

No. _____

In the Supreme Court of the United States

AMANDA GUNASEKARA,

Applicant,

v.

MATTHEW BARTON AND MISSISSIPPI REPUBLICAN EXECUTIVE COMMITTEE,

Respondents.

ON APPLICATION FOR STAY, RECALL OF MANDATE, AND INJUNCTIVE RELIEF
TO THE SUPREME COURT OF MISSISSIPPI

APPENDIX TO EMERGENCY APPLICATION FOR STAY

SPENCER M. RITCHIE
Forman Watkins & Krutz LLP
210 East Capitol Street, Suite 2200
P.O. Box 22608
Jackson, MS 39201
(601) 960-8600
spencer.ritchie@formanwatkins.com

CHRISTOPHER MILLS
Counsel of Record
Spero Law LLC
557 East Bay Street #22251
Charleston, SC 29413
(843) 606-0640
cmills@spero.law

Counsel for Applicant

TABLE OF CONTENTS

Opinion and Order of the Supreme Court of Mississippi (May 11, 2023) App. 1
Order of the Circuit Court of Hinds County (March 27, 2023) App. 27
Letter to Attorney General Lynn Fitch and Brief (April 19, 2023) App. 31
Order Denying Motion to Stay or Recall Mandate (May 24, 2023) App. 58

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2023-EC-00377-SCT

AMANDA GUNASEKARA

v.

***MATTHEW BARTON AND MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE***

DATE OF JUDGMENT:	03/27/2023
TRIAL JUDGE:	HON. LAMAR PICKARD
TRIAL COURT ATTORNEYS:	B. SEAN AKINS MICHAEL B. WALLACE CHARLES EDWARD COWAN SPENCER MARK RITCHIE SIMON TURNER BAILEY SPENCE JAYON FLATGARD
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	SPENCER MARK RITCHIE
ATTORNEYS FOR APPELLEES:	B. SEAN AKINS MICHAEL B. WALLACE CHARLES EDWARD COWAN
NATURE OF THE CASE:	CIVIL - ELECTION CONTEST
DISPOSITION:	AFFIRMED - 05/11/2023
MOTION FOR REHEARING FILED:	

EN BANC.

KING, PRESIDING JUSTICE, FOR THE COURT:

¶1. Amanda Gunasekara seeks to run in the Republican primary election for Public Service Commissioner, District 3 (Northern District). Matthew Barton, a candidate for district attorney in Desoto County, challenged her qualifications to run for commissioner and, specifically, whether she had been a citizen of Mississippi for five years prior to the election

date. The trial court found that Gunasekara had not met the citizenship requirement and disqualified her as a candidate. We find that the trial court did not manifestly err by holding that Gunasekara failed to meet the residency requirements for the office of Public Service Commission. Therefore, we affirm the decision of the Hinds County Circuit Court.

FACTS AND PROCEDURAL HISTORY

¶2. Following Gunasekara’s father’s retirement from the military, Gunasekara’s family permanently moved to Decatur, Mississippi, in 1998. Gunasekara lived in Mississippi from 1998 until 2010, when she graduated from the University of Mississippi School of Law. She has held a bank account with Citizens Bank of Philadelphia since 2007. In 2010, Gunasekara and her husband, Surya Gunasekara, moved to Washington, D.C.

¶3. From 2010 to 2018, Gunasekara lived in D.C. and worked in the United States House of Representatives, the United States Senate, and the Environmental Protection Agency (EPA). Gunasekara testified that she had not intended to stay in D.C. indefinitely and did not consider D.C. her home during that time frame. While she was there, however, she stated that she had no definite plans to leave. Gunasekara had D.C. car tags and a D.C. driver’s license. Gunasekara also voted in D.C.

¶4. Gunasekara and her husband bought a house in D.C. in 2014. Gunasekara received a homestead deduction for her D.C. house from 2014 until 2021. To qualify for a homestead deduction, “[t]he property must be occupied by the owner/applicant . . . [and] [t]he property must be the principal residence (domicile) of the owner/applicant.” *See* DC.gov, Office of

Tax and Revenue, <https://otr.cfo.dc.gov/page/homesteadsenior-citizen-deduction> (last visited May 2, 2023). Gunasekara testified that she had received the homestead deduction by inadvertent mistake and that the deduction had automatically renewed. She testified that, in 2023, she contacted the D.C. Office of the Chief Financial Officer, Office of Tax and Revenue, to rectify the situation. To support this, the record contains an email dated February 10, 2023, that states,

The Office of Tax and Revenue's (OTR) Homestead Unit has received your message regarding repaying an unpaid balance on your former District residence located at 418 South Capitol St., SE. Due to the property's new ownership, as a prior deeded owner you are not liable once a sale has been recorded. Any outstanding balances that were on the property would have been settled by the new deeded owners' title company at closing.

¶5. In March 2017, Gunasekara became Senior Advisor for Air to the Administrator of the EPA, a full-time position. At that point, the Gunasekaras had two children. The children attended daycare and/or school in D.C.

¶6. During the summer of 2018, Gunasekara stated that she, along with her husband, decided to transition back to Mississippi to make it their permanent home. Gunasekara's parents, Mike and Ada McGrevey, lived at 147 Chapel Hill Road, Decatur, Mississippi. Property adjacent to the McGreveys, that included an older house, was announced for sale in August 2018. On August 21, 2018, Gunasekara's "parents and [she] agreed to purchase a home for [her] family adjacent to their farm, located at 16489 Hwy. 503 Decatur, Mississippi." Gunasekara's parents stated that they had discussed the property with Gunasekara and had agreed to put a bid on the property: Gunasekara's parents would take

the majority of the land, and Gunasekara would take the house. Gunasekara’s parents put the money down for the house, and the deed was issued to the McGreveys for the entirety of the property.¹ Gunasekara testified that she did not have any thoughts of staying in D.C. when the bid for the Decatur property was accepted.

¶7. Gunasekara stated that in September 2018, they contacted a local contractor to evaluate the property, to make plans for renovation, and to calculate costs.

¶8. On October 1, 2018, the homestead deduction for their D.C. home was renewed. Gunasekara testified that, also in October, her mom and another person began clearing the land and pulling down dilapidated buildings on the Decatur property. On October 23, Gunasekara renewed a car tag in D.C. Gunasekara testified that she did this for parking purposes.

¶9. The Decatur house needed significant renovations. In November 2018, the McGreveys did a walk-through of the house with Gunasekara and the contractor. Gunasekara also spoke with local educators about enrollment in school for their son and researched daycare options. Gunasekara testified that when she came to Mississippi from D.C. to meet with contractors and educators, she stayed with her parents in her childhood bedroom. The McGreveys stated that they “continued to oversee day-to-day work of the home while [Gunasekara] commuted back and forth from Decatur to DC.”

¹Gunasekara testified that her parents bought the house for her “to eventually procure once [she] had the funds lined up to pay for it on paper.”

¶10. Gunasekara was registered to vote in D.C. from 2010 through 2018. On November 6, 2018, Gunasekara voted in D.C. for a candidate in an Advisory Neighborhood Committee (ANC) election.² She stated that she had voted to help a friend who was running as a Republican in a majority-Democrat neighborhood.

¶11. Interior renovations to the Decatur house began in January 2019. On January 28, 2019, Gunasekara obtained a Mississippi driver's license, which automatically registered her to vote in Mississippi.

