2024. (Ex. P-21; Testimony of Messner). The Secretary of State's office later provided a list of 8,075 signatures accepted as valid, including each signer's voter registration number, name, address, and date of signing. (Ex. P-21). The list of the signatures accepted as valid (the "Accepted Data Set") did not reference the line or page numbers of the PDF files containing 24,000 signatures (the "Full Data Set"). (*Id.*). Due to time constraints and limitations in the data provided concerning the valid signatures, the team was not able to completely match the Accepted Data Set to signatures in the Full Data Set. (*Id.*; Testimony of Messner).

8. The Full Data Set, in the form provided by the Secretary of State's office, was essentially comprised of images showing 24,000 signatures. (Tr. 48: 2-11). As part of the review process, teams of data entry clerks "digitized" the signature data by typing it into a database. (Testimony of Messner, Tr. 71: 7-11). Mr. Messner acknowledged that it was "likely that there were small amounts of human error" during this process. (Testimony of Messner, Tr. 71: 15-19). For example, it was possible that a clerk spelled a name differently or inverted numbers in an address. (Testimony of Messner, Tr. 71: 20-23).

9. From the Full Data Set, the team identified the following deficiencies:

- For 1,000 cases, signatures on a petition sheet exhibited multiple signer counties,
- For 690 cases, the signers' city field was missing/blank,
- For 652 cases, the "on or after" date sworn to in the circulator's affidavit was later than the petition sheet's earliest signature,
- For 416 cases, the "not later than" date from the circulator's affidavit is earlier than the petition sheet's latest signature,
- For 194 cases, the circulator signatures on the affidavit are printed, rather

than signed,

- For 186 cases, the signers' city field did not match the voter file or postal city, and
- For 96 cases, the signature of the voter appears to be missing entirely.

(Exs. P-21, P-22).

10. Although the team identified deficiencies in the Full Data Set, it did not ascertain whether any of these deficiencies affected signatures that were accepted. (Testimony of Messner, Tr. 75: 19-25). At the hearing, Mr. Messner also acknowledged that there could have been instances in which an individual whose signature was identified as invalid by the team later provided a compliant signature. (Testimony of Messner, Tr. 72). That is, in a case where an individual provided a deficient signature (e.g., by leaving insufficient information or signing on an invalid sheet) but the same individual later signed correctly with all required information on a valid sheet, the team would not capture the subsequent, correct signature. (Testimony of Messner, Tr. 72:21 – 73:1, 91: 8-17).

11. The parameters by which the team determined signatures to be noncompliant were provided to them by legal counsel. (Testimony of Messner, Tr. 67: 5-9). Specifically, legal counsel provided these parameters to team leaders, who in turn instructed the data entry clerks working under them. (*Id.*). Reportedly, these parameters were based on the Georgia Election Code. (*Id.*). Mr. Messner could not verify with certainty whether every single decision made by a data entry clerk was reviewed, though he opined that “many to most” of them were. (Testimony of Messner, Tr. 68: 9-16).

12. The team also noted anomalous activity by a notary associated with the Respondent's campaign. (Ex. P-21; Testimony of Messner, Tr. 58–59). This notary was reportedly responsible for 85.5% of the sheets notarized for the campaign. (*Id.*). This activity consisted of unusually

high volumes of notarized sheets. (*Id.*). However, Mr. Messner did not confirm that this notary's sheets were among those accepted by the Secretary of State, though he opined some must have been, given the quantity she notarized. (Testimony of Messner, Tr. 76: 23 – 77: 8).

13. The team did not conclude that any of the 8,075 signatures accepted to be valid were actually invalid (i.e. not compliant with the Georgia Election Code). (Ex. P-21; Testimony of Messner, Tr. 75: 19-25). As Mr. Messner testified, neither he nor the team could definitively conclude from the findings that the Secretary of State had accepted an invalid signature. (*Id.*).

14. The Respondent is the founder of the Justice for All Party. (Ex. P-5). He has sought access to ballots in several different states through various political entities, including the Unity Party of Colorado, the Florida Natural Law Party, the Legal Marijuana NOW National Party of the United States, the Progressive Party, the Green Mountain Justice and Peace Party, and the United Citizens Party. (Exs. P-7 through P-18).

