OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DAVID P. WELDEN	:	
	:	
Plaintiff	:	
	:	
v.	:	Docket Number: OSAH-SECSTATE-CE-1215137-60-MALIHI
	:	
BARACK OBAMA	:	
	:	
Defendant	:	
	:	

PLAINTIFF WELDEN'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

DECISION

Plaintiff David Welden challenges Defendant Barack Obama's qualifications to run for the office of President of the United States. The Plaintiff presented evidence and argument on January 26, 2012, and the record was closed on that day.

Introduction and Findings of Fact

The Defendant's father was not a U.S. citizen at the time the Defendant was born. Defendant's father was a non-immigrant student at the time of the Defendant's birth. Pursuant to Article II of the United States Constitution, "No person except a natural born citizen…shall be eligible to the office of President." U.S. Const. art. II, §1, ¶5. Plaintiff contends that the term "natural born citizen" means born in the United States of parents that were themselves United States Citizens. Defendant has presented no argument on the substance of the issue at hand.[1]

For the reasons stated below, the Court has determined that Defendant does not meet the Constitutional requirements to run for the office of President of the United States.

[1] The Defendant and the Defendant's attorney failed to attend the January 26 hearing despite having previously appeared in this matter via the filing of several documents with this Court in this matter, and despite having received ample notice of said hearing. The Defendant's failure and his attorney's failure to appear is discussed further below.

Conclusions of Law

The United States Constitution ("Constitution") states that "No person except a natural born citizen…shall be eligible to the office of President." U.S. Const. art. II, §1, ¶5. The United States Supreme Court has interpreted the term natural born citizen to mean a person born in the United States of parents that were themselves United States Citizens. *Minor v. Happersett*, 88 U.S. 162, 167 (1874). Construction by the United States Supreme Court of terms and clauses within the United States Constitution are binding upon every court in this country. *Marbury v. Madison*, 5 U.S. 137 (1805). The *Minor* Court's definition of the article II term "natural born citizen" was pivotal to its decision, and is therefore part of the *Minor* Court's holding. See *Black's Law Dictionary* 737 (Bryan A. Garner ed., 7th ed., West 1999) (*see also Id*. at 1195 defining "precedent" and *quoting* James Parker Hall, *American Law and Procedure* xlviii (1952); *see also Id*. at 465, distinguishing "dictum gratis"). As such, the *Minor* Court's definition of natural born citizen is precedent, binding upon all courts in this country. *Marbury*, 5 U.S. 137.

Further, Georgia Election Code states: "Every candidate for federal and state office…shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. §21-2-5(a). Chapter 2 of Title 21 also states: "This chapter shall apply to any general or special election in this state to fill any federal, state, county, or municipal office, to any general or special primary to nominate candidates for any such office, and to any federal, state, county, or municipal election or primary for any other purpose whatsoever, unless otherwise provided."

Therefore, the Court concludes that because the Defendant's father was not a United States Citizen at the time the Defendant was born, the Defendant is not a natural born citizen under article II of the Constitution. Because the defendant does not meet the Constitutional

qualifications for holding the office being sought, the Defendant should not appear on any ballot for any election within this State as a candidate for the office of President of the United States.

I. Effect of Default: Findings on the Merits in the Absence of Defendant

This Court is required to determine the merits of the issues presented by the Plaintiff, regardless of the absence of the Defendant and entry of a default judgment against the Defendant.

Administrative Rule of Procedure 616-1-2-.30(1) states in relevant part: "A default order may be entered against a party that fails to participate in any stage of a proceeding, a party that fails to file any required pleading, or a party that fails to comply with an order issued by the Administrative Law Judge." The rule continues: "After issuing a default order, the Administrative Law Judge shall proceed as necessary to resolve the case without the participation of the defaulting party, or with such limited participation as the Administrative Law Judge deems appropriate, and *shall determine all issues in the proceeding, including those affecting the party in default*." Id. at (2)(emphasis added).

Due to the Defendant's and Defendant's attorney's failure to appear this Court will enter a default judgment against the Defendant in the instant matter. However, this Court is also required to resolve the factual and legal issues presented and include such findings and conclusions with its entry of default judgment. Accordingly, the Court concludes as follows.

