

SUPERIOR COURT OF GEORGIA
FOR THE COUNTY OF FULTON

DAVID P. WELDEN	:	
	:	
Petitioner	:	
	:	Superior Court
v.	:	Docket Number:
	:	
BARACK OBAMA	:	OSAH Docket Number:
	:	OSAH-SECSTATE-CE-
Respondent	:	1215137-60-MALIHI
	:	
	:	
	:	

**PETITIONER’S MOTION FOR EMERGENCY STAY AND PRELIMINARY
INJUNCTION**

Pursuant to the Uniform Rules for the Superior Courts of Georgia, Rule 6.1 and 6.7, and O.C.G.A. § 21-2-5(e), Petitioner respectfully submits this motion for an emergency stay of the final decision of the Secretary of State and a preliminary injunction prohibiting the Georgia Secretary of State from including candidate Barack Obama on the Georgia Presidential Primary ballot. Grounds for this motion, as set forth more fully below, are that the Georgia Presidential Primary election will be held on March 6, 2012; that Petitioner challenges the Constitutional qualifications of candidate Barack Obama to appear on the Georgia Presidential Primary ballot; and therefore immediate action by this Court is necessary for proper adjudication of this matter.

Supporting Authorities and Facts

Uniform Rules for the Superior Courts of Georgia, Rule 6.7 states “Upon written notice and good cause shown, the assigned judge may shorten or waive the time requirement applicable to emergency motions, except motions for summary judgment, or grant an immediate hearing on

any matter requiring such expedited procedure. The motion shall set forth in detail the necessity for such expedited procedure.”

Also, O.C.G.A. §21-2-5(e) states in relevant part “[T]he reviewing court may order a stay upon appropriate terms for good cause shown.”

The instant motion requires emergency waiver of the time normally applicable for handling such a motion because the Georgia Presidential Primary election will be held less than three weeks from the time of filing of this motion. (Petitioner respectfully notes that this Court is required to take judicial notice of the laws of this state establishing the date of the March 6, 2012 Presidential Primary election.) *See* O.C.G.A. §24-1-4.

Standard for Stay and Preliminary Injunction

Georgia Courts have broad discretion under OCGA § 9-5-8 in deciding whether to grant a request for an interlocutory injunction. *Kinard v. Ryman Farm Homeowners' Ass'n, Inc.*, 278 Ga. 149, 149 (2004); *citing West v. Koufman*, 259 Ga. 505 (1989). To obtain a preliminary injunction, a movant must show: (1) likelihood of success on the merits; (2) the preliminary injunction is necessary to prevent irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir.1998).

Likelihood of Success on the Merits

The instant litigation presents a pure issue of law. As set forth in the Petitioners petition, the Petitioner asserted only one fact. This fact was supported by multiple unopposed exhibits,

including assertions and adoptions of fact by the Respondent. The only point of contention in the instant litigation is the application or wholesale rejection of established U.S. Supreme Court precedent.

Likelihood of success on the merits is not only the first factor in considering a preliminary injunction, it is by far the most important because it directly affects the other three factors. The balance of harms and effect on the public interest are directly affected by the likelihood of success on the merits because these other factors must take into consideration the harm of an incorrect determination of the merits by this Court at the preliminary injunction stage. A strong showing of likelihood of success on the merits greatly decreases the possibility of an incorrect determination on the merits.

A strong showing of likelihood of success on the merits is easier to find where no facts are in dispute. Because the instant litigation revolves around one uncontested fact and one legal issue this Court should be as confident as is possible regarding its analysis of the merits of this motion.

Petitioner's showing of likelihood of success on the merits is fully set forth in his petition, accompanying this motion. For purposes of avoiding repetition Petitioner hereby incorporates said petition within this motion as if set forth fully here.

Irreparable Injury to Petitioner

The instant litigation will determine whether the Respondent will appear on a ballot in this state for a Presidential Primary election. No adequate remedy at law exists and no damages are sought. At issue is nothing less than the enforcement or loss of constitutional rule of law. The

Petitioner's right to live in a Constitutional Republic will be lost if the clearest terms of the U.S. Constitution will not be enforced by the judicial branch of government.

Harm to Petitioner Outweighs Harm to Respondent

No individual candidate is more important than consistent enforcement of constitutional rule of law. The Respondent is not an exception to this truism. In fact, the office sought by the Respondent has the highest responsibility to protect and defend the Constitution. Therefore, the potential loss to the Respondent from incorrect granting of this motion would be an individual loss and would be a loss that any holder of the office sought should be willing to endure if doing so would ensure continued enforcement of the U.S. Constitution. This is particularly true where the current Respondent has been aware of this Constitutional question for years, has had the ability to address the issue, yet has spent millions of dollars for the specific purpose of avoiding having the question answered by a court of competent jurisdiction.

In contrast, should this Court incorrectly deny this motion it would confirm that the judicial branch is now unwilling to enforce the clearest and most basic requirements of the U.S. Constitution. Harm to Petitioner that would result from such incorrect refusal to grant this motion represents nothing less than the loss of our constitutional form of government for all Americans.

One man's political career is not more important than reestablishing constitutional rule of law. Caution alone warrants balancing in favor of the concerns of an entire society against the personal career of one man.

Preliminary Injunction Would Serve the Public Interest

The Petitioner's petition is intended to protect the public's right to constitutional rule of law. As discussed above, the public interest will be better served by granting the instant motion, even if the Respondent were to ultimately prevail on the merits.

Conclusion

For the reasons set forth herein, the Petitioner respectfully requests that this Court grant his emergency motion for a stay of the final decision below and prohibit the Secretary of State of Georgia from including candidate Barack Obama's name on the Georgia Presidential Primary ballot.



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CERTIFICATE OF SERVICE

I certify that I have served the opposing party in this matter with a copy of Petitioner's Motion for Emergency Stay and Preliminary Injunction by sending a copy via first class U.S. mail to attorney Michael Jablonski at 260 Brighton Rd. NE, Atlanta, GA 30309. A copy was also sent via e-mail addressed to: Michael Jablonski Michael.jablonski@comcast.net

This the 14th day of February, 2012.



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