¶12. On February 7, 2019, Gunasekara resigned from her full-time position at the EPA in D.C. On February 8, she established and incorporated her nonprofit, Energy 45 Fund, in Jackson.

¶13. From March to June 2019, the Gunasekaras made several payments to the contractor

²According to the DC.gov website,

An ANC . . . is a non-partisan, neighborhood body each made up of locally elected representatives called Advisory Neighborhood Commissioners. They are a unique feature of the District's Home Rule Charter.

. . . .

The ANCs' main job is to be their neighborhood's official voice in advising the District government (and Federal agencies) on matters that affect their neighborhoods. Although they are not required to follow the ANCs' advice, many District agencies are required to give the ANCs' recommendations 'great weight.'

See DC.gov, Advisory Neighborhood Commissions, <https://anc.dc.gov/page/about-ancs> (last visited March 17, 2023).

as renovations continued in the Decatur house. Gunasekara testified that she continued to commute from D.C. to Mississippi during this time.

¶14. In June 2019, the renovations were completed, and Gunasekara moved her family and belongings to Decatur. In August, Gunasekara's daughter began daycare in Newton County, and her son was enrolled in Newton County Elementary School.

¶15. From June 2019 until March 2020, the Gunasekaras rented their D.C. house on Airbnb for short-term rentals. The Gunasekaras also had a longer term tenant that lived in one bedroom of the house. At some point in 2019, Gunasekara's parents deeded the Decatur house to her husband and her.

¶16. In March 2020, Gunasekara was appointed Chief of Staff to the EPA. She stated that she committed to her boss that she would be in the position for one year. Gunasekara's husband also accepted an appointee job in D.C. The EPA position required Gunasekara to be in D.C. for most of the work week, during which she and her husband stayed at their D.C. property. Throughout her time as EPA Chief of Staff, her children attended school in Mississippi, and she continued to pay taxes in Mississippi. Gunasekara testified that she still considered Mississippi her primary residence during that time, and she traveled home weekly.

¶17. In June 2020, the Gunasekaras filed a loan application to refinance their house in D.C.

A provision in the refinance documents stated that

Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and

shall continue to occupy the Property as Borrower’s principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower’s control.

Gunasekara testified that she had been aware of that provision. She testified that she had spoken with her mortgage specialist and that it was customary practice in D.C. for “political employees and service members that are there on a temporary basis to have a mortgage or refinance agreement that looks like what we signed on to.” Gunasekara and her husband signed the loan documents in July 2020.

¶18. Gunasekara’s position ended when the new administration began on January 20, 2021. Gunasekara and her husband returned to Mississippi at that time. In March 2021, the Gunasekaras agreed to purchase 1300 Pleasant Drive, Oxford, Mississippi. While a house on that property was being constructed, they lived at a rental property located at 100 Camellia Lane, Oxford. In June 2021, the Gunasekaras enrolled their children in the Oxford School District. The Gunasekaras purchased the Oxford property on October 29, 2021, and sold their house in D.C. on November 17, 2021.

¶19. In November 2022, Gunasekara announced her intention to run for Public Service Commissioner, District 3 (Northern District), for the August 8, 2023, Republican Party primary election.³ On January 5, 2023, Gunasekara filed documents to qualify for the position.

³Because no Democratic candidate qualified to run for the seat, the winner of the Republican primary election will become the next commissioner.

¶20. On February 9, 2023, Matthew Barton filed a contest of Gunasekara’s qualifications with the Executive Committee of the Mississippi Republican Party (the Executive Committee). Barton contended that, because Gunasekara had been a resident of D.C. within the preceding five year period, she was not qualified to run for commissioner.

¶21. On February 16, 2023, after a hearing on the merits, the Executive Committee denied Barton’s contest and certified Gunasekara as a candidate.⁴

¶22. On February 24, 2023, Barton filed a petition for judicial review of the Executive Committee’s decision in the Hinds County Circuit Court. This Court appointed Special Circuit Judge Lamar Pickard to preside over the case. After a hearing on the merits, the trial court entered an order that disqualified Gunasekara as a candidate. In its order, the trial court reasoned that Gunasekara was required to have been a resident of Mississippi on November 7, 2018, the date that is at least five years prior to the November 2023 general election. It found that

The evidence is clear that in 2018, [Gunasekara] and her family determined that they would relocate[] to Mississippi and that in August, 2018 [Gunasekara] and her parents acquired a house in Decatur, Mississippi with the intention of returning to Mississippi. Further, that by the spring of 2019, [Gunasekara] had resigned her job in [D.C.], registered to vote in Mississippi and had become a Mississippi resident.

The trial court also found, however, that the evidence “clearly” showed that Gunasekara had

⁴There is no written transcript of the hearing before the Executive Committee; however, the hearing was recorded by video, and a copy of the video was submitted to the trial court by the Mississippi Republican Party. The video is not contained in the record before this Court.

continued to maintain her residency in D.C. in 2018, including exercising her right to vote there on November 6, 2018. The trial court found that there was a “plethora of evidence,” including her voting in D.C. on that date, that clearly established that she was a resident of D.C. on the day before she was required to have been a Mississippi resident and that no evidence showed a change in that status in the twenty-four-hour period afterward.

¶23. Therefore, the trial court concluded that, “[e]ven if this Court found all of that evidence successfully rebutted, which the Court expressly does not do, when all of the evidence is considered as a whole, it is clear and the Court so finds, that [Gunasekara] was a citizen of the District of Columbia on November 7, 2018.”

¶24. Gunasekara appealed the circuit court’s decision to this Court and raised the following issues:

- I. Whether the trial court applied an erroneous legal standard for citizenship by determining whether Gunasekara met the five-year durational-citizenship requirement to run for Mississippi Public Service Commissioner.
- II. Whether the trial court’s determination that Gunasekara did not meet the citizenship requirement conflicts with this Court’s decision in *Hale v. State Democratic Executive Committee*.
- III. Whether the trial court’s application of the citizenship requirement violates the Fourteenth Amendment of the United States Constitution.

ANALYSIS

¶25. “[I]n a candidate qualification challenge, the standard of review for questions of law is *de novo*.” *Simmons v. Town of Goodman*, 346 So. 3d 847, 850 (Miss. 2022) (quoting

Hale v. State Democratic Exec. Comm., 168 So. 3d 946, 951 (Miss. 2015)). This Court reviews a trial judge’s findings of fact for manifest error, “including whether the findings were the product of prejudice, bias, or fraud, or manifestly against the weight of the credible evidence.” *Id.* (internal quotation mark omitted) (quoting *Hale*, 168 So. 3d at 951). “[W]hether a candidate meets [the] residency requirement [to run for office] clearly involves questions of fact.” *Id.* (second and third alterations in original) (internal quotation marks omitted) (quoting *Hale*, 168 So. 3d at 951).