II. *Minor v. Happersett*, 88 U.S. 162 (1874)

In *Minor v. Happersett* the United States Supreme Court was presented the question: does the 14th Amendment grant all citizens the right to vote? Minor, a woman living in Missouri, challenged that state's constitutional prohibition against women voting. The Court held that

women could be citizens before ratification of the 14th Amendment, but that the 14th Amendment created no new privileges or immunities.

1. *Minor* Court's Definition of Natural Born Citizen Under Article II[2]

The United States Supreme Court defined the term "natural born citizen" in *Minor v. Happersett*. 88 U.S. at 167. The *Minor* Court established that "it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural-born citizens, as distinguished from aliens or foreigners." *Id.*

It is clear that the *Minor* Court was referring to the term "natural born citizen," as it appears in article II of the Constitution because, in the paragraph preceding the definition quoted here, that Court quoted the article II requirement that the President must be a "natural born citizen."

The *Minor* Court's definition of natural born citizen is immediately followed by a statement that "there have been doubts" about the broader class of people identified as "citizens." *Id*. However, this statement is immediately followed by the clarification that there have "never been doubts" as to the narrower class of natural born citizens. *Id*. This understanding of the Minor Court's statement is supported by its extensive discussion of the broader term "citizen" at the beginning of the Court's opinion. *Id*. at 166.The Court concludes its discussion of the term citizen by stating, "When used in this sense it is understood as conveying the idea of membership of a nation, and nothing more." *Id*. The Court, therefore, clearly established that the term "citizen" in its opinion was to be understood to be very broad. With this in mind, the *Minor*

[2] Nothing in this opinion should be read as an attempt to independently construe of the United States Constitution. To the contrary, this section and the following section of this opinion are intended to show that this Court is simply applying the construction established by United States Supreme Court precedent.

Court's statement is unambiguous: it established two distinct classes of people, citizens and natural born citizens; "citizen" is a broad term that is inclusive of all "natural born citizens"; as to the outer limits of the term "citizen" there are doubts; and as to the definition of "natural born citizen" there have "never been doubts". *Id.*

The *Minor* Court's definition of the term natural born citizen uses the term "parents." This is the plural form of the term "parent." Had the Court intended to indicate natural born citizen status could be conferred upon an individual with one citizen parent, the Court could have used the term "parent" instead of "parents." The Court could also have identified a specific parent using the terms "father" or "mother." It did not use the terms "mother," "father," or "parent." Instead it chose to use the plural term "parents." The plain language meaning of this term indicates a requirement for both parents to be citizens.

2. Precedential Status of the *Minor* Court's Definition of "natural born citizen"

In order to reach its holding, the *Minor* Court first had to determine whether Mrs. Minor was a citizen. It explicitly did so by determining that she was a natural born citizen: "For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens." *Id.* at 167. Because both of Mrs. Minor's parents were U.S. citizens at the time she was born, and she was born in the U.S., she was a natural born citizen. Because all natural born citizens are also within the broader category "citizen," Mrs. Minor was a citizen.

The *Minor* Court's decision to establish that Mrs. Minor was a citizen because she was a natural born citizen followed the well-established doctrine of judicial restraint. Judicial restraint required the *Minor* Court to avoid interpreting the citizenship clause of the 14th Amendment if

the circumstances presented in the case at hand didn't require the Court to construe the 14th amendment's citizenship clause in order to reach its holding. The facts presented didn't require such an interpretation, so the Court didn't reach the 14th amendment's citizenship clause. But this restraint did require the Court to conclude that Mrs. Minor was a citizen via its definition of natural born citizen and its conclusion that all natural born citizens are within the broader category of "citizens." This is why it made the statement "For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens." *Id.* at 168. In other words, the *Minor* Court's definition of "natural born citizen" was pivotal to reaching its holding.

The Court then discussed several other types of citizenship as general examples of its conclusion that women could be citizens. However, it then returned to the specific case of Mrs. Minor, concluding: "The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship." *Id.* at 170.

Because the Minor Court's definition of "natural born citizen" was pivotal to reaching its holding, the Court's definition is part of its holding and is, therefore, also precedent. *See Black's Law Dictionary* 737 (Bryan A. Garner ed., 7th ed., West 1999) (*see also Id.* at 1195 defining "precedent" and *quoting* James Parker Hall, *American Law and Procedure* xlviii (1952); *see also Black's Law Dictionary* at 465, distinguishing "dictum gratis").