III. CONCLUSIONS OF LAW

1. In Georgia, independent candidates desiring to appear on the ballot must meet the requirements expressed in Code Section 21-2-132. One such requirement is that candidates file a nomination petition “in the form prescribed in Code Section 21-2-170.” O.C.G.A. § 21-2-132(e). This nomination petition must be signed by at least 7,500 eligible voters. O.C.G.A. § 21-2-170(b); *see Green Party of Georgia v. Kemp*, 171 F. Supp. 3d 1340 (N.D. Ga. 2016). Code Section 21-2-170 imposes stringent requirements for nomination petitions. A nomination petition must be on one or more sheets of uniform size, and different sheets must be used by signers resident in different counties or municipalities. O.C.G.A. § 21-2-170(d). Each sheet must include, on the bottom or back thereof, the affidavit of the circulator of the sheet. *Id.* This affidavit must be subscribed and sworn to by the circulator before a notary public and set forth:

- (1) His or her residence address, giving municipality with street and number, if any;
- (2) That each signer manually signed his or her own name with full knowledge of the contents of the nomination petition;
- (3) That each signature on such sheet was signed within 180 days of the last day on which such petition may be filed; and
- (4) That, to the best of the affiant's knowledge and belief, the signers are registered electors of the state qualified to sign the petition, that their respective residences are correctly stated in the petition, and that they all reside in the county or municipality named in the affidavit.

Id.

2. The Secretary of State is charged with reviewing nomination petitions for compliance with the requirements expressed in Code Section 21-2-170. O.C.G.A. § 21-2-171(a). The Secretary must “disregard any pages or signatures that are not in conformance with the provisions of [Code Section 21-2-170].” *Id.*

3. Based on the evidentiary record, the Court concludes that the Respondent's nomination sheet contained the requisite number of signatures. The parties stipulated that 8,075 signatures on the nomination petition have been determined to be valid. Of these signatures, the Petitioners were not able to identify one that was deficient, let alone 576, such as would render his nomination petition deficient. The Court accepts that the Petitioners' review identified deficient signatures, but there is nothing in the record to suggest that these deficiencies were not already identified and culled from the 24,000 total signatures in the Respondent's original nomination petition.

4. The Court concludes that the Respondent is an “independent” as that term is used in the Georgia Election Code. In context, it is clear that this term is used to differentiate a candidate from a “political party” or “political body” candidate in Georgia. *See* O.C.G.A. § 21-2-2(10), (23), (24), (25); *see also McCrary v. Poythress*, 638 F.2d 1308, 1310-11 (5th Cir. 1981). It is not a separate requirement that a candidate have no association with or relationship to any political entity at any

time in any jurisdiction. The legislature meticulously prescribed the prerequisites for independent candidates in the Georgia Election Code, particularly in Code Sections 21-2-132 and -170.³ If the legislature intended to impose a separate qualification based on the “independence” of a candidate, it would have done so expressly. *See, e.g., Fulton Cty. Sch. Dist. v. Jenkins*, 347 Ga. App. 448, 453 (2018) (noting that, if the legislature intended to accomplish a particular outcome, it knew how to do so and, consequently, courts must presume that its “failure to do so was a matter of considered choice”); *Kemp v. Kemp*, 337 Ga. App. 627, 636 (2016).

IV. DECISION

Based on the foregoing findings of fact and conclusions of law, the Court concludes that the Respondent has met the qualifications to seek the office of President of the United States.⁴

SO ORDERED this 26th day of August, 2024.


Michael Malihi, Judge

The seal of the Office of State Administrative Hearings is circular. It features a central emblem with a scale of justice and a book, surrounded by the text "OFFICE OF STATE ADMINISTRATIVE HEARINGS".

³ Indeed, the legislature appears to have added some express safeguards against the overlap of political party and independent or political body candidates in Code Section 21-2-137:

No person shall file a notice of candidacy as an independent or political body candidate for any public office when such person has qualified for the same office to be filled at the same election with any political party; nor shall any person qualify with any political party when such person has filed a notice of candidacy as an independent or political body candidate for the same office to be filled at the same election.

⁴ The Court again emphasizes that this Decision bears on the Respondent’s qualifications, not those of his slate of electors.