¶26. Pursuant to Mississippi Code Section 77-1-1, a public service commissioner must “possess the qualifications prescribed for the Secretary of State.” Miss. Code Ann. § 77-1-1 (Supp. 2022). Thus, in order to qualify as a candidate for commissioner, Gunasekara is required to be “a citizen of the state five years next preceding the day of [her] election” Miss. Const. art. 5, § 133. Therefore, the relevant date for Gunasekara’s citizenship in Mississippi is November 7, 2018. Our Constitution provides that “[a]ll persons, resident in this State, citizens of the United States, are hereby declared citizens of the State of Mississippi.” Miss. Const. art. 3, § 8. Thus, “[i]n Mississippi, for the purpose of elections, residency and domicile are synonymous.” *Hale*, 168 So. 3d at 951 (quoting *Hubbard v. McKey*, 193 So. 2d 129, 132 (Miss. 1966)); see also *Meredith v. Clarksdale Democratic Exec. Comm.*, 340 So. 3d 315 (Miss. 2022) (“Residency under Mississippi election law is based on a person’s domicile.” (citing *Hale*, 168 So. 3d at 951)). “The definition of domicile in this State is well established: ‘there must have been (1) an actual residence voluntarily

established in [Mississippi], (2) with the *bona fide* intention of remaining there, if not permanently, at least indefinitely.” *Hale*, 168 So. 3d at 951 (quoting *Smith v. Smith*, 194 Miss. 431, 434, 12 So. 2d 428, 429 (1943)).

I. Whether the trial court applied an erroneous legal standard for citizenship by determining whether Gunasekara met the five-year durational-citizenship requirement to run for Mississippi Public Service Commissioner.

¶27. Gunasekara begins by contending that the trial court applied an erroneous legal standard for citizenship. She states that the trial court looked to mere residence in its analysis and not domicile; therefore, she argues that the appropriate standard for the entire appeal is *de novo*. We disagree.

A. Intent

¶28. “The first principle of the law of domicile is that every person has a domicile at all times and, at least for the same purpose, no person has more than one domicile at a time.” *Newman v. Newman*, 558 So. 2d 821, 825 (Miss. 1990) (citing *Weisinger v. McGehee*, 160 Miss. 424, 432, 134 So. 148, 150 (1931)). As this Court has held,

“even where a party has two residences at different seasons of the year, that will be esteemed his domicil[e] which he himself selects, or describes, or deems to be his home, or which appears to be the centre of his affairs, or where he votes or exercises the rights and duties of a citizen.”

Hale, 168 So. 3d at 952 (alteration in original) (quoting *Hairston v. Hairston*, 27 Miss. 704, 719 (1854)). “[The] domicile of origin continues until another is acquired.” *Stubbs v. Stubbs*, 211 So. 2d 821, 824 (Miss. 1968) (citing *Lucia v. Lucia*, 200 Miss 520, 525, 27 So. 2d 774 (1946)).

¶29. It is clear that Gunasekara established a domicile in D.C. at some point before the relevant date. Therefore, we must determine whether she acquired a new domicile in Mississippi on or before November 7, 2018. Gunasekara focuses on intent as the overriding factor in establishing domicile and argues that the trial court failed to give adequate weight to her declaration of intent. She testified that, in early 2018, she and her husband decided to leave D.C. and relocate to Mississippi permanently. She contends that her testimony coupled with her parents’ purchase of the property was clear evidence that she intended for her Mississippi residence to be her permanent home.

¶30. Barton argues that intent to establish domicile must be a *present* intent. He contends that Gunasekara must have had a *bona fide* intent in 2018 to be domiciled in Mississippi *at that time*. Barton emphasizes that Gunasekara did not claim that any of her acts in 2018 were designed to make her a citizen of Mississippi at the time and points to Gunasekara’s statement that her “actions in 2018 were just natural—a natural series of events where I was leaving D.C. and once again making Mississippi my permanent home and a series of actions taken consistent with that.” When asked if her parents’ purchase of the property had anything to do with legal ramifications as to residency, Gunasekara responded, “I was just living my life and . . . bringing my kids back to Mississippi.” Therefore, Barton asserts that the evidence very clearly shows that Gunasekara’s intent in 2018 was to make Mississippi her home in the future and that her express intent in 2018 was that D.C. would continue to be her domicile until some unknown time in 2019 when the renovation of the Decatur house would

be completed.

¶31. Gunasekara cites *Stubbs*, in which this Court held that “[t]he foundation of domicile is intent. This intention may be established by physical presence, declaration of intent, and all relevant facts and circumstances, and in this connection it has been held that the declarations of the party himself are most important.” *Stubbs*, 211 So. 2d at 825. In *Stubbs*, however, the Court was tasked to determine the domicile of a person already deceased. *Id.* at 823. Therefore, to determine the decedent’s intent, this Court considered the decedent’s statements and actions at the time he was transitioning from Louisiana to Mississippi. *Id.* at 823-25. This Court wrote, “[t]he cogent question to be determined, therefore, is: Did the decedent by his acts or words *subsequent to departing Baton Rouge* signify an intent on his part to reestablish his domicile in Mississippi?” *Id.* at 825. The Court concluded:

We think that under the relevant facts and circumstances in this case, removal of personal belongings to, actually residing in, Natchez, and the sworn declaration of the decedent on November 24, 1964, avowing his residence to be 309 N. Pearl St., Natchez, Mississippi,⁵ is the best and only real evidence of his intent as to domicile and was sufficient to reestablish the same in Natchez, Mississippi. In our opinion the solemnity of the oath rises above the general desultory statements to his mother and friends that he did not care for Natchez, Mississippi, as a place of residence.

Id.

¶32. Gunasekara also cites *Hairston*, in which, again, this Court determined the domicile of a deceased person. *Hairston*, 27 Miss. at 716. The decedent was domiciled in Virginia

⁵The decedent had applied for a passport and had listed his Mississippi address as his permanent residence. *Id.* at 824.

but bought land in Mississippi in 1836. *Id.* at 717. Although the deceased had frequented Mississippi, he had not brought his family there and had “kept up his establishment in the State of Virginia.” *Id.* at 718. In 1841, after “unpleasant relations sprung up between himself and [his wife],” the decedent had left Virginia and visited Europe and then had returned to Mississippi the following year. *Id.* From 1842 to 1852, the decedent remained in Mississippi.

Id. The *Hairston* Court explained:

“that is properly the domicil of a person where he has his true, fixed, permanent home and principal establishments, and to which whenever he is absent, he has the intention of returning.” This is perhaps the most comprehensive and correct definition of the term which could be given. *Two things must concur*, the same authority, to constitute domicil: “first, residence; and secondly, the intention of making it the home of the party. *There must be the fact and the intent.*”

Id. at 718–19 (emphasis added) (citations omitted).

¶33. The Court continued, stating,

“the declarations of the party himself, where he can have no object or inducement to falsify the truth or to deceive those to whom such declarations are made, are the best evidence of his intention to make his actual residence his permanent residence also.” . . . But where acts, although unaccompanied by declarations, concur with long continued residence or habitancy, evincing an intention of permanent residence, it is manifest that they furnish as satisfactory evidence of that intention as the express declarations of the party to that effect.

Id. at 719-20 (citation omitted). This Court wrote that, when determining domicile, “[t]he place where a man carries on his business or professional occupation, and has a home or permanent residence, is his domicil.” *Id.* at 719. It found probative the decedent’s “declaration that he expected to live and die at his residence in Lowndes county, his

continued residence for ten years at a place where a large part of his property was situated, and finally, the exercise of the rights of a citizen.” *Id.* at 721. Thus, to determine the decedent’s intent, the *Hairston* Court also looked to the decedent’s past actions and statements at the time he had left Virginia and through to his death to determine his intent. *Id.* at 720-21.