III. Congressional Power to Naturalize

Article I of the United States Constitution grants Congress power "To establish uniform rules of naturalization." However, this power does not alter or effect the article II requirement that "No person except a natural born citizen…shall be eligible to the office of President." U.S. Const. art. II, §1, ¶5. It is well established that Congressional authority does not include authority to alter the Constitution unless it follows the steps required to amend the Constitution, as established within article V. *See* Amd. X. Therefore, all acts of Congress made pursuant to its article I authority to naturalize have no effect upon the Supreme Court's construction of article I regardless of any attempt by Congress to establish a different definition of "natural born citizen." All federal code, regulations, resolutions, and other acts of Congress are simply irrelevant to the analysis at hand because Congress has no authority to alter article II except through the amendment process.

IV. Fourteenth Amendment

The 14th amendment to the Constitution created a third independent path to citizenship. However, the amendment did not alter or effect the article II requirement that "No person except a natural born citizen…shall be eligible to the office of President." U.S. Const. art. II, §1, ¶5.

The Supreme Court established the relevant rule of Constitutional construction in *Marbury v. Madison*: "It cannot be presumed that any clause in the Constitution is intended to be without effect; and therefore such a construction is inadmissible." 5 U.S. 137, 174 (1805). This rule is still in effect and a similar rule is used for statutory construction: "When there are two acts upon the same subject, the rule is to give effect to both if possible…The intention of the legislature to repeal must be clear and manifest." *United States v. Borden Co.*, 308 U.S. 188, 198

(1939). See also, *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *United States v. Tynen*, 78 U.S. 88 (1870); *Henderson's Tobacco*, 78 U.S. 652 657 (1870); *General Motors Acceptance Corp. v. United States*, 286 U.S. 49, 61 (1932); *Wood v. United States*, 41 U.S. 342, 362-63 (1842).

Nothing in the language of the 14th amendment expressly alters the language or construction of the term natural born citizen. In fact, neither the term natural born citizen, nor the requirements to serve as President are mentioned in the 14th amendment.

Also, the 14th amendment establishes a path to "citizenship." If individuals that qualify as "citizens" under the 14th amendment are construed to qualify to run for President, then the term "natural born citizen" establishing a distinct qualification for holding the office of President under article II would lose its distinction from the term "citizen" as required to hold the offices of Senator and Member of the House of Representatives under article I. This would leave the distinction between the qualifications for President and members of Congress without effect. "Such a construction is inadmissible." *Marbury*, 5 U.S. at 174.

More importantly, the *Minor* Court defined "natural born citizen" under article II as "all children born in a country of parents who were its citizens." The *Minor* Court's holding and definition was established after the 14th amendment had been ratified, proving that the amendment didn't alter this definition. 88 U.S. at 167. This is further proved by the holding of the *Minor* Court that "The amendment did not add to the privileges and immunities of a citizen." *Id*. at 171. Therefore, if an individual was not qualified to hold the office of President under article II before the amendment, then he or she was not qualified after the amendment. *Id*.

V. Wong Kim Ark, 169 U.S. 649 (1898).

The Supreme Court's decision in *Wong Kim Ark* ("WKA") did not alter or negate the definition of natural born citizen as established by the *Minor* Court. Compare *United States v. Wong Kim Ark*, 169 U.S. 649 (1898) with *Minor*, 88 U.S. 162. The holding of WKA answered the narrow question that was avoided by the *Minor* Court: namely construction of the citizenship clause of the 14th amendment. A review of the holding from WKA confirms this conclusion: "the single question stated at the beginning of this opinion, namely, whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a *citizen* of the United States by virtue of the first clause of the fourteenth amendment of the Constitution: '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.' For the reasons above stated, this court is of the opinion that the question must be answered in the affirmative." 169 U.S. at 705 (emphasis added).

Rather than construing the definition of the term "natural born citizen" under article II, the WKA Court was construing the term "citizen" under the 14th Amendment. Regardless of the answer to the question answered by the WKA Court, it does nothing to change the requirements for the office of President.

To conclude that the WKA court altered the definition of natural born citizen under article II would require a conclusion that dicta alters established precedent. This is simply not the rule. Dicta is persuasive. Where the reasoning in dicta is logical and well supported, and where it

does not conflict with precedent, it can be followed at the discretion of other courts. However, where dicta directly conflicts with precedent it cannot be followed by lower courts.

Had Mr. Wong Kim Ark been a natural born citizen then he wouldn't have had to resort to the 14th Amendment in order to be found a "citizen." Because Mr. Ark was not a natural born citizen, the WKA court had no reason to construe the term natural born citizen in order to answer the question: Was Mr. Ark a citizen under the 14th amendment? Therefore, any discussion within the WKA opinion that could possibly be construed to alter the article II term natural born citizen, was unnecessary to reach the WKA holding, and was dicta. See *Black's Law Dictionary* 465 (Bryan A. Garner e., 7th ed., West 1999)(*defining* Dictum Gratis).

To conclude that the WKA court altered the definition of natural born citizen under article II would also require a conclusion that the WKA court intended to completely ignore the rules of Constitutional construction established by the *Marbury* Court, as discussed above. Nothing in WKA implies an intent to leave no distinction between the requirements to hold the office of President and the requirements to hold the office of Senator. If WKA changed the definition of natural born citizen established by the Minor Court, then the distinction between the requirements to hold the office of President and the requirements to hold the office of Senator would be eliminated. This would leave article II section 1 paragraph 5 "without effect."

Finally, to conclude that the WKA court altered the definition of natural born citizen under article II would also require a conclusion that the WKA court intended to overturn Minor's holding that the 14th amendment didn't create any new privileges or immunities. Mr. Ark certainly was not qualified to run for president before the 14th amendment was ratified. So, to conclude that he was a natural born citizen after the 14th amendment not only runs contrary to the

holding of the WKA Court, it also requires *Minor* to be overturned. Such a conclusion is not suggested by WKA, or any decision of the Supreme Court since WKA.

The holdings from *Minor* and WKA simply do not conflict. Any other conclusion runs contrary to every rule of construction and is not supported by any subsequent precedent from the Supreme Court.

VI. Facts Established

1. Defendant's Burden

While the Defendant and his attorney violated an order of this Court to appear at the January 26th hearing, the Defendant did file documents raising an argument that the burden of proof lies with the Plaintiff in this case. For the reasons discussed here, the Court concludes that the Defendant has the entire burden to prove that he is qualified to hold the office for which he is running.

The Supreme Court of Georgia has clearly established that it is the affirmative obligation of a candidate to establish his qualifications for office, and that the burden is not upon the challenger. *Haynes v. Wells,* 538 S.E.2d 430(2000). That holding was relied upon by this court to remove Keith Gross from the Democratic primary ballot, concluding, "The burden of proof is entirely upon Respondent to establish affirmatively his eligibility for office." *O'Brien v. Gross,* OSAH-SECSTATE-CE-0829726-60-MALIHI, at 12 (2008).

The Defendant in the instant case asserts that *Haynes* is inapplicable because that holding rested upon a statutory requirement that candidate Haynes hadn't met. The *Haynes* Court concluded that the statute created an affirmative burden for Mr. Haynes. The Defendant also cites *Patten v. Miller, Westberry v. Saunders,* and *McLendon v. Everett* in support of the

principal that "the right to hold office is the general rule, ineligibility the exception." Def. BR. at 1, *citing* 190 Ga 123, 139 (1940); 250 Ga. 240, 241 (1982); 205 Ga. 713, 713 (1949), *respectively*.

As in *Haynes*, the instant challenge is founded upon statutory requirements that "Every candidate for federal and state office…shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. §21-2-5(a). Said statutory requirements create the same affirmative burden to prove eligibility as the statute at issue in *Haynes*.

Also, the cases cited by the Defendant have been overruled by subsequent legislation, at least as they apply to the instant challenge. (*See* 1998 Ga. Laws Act 697 (S.B.630)). The legislature has authority to add requirements to run for office in this State. The requirements established by §21-2-5 were established after the cases cited by the Defendant and the new version of the statute was construed by the Georgia Supreme Court in *Haynes*. (*See Id.; See also* 538 S.E.2d 430(2000)).

Accordingly, the Court finds that he burden of proof is entirely upon Defendant to establish affirmatively his eligibility for office.

2. Facts Established[3]

Based on the record in this case the Court finds that the Plaintiff is an elector qualified to vote for the Defendant in the Georgia state primary for the office of President of the United States. The Court further finds that the Plaintiff filed a timely challenge pursuant to §21-2-5 to the Defendant's Constitutional qualifications to hold the office of President of the United States.