¶34. In contrast, the *Hale* Court, quoting *Stubbs*, found important and critical to its analysis the potential candidate’s declarations regarding his intent to change his domicile. *Hale*, 168 So. 3d at 952-53. There, the Court stated that, “[a]s a domicil[e] may be acquired by a longer or shorter residence, depending upon the circumstances of the case, its true basis and foundation must be the intention, the *quo animo* of evidence.” *Id.* at 952 (internal quotation mark omitted) (quoting *Hairston*, 27 Miss. at 719).

¶35. Although the declarations of the candidate are “most important[,]” the declarations “must be accompanied by evidence of . . . actual living arrangements and activities in [the state.]” *Meredith*, 340 So. 3d at 325 (citations omitted). The residency requirement “is not satisfied with a simple declaration that one intends to be a resident of a particular county when the overwhelming proof shows that he actually resides elsewhere. It is not enough that [a candidate] considers himself an official resident of [the state]. He must actually reside there permanently.” *Young v. Stevens*, 968 So. 2d 1260, 1264 (Miss. 2007).

¶36. Gunasekara argues that, “[t]o the extent the trial court even accounted for [her] testimony concerning her intent, it certainly did not give it adequate weight as required under

this Court’s precedent for a proper domicile analysis.” If this Court accepted Gunasekara’s argument, however, a candidate’s present declaration regarding her past intentions would determine domicile. Instead, this Court’s precedent shows that, although a present declaration is probative in the analysis, in order to determine domicile, all evidence must be considered, including actions and declarations at the time of the transition between residences.

¶37. Here, in its final judgment, the trial court acknowledged that the residency requirement for citizenship is based on domicile and found that Gunasekara had established her “residency and citizenship in [D.C.] at some point prior to November 7, 2018.”⁶ The trial court also acknowledged that, in 2018, Gunasekara had determined that she would relocate to Mississippi. It then looked to Gunasekara’s exercise of her right to vote in D.C. the day before the election, along with the “plethora of evidence supporting [Gunasekara’s] citizenship in [D.C.] on November 7, 2018” to determine that she had not abandoned her domicile before that date. The trial court properly considered all factors in its analysis. Therefore, the trial court did not use an incorrect legal standard to determine Gunasekara’s

⁶In its final judgment, the trial court stated that “in order for the candidate to meet the five year citizenship requirement, the candidate must have been a resident of Mississippi on November 7, 2018” Gunasekara takes issue with the trial court’s use of the term “resident” or “residency” in its opinion. Gunasekara contends that the proper analysis was whether she was domiciled in D.C. Yet, in its analysis, the trial court cited the standard for domicile and stated that residence was based on domicile. It is clear that the trial court used domicile as the appropriate standard and chose the synonymous terms “resident” or “residency” to discuss in its opinion.

citizenship.⁷

B. Evidence of Domicile

¶38. Gunasekara next asserts that the trial court either overlooked or did not give adequate weight to the evidence between August 2018, when she agreed to purchase the Decatur house, and January 2019, when she registered to vote in Mississippi. Gunasekara points to her testimony that the Decatur house needed significant work, that she began to work with a contractor in September 2018 to complete the work, that the work began in October 2018 and continued until June 2019, and that she began commuting between Mississippi and D.C. in October 2018. She argues that these act clearly establish her intent to abandon D.C. and remain in Mississippi indefinitely.

¶39. Barton argues that the test for domicile requires that a candidate must have had an actual, physical residence in Mississippi. He contends that in order for a change of domicile to be effective, the candidate must acquire a new residence and then actually move. His contention is that Gunasekara did not have a *bona fide* residence in Mississippi until June

⁷Gunasekara cites *Hale* and contends that she was not required to sell her D.C. property or to cease using the property in order to establish her domicile in Mississippi. In *Hale*, Bill Stone, a potential candidate for the Mississippi Senate, lived in Ashland, Mississippi, for more than twenty years, where he owned a home. *Hale*, 168 So. 3d at 948. After significant redistricting, Stone decided to move to Holly Springs and began renting a house there. *Id.* Stone did not sell his Ashland house and planned on using it as a rental property. *Id.* at 949. Even so, this Court found that Stone had established his domicile in Holly Springs. *Id.* at 955. We agree that Gunasekara was not required to sell her D.C. home in order to establish a new domicile. The trial judge, however, did not find otherwise. Therefore, this argument lends no support to Gunasekara's contention that the trial judge applied the wrong legal standard.

2019, when renovations on the Decatur house were finished, and Gunasekara moved her family and belongings into the house.

¶40. This Court recently discussed the requirements for domicile, stating:

“A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with the intent to remain there, and the old must be abandoned without intent to return thereto.” “[T]he exercise of political rights, admissions, declarations, the acts of purchasing a home and long-continued residency are circumstances indicative of his intention to abandon his domicile of origin and to establish a new domicile.”

Meredith, 340 So. 3d at 324-25 (alteration in original) (citations omitted). This Court has also held that

The determination of a person’s “permanent home and principal establishment” *turns on actual proof of a person’s living arrangements*. It is not satisfied with a *simple declaration* that one intends to be a resident of a particular county when the overwhelming proof shows that he actually resides elsewhere. It is not enough that [the candidate] considers himself an official resident of [the state]. He must actually reside there permanently.

Bryant v. Westbrooks, 99 So. 3d 128, 133 (Miss. 2012) (first alteration in original) (quoting *Young*, 968 So. 2d at 1264). Therefore, Barton correctly argues that removal to the new locality and actual residency is required to change a person’s domicile. Yet owning and moving into a house is not required. Gunasekara could have established removal to Mississippi and actual residency while living in her parents’ house before the Decatur house was finished. As the trial court stated, “[i]t is clear that [Gunasekara] did, in fact, relocate and change her citizenship to the State of Mississippi at some point shortly after November 7, 2018.” The trial court found, however, that Gunasekara had not changed her citizenship on

or before November 7, 2018, the date on which she was required to have been a citizen of Mississippi in order to qualify as a Public Service Commission candidate.

¶41. The record shows that on November 7, 2018, Gunasekara owned a house in D.C., where her husband and children resided, and on which she received a homestead deduction. Gunasekara paid income taxes in D.C. She had a full time job in D.C., had a D.C. driver's license, and was registered to vote in D.C. Gunasekara renewed her car tag in D.C. at the end of October 2018. Moreover, the day before Gunasekara was required to have been a citizen of Mississippi, she exercised her right to vote in D.C. Although Gunasekara testified that she had started working with a contractor to make renovations to the Decatur house and that she began commuting between Mississippi and D.C., the trial court found that a “plethora” of evidence supported its determination that Gunasekara's domicile remained in D.C. on November 7, 2018. As the *Hale* Court stated, “[n]ot one of the facts upon which [the candidate] relies . . . renders the [trial court's] decision to have been manifestly erroneous.” *Hale*, 168 So. 3d at 953.

C. Voting

¶42. Gunasekara next argues that the trial court improperly treated her vote in the D.C. election on November 6 as a determinative factor in its analysis. Gunasekara concedes that the exercise of political rights is a factor in determining domicile; however, she argues that voting is not more determinative than any other factor.