[3] Because the Defendant and his attorney failed to appear at the January 26 hearing, the evidence submitted by the Plaintiff was entered unopposed.

Further, based upon testimony of two witnesses and submission of three exhibits, the Court concludes that the Defendant's father was not a United States citizen at the time the Defendant was born.

The Plaintiff's exhibits included copies of the Defendant's birth certificate, statements from a book written by the Defendant, and a U.S. Department of Justice immigration document obtained through a Freedom of Information Act request. The Defendant's birth certificate indicates that the Defendant's father was born in Kenya and that the Defendant was born in 1961. The Department of Justice document indicates that the Defendant's father was an "F-1 non-immigrant student" visiting the United States as a non-citizen in 1962. The relevant statements in the book authored by the Defendant indicate that the Defendant's father had his passport revoked by the government of Kenya in 1967 and as a result was unable to leave Kenya in 1967. This evidence is sufficient to establish that the Defendant's father was not a U.S. citizen when the Defendant was born in 1961.

These conclusions are further supported in light of the Defendant's refusal to comply with this Court's order to appear. The Defendant's contumacious conduct denied the Plaintiff the opportunity to obtain testimony from the Defendant further supporting the Plaintiff's factual assertions. The Defendant's failure to appear also resulted in the Defendant failing to offer any opposition to the evidence presented.

VII. Constitutional Right To Associate

The Defendant also filed a motion to dismiss arguing that §21-2-5 as applied to the instant challenge interferes with the Georgia Democratic Party's right to associate as protected

by the United States Constitution. For the reasons set forth here, the Court concludes that the Defendant's argument fails.

The right to associate has been interpreted to allow private groups to determine who will and will not be members of the group. *Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107 (1981); *Duke v. Cleland*, 954 F.2d 1526 (11th Cir. 1992); *Belluso v. Poythress*, 485 F.Supp. 904 (N.D.Ga. 1980). However, no court has extended this right beyond the confines of the private organization. A party can determine who it will include as members. That party can also determine which of those members will be its candidates. However, nothing in the Constitution or precedent forces a State to accept a party's selection of candidates for appearance on a ballot.[4]

Several right-to-associate cases did involve candidates' exclusion from ballots. *See Democratic Party of U.S. v. Wisconsin*, 450 U.S. 107 (1981); *Duke v. Cleland*, 954 F.2d 1526 (11th Cir. 1992); *Belluso v. Poythress*, 485 F.Supp. 904 (N.D.Ga. 1980). However, all of these cases are exactly opposite to the present situation. All referenced cases involved political parties excluding a candidate because the party didn't want to be associated with the candidate. In every case cited the candidate sued the party and/or state for inclusion on the ballot after being excluded.

There are no cases where a political party's decision to support a candidate created a Constitutional right to force a State to not only accept that decision but to also accept that candidate and place the candidate on a ballot. Such precedent would place the political party's authority above that of the state. This is why no such precedent exists.

[4] While right-to-associate precedent has negated some state's restrictive laws for recognizing political parties, these precedent have not forced states to accept all candidates for appearance on ballots without any screening of such candidates.

It is true that some states lack election codes authorizing any state officials to screen candidate selections from political parties. In these states political parties have essentially unfettered authority to determine which candidates appear on ballots. However, these instances represent decisions of the states to not screen candidates. It is the states' right to decide how to administer its elections. The fact that some states have decided to not protect their citizens from unqualified candidates does not mean that other states don't have the right to screen candidates. It simply means that some states have left the screening to the political parties.

Georgia has determined that it is in the best interest of its citizens to screen candidates prior to placement on the ballot. *See* §21-2-5. Right-to-associate precedent does not prevent Georgia from protecting its citizens in this manner.

In the instant case the Democratic Party of Georgia's Constitutional right to determine its membership coexists with Georgia's right to govern Georgia. Georgia code does not interfere with the autonomy of the political party's internal decision making because it does nothing to prohibit the parties from submitting any name to the Secretary of State for inclusion in the Presidential primary. The Party is free to submit any name as their next Presidential candidate. However, Georgia is not required to accept such submissions and waste taxpayer money on ballots where such candidates are clearly not qualified to hold the office sought.