¶43. Gunasekara again points to *Hale*, in which Stone, the candidate, had registered to vote

in Marshall County approximately five months after he was required to have established residency in that county. *Hale*, 168 So. 3d at 949. This Court affirmed the decision of the trial court that Stone had established domicile in Marshall County in 2013. *Id.* at 956. Gunasekara argues that the trial court departed from this Court’s precedent. Yet, unlike in this case, in *Hale*, no evidence was presented that Stone had chosen to exercise his right to vote in Benton County after he began renting a house in Marshall County. *Id.* at 949.

¶44. Here, the trial court did not consider Gunasekara’s vote as the sole determinative factor in its analysis. It found that, along with the plethora of evidence presented, the exercise of her right to vote was a clear expression of her declaration of citizenship. As Gunasekara concedes, this Court has repeatedly held that voting is a factor in determining domicile. *See Hale*, 168 So. 3d at 952. Therefore, the trial court did not err by factoring into its decision Gunasekara’s decision to vote in D.C. the day before she was required to have been a citizen of Mississippi.

¶45. In summary, we find that the trial court applied the appropriate legal standard in its analysis and that its findings of fact contained no manifest error. Moreover, the trial court’s findings are supported by the evidence.

II. Whether the trial court’s determination that Gunasekara did not meet the citizenship requirement conflicts with this Court’s decision in *Hale v. State Democratic Executive Committee*.

¶46. Gunasekara argues that the *Hale* case is precedential and that an adherence to *Hale* requires reversal. As previously discussed, in *Hale*, Stone had been a senator and long-time

resident of Benton County. *Hale*, 168 So. 3d at 948. After significant redistricting, Stone decided to seek a November 2015 Democratic Party nomination for a newly created Senate district, which encompassed parts of Marshall County. *Id.* In order to qualify, Stone was required to have been domiciled in Marshall County for two years prior to the election. *Id.* So, in October 2013, Stone began to rent a house in Holly Springs, Marshall County, from his brother. *Id.* at 949. The state senate was in session in Jackson for the majority of the time Stone resided at the rental house. *Id.*

¶47. This Court found that Stone had “provided an abundance of evidence” to show that he had changed his domicile to Marshall County. *Id.* at 951. It recounted that after Stone had begun renting the Holly Springs house in October 2013, he had immediately contacted the utility department to obtain electricity. *Id.* The Court discussed that he had notified the state senate comptroller of his change of address on October 27, 2013, and that the comptroller had sent an email to every member of the senate to inform them of the change. *Id.* The Court stated, “[s]ignificantly, he canceled his homestead exemption for his Ashland residence in Benton County, did not claim homestead exemption anywhere in 2014 while he was renting the house . . . in Marshall County, and claimed homestead exemption in 2015” for the home that he purchased in Holly Springs. *Id.*

¶48. The Court noted that Stone had registered car tags in Marshall County when they came due in February 2014 and September 2014 and that he registered to vote in Marshall County in April 2014. *Id.* He changed his address on his income tax filings in 2014 and

adjusted his mileage deduction. *Id.* The Court wrote that Stone had “altered major aspects of his life, including the church he attended, to Marshall County.” *Id.* Stone had also resigned as an Ashland volunteer firefighter and allowed his Ashland Civic Club membership to lapse. *Id.* at 952. The Court found probative that Stone had bought a house in Holly Springs in July 2014. *Id.* Lastly, the Court cited Stone’s testimony and that he had stated “under oath and without contradiction that he moved to Marshall County with the intent to remain there indefinitely.” *Id.*

¶49. The *Hale* Court noted that

“[T]here is a strong but rebuttable presumption of residency in the county where the homestead exemption is filed.”

....

Although canceling one’s homestead exemption does not give rise to a rebuttable presumption regarding his or her domicile, it can provide relevant circumstantial evidence of a person’s intention to establish a new domicile, which should be considered along with the other relevant facts and circumstances of the case.

Id. (citation omitted). Therefore, the Court found that “[f]rom the point in time at which he filed for homestead exemption in Marshall County, Stone enjoyed a rebuttable presumption that his domicile was in Marshall County.” *Id.* (citing *Hinds Cnty. Election Comm’n v. Brinston*, 671 So. 2d 667, 669 (Miss. 1996)).

¶50. The Court also wrote about the importance of one’s intent in establishing domicile.

Id. It stated:

This Court has held that “intention may be established by physical presence,

declaration of intent, and all relevant facts and circumstances, and in this connection it has been held that the *declarations of the party himself are most important.*” Our precedent dictates that Stone’s statements of intention regarding his domicile are critical to our analysis, and thus we are bound to consider that Stone testified under oath that he intended to abandon his home in Ashland for the purpose of establishing a residence in Holly Springs and remaining there indefinitely.

Id. at 952-53 (citations omitted). This Court further discussed that the “exercise of political rights, admissions, declarations, the acts of purchasing a home and long-continued residency are circumstances indicative of his intention to abandon his domicile of origin and to establish a new domicile.” *Id.* at 953 (internal quotation mark omitted) (quoting *Johnson v. Johnson*, 191 So. 2d 840, 842 (Miss. 1996)). Thus, the Court again emphasized that all factors are taken into consideration when determining domicile. *Id.*

¶51. Gunasekara argues that, like Stone, she continued to maintain her former residence but not as her permanent home. She again points out that Stone also was registered to vote in his former county for a brief time during the relevant period. Yet, as Barton argues, *Hale* can be distinguished from the instant case. In *Hale*, minimal evidence was cited regarding Stone’s connection with his Benton County house after he began renting a house in Marshall County. Here, by contrast, Gunasekara spent the majority of her time at her D.C. residence. While Stone remained registered to vote in Benton County for a brief time after November 2018, Gunasekara actually exercised her right to vote in D.C. on November 6, 2018.

¶52. Unlike Stone, when Gunasekara’s car tag became due on October 23, 2018, she registered her tag in D.C. Gunasekara also received a homestead deduction on her D.C. house

in 2018, 2019, 2020, and 2021. While we acknowledge Gunasekara’s testimony that the homestead deduction was received by inadvertent mistake, the record indicates that no efforts were undertaken to correct this inadvertent mistake until 2023, after the property was sold. When the facts are taken as a whole, Gunasekara was not entitled to the same rebuttable presumption that she had changed her domicile.

¶53. “It is the candidate’s burden to prove that she meets the residency requirement.” *Westbrooks*, 99 So. 3d at 133 (citing *Edwards v. Stevens*, 963 So. 2d 1108, 1110 (Miss. 2007)). Taking all factors into consideration, the trial court did not commit manifest error by holding that Gunasekara’s domicile remained in D.C. until some point after November 7, 2018. Accordingly, we affirm the decision of the trial court.

III. Whether the trial court’s application of the five-year citizenship requirement violates the Fourteenth Amendment of the United States Constitution.

¶54. Lastly, Gunasekara argues that the trial court’s application of the five-year citizenship requirement in this case violates the Fourteenth Amendment. Gunasekara states that she is not challenging the constitutionality of the five-year residency requirement as a whole, but only “[w]hether the trial court’s application of the five-year durational-citizenship requirement in this case violates the Fourteenth Amendment.”

¶55. Under Mississippi Rule of Civil Procedure 24(d), when the constitutionality of a statute is challenged, the Attorney General of the State of Mississippi must be notified “within such time as to afford him an opportunity to intervene and argue the question of constitutionality.” M.R.C.P. 24(d). Mississippi Rule of Civil Procedure 81(a)(4), however,

provides that the Mississippi Rules of Civil Procedure “apply to all civil proceedings but are subject to limited applicability in the following actions which are generally governed by statutory procedures . . . (4) proceedings pertaining to election contests” M.R.C.P. 81(a)(4). Even so, this Court previously has declined to address the constitutionality of a statute in an election contest pursuant to Rule 24(d). See *James v. Westbrooks*, 275 So. 3d 62, 66 (Miss. 2019).

¶56. Although Gunasekara argues that she is attacking the constitutionality of the statute as it was applied in this case, Gunasekara’s arguments attack the five-year residency requirement as a whole. Resolution of this issue is of broad public importance. Accordingly, as a matter of public policy, the attorney general should be given an opportunity to argue the question of constitutionality. Therefore, we decline to address the issue at this time.

CONCLUSION

¶57. The trial court did not manifestly err by finding that Gunasekara was unable to meet the five-year residency requirement in order to qualify for the office of Public Service Commission. Therefore, we affirm the judgment of the Hinds County Circuit Court.

¶58. Given the necessity for an expedited and final disposition of the instant appeal, under this Court’s authority to suspend the rules pursuant to Mississippi Rule of Appellate Procedure 2(c), the Court finds that no motion for rehearing will be allowed and that this opinion shall be deemed final in all respects. The Court finds that the mandate in this matter should issue immediately.

¶59. The Clerk of this Court is directed to send copies of this opinion to the Mississippi Republican Executive Committee and to the Secretary of State.

¶60. **AFFIRMED.**

**RANDOLPH, C.J., KITCHENS, P.J., BEAM, ISHEE AND GRIFFIS, JJ.,
CONCUR. COLEMAN, MAXWELL AND CHAMBERLIN, JJ., NOT
PARTICIPATING.**

IN THE CIRCUIT COURT OF HINDS COUNTY, MISSISSIPPI

MATTHEW BARTON

PETITIONER

VS.

CAUSE NO. 23-129

**MISSISSIPPI REPUBLICAN EXECUTIVE
COMMITTEE, FRANK BORDEAUX, CHAIRMAN
AND AMANDA GUNASEKARA**

RESPONDENTS

ORDER

THIS DAY, there came on to be heard and was heard the Petition to Contest Candidate Qualifications and the Court having considered the evidence finds, as follows:

(1)

That the Petitioner filed a Petition to Contest Candidate Qualifications on February 24, 2023 seeking a judicial review of the candidacy of Amanda Gunasekara for the position of Public Service Commission for the Northern District of Mississippi.

(2)

That pursuant to Miss. Code §23-15-961, the Mississippi Supreme Court appointed the undersigned as a Special Judge to hear the case on an expedited basis and that a hearing was conducted at the Hinds County Courthouse in Jackson, Mississippi on March 22, 2023.

(3)

That Miss. Code §77-1-1 provides that Public Service Commissioners “shall each possess the qualifications prescribed for the Secretary of State.” Article 5, §133 of the Mississippi Constitution includes a requirement that the candidate must be “a citizen of the state five years next preceding the day of his election. . .”

(4)

That Article 3, §8 defines a citizen as someone who is a “resident in this state.” Further, that “Residency under Mississippi election law is based on a person’s domicile.” *Hall v. State*, 168 So.3d 946, 951 (Miss. 2015). Therefore, in order for the candidate to meet the five year citizenship requirement, the candidate must have been a resident of Mississippi on November 7, 2018, the date that is at least five years prior to the November, 2023 general election.

(5)

The testimony of the Respondent and other documentary evidence established that she moved to the District of Columbia in 2010, bought a house there in 2014, registered to vote, obtained a driver’s license and established a homestead. Therefore, the court finds that the Respondent established her residency and citizenship in the District of Columbia at some point prior to November 7, 2018.

(6)

The evidence is clear that in 2018, the Respondent and her family determined that they would relocated to Mississippi and that in August, 2018 the Respondent and her parents acquired a house in Decatur, Mississippi with the intention of returning to Mississippi. Further, that by the spring of 2019, the Respondent had resigned her job in the District of Columbia, registered to vote in Mississippi and had become a Mississippi resident.

(7)

That the core question before the court is when did the Respondent abandon her residency in the District of Columbia and become a resident of Mississippi. Specifically, was the Respondent a resident of Mississippi on November 7, 2018 when her five year period of residency began?

In Mississippi, residence and domicile are synonymous for election purposes. *Hinds County Election Comm'n v. Brinston*, 671 So.2d 667, 668 (Miss.1996). A person's domicile in election matters has been defined as the place: where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning . . . A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto.

Smith v. Deere, 195 Miss. 502, 505-06, 16 So.2d 33, 34 (1943)(internal citations omitted).

As cited in *Garner v. Democratic Executive Committee*, 956 So.2d. 906, 909 (Miss. 2007)

(8)

That evidence clearly shows that despite her plan to return to Mississippi, the Respondent continued to maintain her residency in the District of Columbia including exercising her right to vote there on November 6, 2018. The Court finds that this vote clearly expressed her declaration of her continued citizenship in the District of Columbia at that time.

(9)

That there is nothing in the evidence that indicates any change in that intent in the following 24-hour period that would have been necessary in order to establish citizenship in the State of Mississippi on November 7, 2018. To the contrary, the evidence clearly established that the Respondent was, in fact, a resident citizen of the District of Columbia on that day.

(10)

There is a plethora of evidence supporting the Respondent's citizenship in the District of Columbia on November 7, 2018. It is clear that the Respondent did, in fact, relocate and change her citizenship to the State of Mississippi at some point shortly after November 7, 2018.

However, that had not occurred on November 7, 2018. Even if this Court found all of that

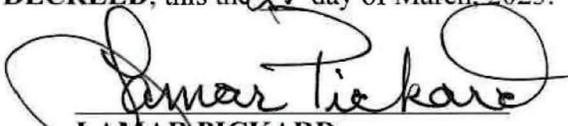
evidence successfully rebutted, which the Court expressly does not do, when all of the evidence is considered as a whole, it is clear and the Court so finds, that the Respondent was a citizen of the District of Columbia on November 7, 2018.

(11)

That the Respondent does not meet the minimum qualifications under the Mississippi Constitution and Mississippi Code to be a candidate for the Mississippi Public Service Commission for the Northern District of Mississippi for the November, 2023 election.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Amanda Gunasekara is hereby disqualified as a candidate in the Republican primary for Public Service Commission for the Northern District of Mississippi. Further, that the Clerk of the Court shall forward a certified copy of this order to the Mississippi Secretary of State.

SO, ORDERED, ADJUDGED AND DECREED, this the ^{27th} day of March, 2023.