Georgia code does not prevent the political parties from submitting any name. Instead the code simply determines what the State does with the Party's list of candidates after the Party has forwarded its list to the State. *See* O.C.G.A. §21-2 et seq. This code does nothing to prevent any political party from excluding, or including, any person they choose to exclude or include. Nor does it prevent the Party from choosing candidates to submit, in its "sole discretion." Georgia's

code simply exercises the State's right to administer elections in a manner that best serves the citizens of the State.

In the instant case, Georgia's Election code does nothing to infringe on the Democratic Party of Georgia's right of association because the Party can and did include the Defendant in its organization. The Party can and did include the Defendant in the Party's list of candidates. The Party's rights, however, end there. Its rights cannot force the State to place the Defendant's name on a ballot after the State determines that the Defendant is not qualified "to hold the office sought." §21-2-5. The rights of the Party and of the State simply do not conflict.

VIII. Constitutional Qualifications are Unaffected by Popular Vote

The Defendant's motion to dismiss also asserted that the issues raised by the Plaintiff were "soundly rejected by 69,456,897 Americans in the 2008 elections." *See* Def.'s Mtn. at 5. This statement reflects a lack of understanding regarding Constitutional protections.

Contrary to the Defendant's assertion, voters are not the final arbiters of whether an individual is qualified to hold office. In a Constitutional Republic the power of the majority is limited and cannot infringe upon protected rights of a minority.

The Constitution is an anti-majoritarian document; meaning that it protects individuals from invasions and usurpations by the majority. Constitutionally protected rights are held inviolate regardless of the majority's desire to violate them. Without such protections, any law could be enacted simply because it becomes popular. This would be true even if such law denied an individual their right to life, liberty, or property. Without the anti-majoritarian protection of the Constitution, Congress could legalize the killing of all Jews, for example, as was done in World War II Germany. Constitutional requirements are absolute, and must be followed

regardless of how popular or unpopular such requirements may be, because they are in place to protect the minority.

The Defendant's presumption that popular vote overrides the Constitution runs contrary to the Constitution. Contrary to the Defendant's statement, a minority of Americans have an absolute right to have Constitutional rights enforced, regardless of how popular or unpopular those rights may currently be.

IX. Statutory Authority

The Defendant also asserted that §21-2-5 doesn't apply to Presidential primary elections.

Statutory provisions must be read as they are written, and this Court finds that the cases cited by the Defendant are not controlling. When the Court construes a constitutional or statutory provision, the "first step…is to examine the plain statutory language." *Morrison v. Claborn*, 294 Ga App. 508, 512 (2008). "Where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden. In the absence of words of limitation, words in a statute should be given their ordinary and everyday meaning." *Six Flags Over Ga. V. Kull*, 276 Ga. 210, 211 (2003) (citations and quotation marks omitted). Because there is no other "natural and reasonable construction" of the statutory language, this Court is not authorized either to read into or to read out that which would add to or change its meaning." *Blum v. Schrader*, 281 Ga. 238, 240 (2006).

Georgia Election Code §21-2-5(a) states: "Every candidate for federal and state office…shall meet the constitutional and statutory qualifications for holding the office being sought." This Court has seen no case law limiting this provision, nor found any language that contains an exception for the office of President or stating that the provision does not apply to the Presidential preference primary.

Furthermore, as to the application of §21-2-5 to the Presidential primary provisions, Chapter 2 of Title 21 also states: "This chapter shall apply to any general or special election in this state to fill any federal, state, county, or municipal office, to any general or special primary to nominate candidates for any such office, and to any federal, state, county, or municipal election or primary for any other purpose whatsoever, unless otherwise provided." O.C.G.A. §21-2-15. This statutory language is clear and inclusive.

Accordingly, this Court finds that the Defendant is a candidate for federal office and must, under Code Section 21-2-5, meet the constitutional and statutory qualifications for holding the office being sought.

X. Authority of this Court Pursuant to the Full Faith and Credit Clause of the Constitution

The Defendant has also asserted that this Court's authority to subpoena documents and order appearance of persons, ends at the borders of the state of Georgia. This is not correct.

Article IV of the United States Constitution states in relevant part: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state."

Accordingly, this Court has authority to order the attendance of persons and to subpoena documents, wherever they may be found, whether within this state or beyond, to the extent allowed by the laws of this state and subject to the limitations thereof as established in the precedent of this state's judicial branch and the judicial branch of the United States federal government. U.S. Const. art. IV, §1, ¶1.