LAMAR PICKARD
SPECIAL CIRCUIT JUDGE

FormanWatkins

Forman Watkins & Krutz LLP

Spencer Ritchie
Spencer.Ritchie@formanwatkins.com
Direct Dial: 601-960-3172

April 19, 2023

Hon. Lynn Fitch
Mississippi Attorney General
c/o Justin Matheny
Assistant Solicitor General
Post Office Box 220
Jackson, MS 39205-0220
Justin.Matheny@ago.ms.gov

Re: *Amanda M. Gunasekara vs. Matthew Barton*, No. 2023-EC-00377-SCT

Dear Attorney General Fitch:

I represent the appellant Amanda Gunasekara in the above-referenced election contest now pending before the Mississippi Supreme Court. Pursuant to Mississippi Rule of Civil Procedure 24(d), this letter is to inform you that one issue raised in the appeal is whether the manner in which the trial court applied a Mississippi statute in the contest violated the U.S. Constitution. Although the Mississippi Rules of Civil Procedure expressly do not apply to election contests (Miss. R. Civ. P. 81(4)), and the constitutional challenge is to the *application* of the statute and not statute itself, notice is nevertheless hereby given as a matter of courtesy.

In particular, the challenge asserted in the appeal is whether the trial court's application of Miss. Code Ann. § 77-1-1, and the statute's incorporated durational-citizenship requirement, to conclude Mrs. Gunasekara was not qualified to be a candidate for Mississippi Public Service Commissioner violated the Fourteenth Amendment of the U.S. Constitution. A copy of Mrs. Gunasekara's opening brief before the Mississippi Supreme Court, which was filed on April 13, 2023, is attached to this letter. You will find the pertinent argument on pages 15-19 of the brief.

Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,

/s/ Spencer M. Ritchie

Spencer M. Ritchie

Counsel for Appellant Amanda M. Gunasekara

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**AMANDA M. GUNASEKARA****APPELLANT****VS.****CAUSE NO.: 2023-EC-00377-SCT****MATTHEW BARTON****APPELLEE**

From the Circuit Court of Hinds County, Mississippi
Honorable Lamar Pickard, Special Judge
(No. 25CI1:23-cv-00129)

Appeal — Brief for Appellant Amanda M. Gunasekara

Spencer M. Ritchie (MSB #103636)
FORMAN WATKINS & KRUTZ LLP
210 East Capitol Street, Suite 2200
P.O. Box 22608
Jackson, Mississippi 39201
(601) 960-8600
Spencer.Ritchie@formanwatkins.com

Counsel for Appellant Amanda M. Gunasekara

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal:

Amanda McGrevey Gunasekara – *Appellant*

Spencer M. Ritchie – *Counsel for Appellant*

Matthew Barton – *Appellee*

B. Sean Akins – *Counsel for Appellee*

State Executive Committee of the Mississippi Republican Party – *Respondent*

Michael B. Wallace – *Counsel for the State Executive Committee of the Mississippi Republican Party*

Charles E. Cowan – *Counsel for the State Executive Committee of the Mississippi Republican Party*

Frank Bordeaux – *Respondent*

SO CERTIFIED this 13th day of April, 2023.

BY: /s/ Spencer M. Ritchie
Spencer M. Ritchie
Counsel for Appellant

TABLE OF CONTENTS

Certificate of Interested Persons	i
Table of Authorities	iii
Statement of Issues	1
Statement of Assignment	1
Statement of the Case.....	1
Summary of the Argument.....	8
Argument	8
Conclusion	20
Certificate of Service	20

TABLE OF AUTHORITIES

Cases:

Aetna Cas. & Sur. Co. v. Williams,
623 So. 2d 1005 (Miss. 1993).....9, 13

Att’y Gen. of New York v. Soto-Lopez,
476 U.S. 898 (1986).....16

Bd. of Comm’rs of Sarasota Cnty. v. Gustafson,
616 So. 2d 1165 (Fla. Dist. Ct. App. 1993)17

Bd. of Sup’rs of Elections of Prince George’s Cty. v. Goodsell,
396 A.2d 1033 (Md. 1979)16

Bruno v. Civ. Serv. Comm’n of Bridgeport,
472 A.2d 328 (Conn. 1984)16

Bullock v. Carter,
405 U.S. 134 (1972).....18

Cowan v. City of Aspen,
509 P.2d 1269 (Colo. 1973).....16

Dunn v. Blumstein,
405 U.S. 330 (1972).....15, 16, 17, 18

Ferguson v. Williams,
343 F. Supp. 654 (N.D. Miss. 1972).....15

Glenn v. Powell,
149 So. 3d 480 (Miss. 2014).....9

Hairston v. Hairston,
27 Miss. 704 (1854)10

Hale v. State Democratic Exec. Comm.,
168 So. 3d 946 (Miss. 2015).....1, 8, 11, 12, 13, 14, 15

Hinds County Election Comm’n v. Brinston,
671 So. 2d 667 (Miss. 1996).....9

Howlett v. Salish & Kootenai Tribes,
529 F.2d 233 (9th Cir. 1976)16

<i>Johnson v. Johnson</i> , 191 So. 2d 840 (Miss. 1966).....	12
<i>Lentini v. City of Kenner</i> , 479 F. Supp. 966 (E.D. La. 1979).....	18
<i>McLeod v. Allstate Ins., Co.</i> , 789 So. 2d 806 (Miss. 2001).....	9
<i>Mem'l Hosp. v. Maricopa Cnty</i> , 415 U.S. 250 (1974).....	15
<i>Meredith v. Clarksdale Democratic Exec. Comm.</i> , 340 So. 3d 315 (Miss. 2022).....	9
<i>Robertson v. Bartels</i> , 890 F. Supp. 2d 519 (D.N.J. 2012).....	16
<i>Saenz v. Roe</i> , 526 U.S. 489 (1999).....	15
<i>Shapiro v. Thompson</i> , 394 U.S. 618 (1969).....	15-16
<i>Simmons v. Town of Goodman</i> , 346 So. 3d 847 (Miss. 2022).....	9
<i>Stubbs v. Stubbs</i> , 211 So. 2d 821 (Miss. 1968).....	10
<i>Sununu v. Stark</i> , 383 F. Supp. 1287 (D.N.H. 1974).....	19
<i>Thompson v. Mellon</i> , 507 P.2d 628 (Cal. 1973).....	16
<i>Tenn. Wine & Spirits Retailers Ass'n v. Thomas</i> , 139 S. Ct. 2449 (2019).....	16
<i>Turner v. Fouche</i> , 396 U.S. 346 (1970).....	19
<i>Wellford v. Battaglia</i> , 485 F.2d 1151 (3d Cir. 1973).....	16

Williams v. Rhodes,
393 U.S. 23 (1968).....18

U.S. Constitution:

U.S. Const. Art. 1 § 8.....17

Mississippi Constitution:

Miss. Const. Art. 3, § 8.....9

Miss. Const. Art. 5, § 1338, 9

Mississippi Code:

Miss. Code Ann. § 23-15-961.....1, 5, 6, 8

Miss. Code Ann. § 77-1-1.....8

Mississippi Rules of Procedure:

Mississippi Rule of Appellate Procedure 16(b)(5)1

STATEMENT OF THE ISSUES

1. Whether the trial court applied an erroneous legal standard for citizenship in determining whether the Appellant met the five-year durational-citizenship requirement to run for Mississippi Public Service Commissioner.

2. Whether the trial court's determination that the Appellant did not meet the five-year durational-citizenship requirement to run for Mississippi Public Service Commissioner conflicts with this Court's 2015 decision in *Hale v. State Democratic Exec. Comm.*

3. Whether the trial court's application of the five-year durational-citizenship requirement in this case violates the Fourteenth Amendment of the U.S. Constitution.