XI. Defendant's Failure to Appear in Violation of this Court's Order

This Court issued a subpoena ordering the Defendant to appear and testify at the January 26 hearing and produce certain documents. Defendant filed a motion to quash, which this Court denied for reasons set forth in the Court's denial. On the eve of the hearing, Defendant's attorney sent a letter directly to the Secretary of State of Georgia, with copies sent to this Court and attorneys for the Plaintiff. Defendant's letter requested that the Secretary of State halt the proceedings of this Court. The letter ended with a statement that the Defendant and his attorney would suspend all further participation in the proceedings of this Court pending a response from the Secretary of State.

Later the same day, during the evening of January 25th, the Secretary of State responded to the Defendant via a letter with copies to this Court and counsel for the Plaintiff. The Secretary of State's letter informed the Defendant that the Secretary of State lacked authority under Georgia law to suspend this Court's proceedings. The letter concluded by warning the Defendant that any failure to participate in further proceedings of this Court would be at the Defendant's peril.

Considering the office currently held by the Defendant, the Defendant's request that the Secretary of State halt the proceedings of this Court, coupled with the Defendant's willful refusal to comply with an order of this Court, represent a direct threat to the rule of law. The Defendant's actions represent a direct threat to the entire judicial branch and the separation of powers between the branches of government.

The Defendant's decision to completely ignore the authority of this Court is unprecedented. While past Presidents have litigated against subpoenas, in every case those Presidents acknowledged and respected the authority of the judicial branch. In every case those

Presidents instructed their attorneys to attend hearings. In every case those Presidents acknowledged rulings with which they disagreed, and either complied with court orders or followed applicable procedures to appeal to higher courts. In the instant case the Defendant did not appeal to a higher Court, and instead instructed the Secretary of State that he would not participate in further proceedings. When the Secretary of State refused to act in an unlawful manner the Defendant ignored the Secretary of State, violated an order of this Court, and apparently instructed his attorney to act in a manner that violates the professional rules of conduct of this State.

The Defendant's action represents a public denial of the authority of this Court, the laws of this State, and the judicial branch of government as a whole. Such open denial of a separate branch of government by a sitting President amounts to no less than a declaration of total dictatorial authority. Such declaration cannot go without response from this Court. Failure to respond to the Defendant's contumacious conduct would amount to an admission that this Court and the judicial branch as a whole do not have the authority granted to them under articles III and IV of the Constitution.

The Court finds that the Defendant had sufficient notice of the January 26 hearing, that the Defendant was aware that this Court had ordered his appearance, that the Defendant was aware that his motion to quash this Court's subpoena was denied, and that the Defendant thereafter willfully acted against the orders of this Court to appear.

Accordingly, this court finds the Defendant in willful contempt of Court. Pursuant to Administrative Rules of Procedure the Court hereby refers this matter to the Superior Court of Fulton County for confirmation that the Defendant violated Administrative Rules of Procedure

16-1-2-.22 (5) (a), (b), (c), and (f); and to determine appropriate sanctions, taking into consideration the findings and conclusions herein.

Conclusion

Based upon the foregoing discussion and analysis, the Court finds that the term "natural born citizen" as defined by the Supreme Court of the United States, is a person born in the United States of parents that were themselves United States Citizens. The Court also finds that the Defendant's father was not a United States citizen at the time the Defendant was born. As a result, because "No person except a natural born citizen…shall be eligible to the office of President," the Defendant is not constitutionally qualified to hold the office of President of the United States. U.S. Const. art. II, §1, ¶5. Because the Defendant is not constitutionally qualified, he cannot be elected to the office of President regardless of how popular or unpopular he may be with the voters. Therefore, the Defendant should not appear on the ballot for election to the office of President in the primary or general elections in the state of Georgia.

Date:_____

_____

MICHAEL M. MALIHI, Judge

CERTIFICATE OF SERVICE

Pursuant to the Order entered in this matter regarding electronic service, I certify that I have served the opposing party in this matter with a copy of Plaintiff Welden's Proposed Findings of Fact and Conclusions of Law by sending a copy via e-mail addressed to: Michael Jablonski Michael.jablonski@comcast.net

This the 1st day of February, 2012.

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