STATEMENT OF ASSIGNMENT

Pursuant to Mississippi Rule of Appellate Procedure 16(b)(5), as an election contest, jurisdiction of this matter rests exclusively with the Mississippi Supreme Court. Further, the statute under which this appeal is brought, Miss. Code Ann. § 23-15-961(6), requires assignment to the Mississippi Supreme Court.

STATEMENT OF THE CASE

This contest concerns Amanda M. Gunasekara's qualifications to be a candidate for Public Service Commissioner in Mississippi. In particular, it concerns whether Mrs. Gunasekara meets the five-year citizenship requirement for that office. The Appellee Matthew Barton challenged Mrs. Gunasekara's candidacy on grounds she did not meet that requirement. Following a hearing on the matter, the State Executive Committee of the Mississippi Republican Party found that Mrs. Gunasekara met the durational-citizenship requirement. Mr. Barton filed a petition for judicial review of the State Executive Committee's decision and a Special Judge appointed to hear the

matter found Mrs. Gunasekara did not meet the requirement. Mrs. Gunasekara’s appeal of the Special Judge’s ruling is now before this Court.

A. Factual Background

Mrs. Gunasekara is a seventh-generation Mississippian. [Clerk Papers (“CP”) 71, 74]¹. She attended middle school, high school, college, and law school in the State, living in both Decatur and Oxford, Mississippi. [CP 71, 74, 160].

After graduating from law school, in 2010, Mrs. Gunasekara took a position working for a member of the U.S. House of Representatives in Washington, D.C. [CP 71, 74, 161-163]. That job led to positions in the U.S. Senate and eventually with the United States Environmental Protection Agency as a political appointee under President Donald J. Trump. [CP 71, 162-163]. Although she never considered it her home or staying there permanently, Mrs. Gunasekara lived in Washington D.C. with no definite plans to leave from 2010 until the early part of 2018. [CP 71, 164, 190, 232].

In early 2018, Mrs. Gunasekara and her husband decided to relocate back to Mississippi permanently and began looking for property and a home in Mississippi for that purpose. [CP-71, 74, 165-166, 189-190]. In August of 2018, Mrs. Gunasekara learned of a home and property being sold next to her parents’ home and property in Decatur, Mississippi. [CP 71, 74, 166]. Mrs. Gunasekara and her parents agreed for her parents to submit a bid on the property with the express understanding that Mrs. Gunasekara and her husband and their two children would live in the house on the property and take title to it once they had adequate financing. [CP 71, 74, 166, 196-197, 202]. The bid was successful, and Mrs. Gunasekara and her parents took possession of the property that same month, *i.e.*, in August of 2018. [*Id.*]. Mrs. Gunasekara testified that when the

¹ The documents at CP 71-73 and CP 74-75 are affidavits submitted by Mrs. Gunasekara and her parents, Mike and Ada McGrevey, that were admitted into evidence in the trial court as part of Exhibit P-1. That Exhibit as transmitted to the Supreme Court is not legible; therefore, citations herein to that document are to where it appears in the Clerk Papers.

Mississippi property was acquired and they took possession of it, she had no intentions or thoughts whatsoever of remaining in D.C. [CP 171, 197, 201-202].

In September of 2018, Mrs. Gunasekara worked with local contractors to evaluate the property and make plans for necessary and extensive renovations and improvements to the property and home. [CP 71, 167]. Dirt work and demolition of dilapidated buildings began in October of 2018. [CP 71, 74, 167]. In October and November of 2018, Mrs. Gunasekara met with her contractor to make final plans for interior renovations to the home and that work began in January of 2019 and was completed in June of 2019. [CP 71-72, 167].

Starting in October of 2018, Mrs. Gunasekara began commuting back and forth between Mississippi and D.C. to monitor progress on the work to the new property and to lay the groundwork for her family's transition back to Mississippi once the home was ready for them. [CP 71-72, 74-75, 168-169, 202-203, 206-207, 230]. When Mrs. Gunasekara was in Mississippi during this time frame, and until work on the property was complete in June of 2019, she lived in her childhood bedroom in her parents' home adjacent to her new property. [*Id.*].

On November 6, 2018, months after she (1) decided to abandon D.C. as her primary residence in favor of Mississippi, (2) agreed to purchase a home in Mississippi for that purpose, and (3) had begun living in Mississippi part-time until her new home was ready, Mrs. Gunasekara cast a vote for a friend running in a D.C. municipal election that year. [CP 72, 177-178]. Mrs. Gunasekara testified it was her understanding that anyone who had a mere residence in D.C., which she did, could vote in D.C. elections as long as they were not registered to vote someplace else, which at that point, she was not. [CP 54].

In December of 2018, Mrs. Gunasekara added her daughter to the waitlist for a daycare center in Decatur and took steps to register her son at the local elementary school. [CP 72, 167-168, 230].

In January of 2019, Mrs. Gunasekara registered to vote in Mississippi. [CP 72, 168, 230-231]. She reacquired a Mississippi drivers license at the same time. [CP 72, 168, 230]. In February of 2019, Mrs. Gunasekara established an office in Jackson, Mississippi for a non-profit corporation she started and that was incorporated in Mississippi that same month. [CP 72, 168-169, 205-206, 231].

In June of 2019, once the work on their new home was complete, Mrs. Gunasekara moved her family and their belongings into the new home. [CP 72, 170, 231-232]. In August of 2019, Mrs. Gunasekara's children began attending school in Mississippi, and they have done so ever since. [CP 72, 171, 231].

Even after they left D.C., Mrs. Gunasekara and her husband kept the house she purchased there in 2014, which is where they had been living before deciding to relocate permanently to Mississippi. [CP 72]. After returning to Mississippi, they used the D.C. house as a rental property and for when they needed a place to stay while in D.C. on work trips. [CP 72, 174-175]. They eventually sold the property in 2021. [CP 174-175].

In March of 2020, long after she permanently relocated to Mississippi, Mrs. Gunasekara was asked to return to the U.S. Environmental Protection Agency to replace the then-outgoing Chief of Staff. [CP 72, 172]. Because she would be commuting to Washington D.C. from Mississippi on a weekly basis for the job, Mrs. Gunasekara committed to holding the position for a maximum of one year. [CP 72, 172-173]. While she held the job, Mrs. Gunasekara and her family's primary residence remained in Mississippi, and she flew home to Mississippi on a weekly

basis. [CP 72, 173-174]. When she was in D.C. for the position, she stayed in the D.C. house they kept as a rental property. [CP 72, 174-175]. Ultimately, Mrs. Gunasekara's tenure as EPA Chief of Staff lasted from March of 2020 until January of 2021. [CP 72, 173].

In March of 2021, Mrs. Gunasekara and her husband purchased a home in Oxford, Mississippi, and that is where they have lived since. [CP 72, 171-172].

On January 5, 2023, Mrs. Gunasekara filed qualifying papers to run in the Republican primary election for Public Service Commissioner, Northern District. Two other individuals qualified to run in the election: State Representative Chris Brown from Monroe County; and City of Tupelo employee Tanner Newman. Notably, neither of those individuals challenged Mrs. Gunasekara's qualifications. The primary election date is August 8, 2023, and the general election date is November 7, 2023.

B. Procedural Background

Pursuant to Miss. Code Ann. § 23-15-961(1), on February 9, 2023, Mr. Barton filed with the State Executive Committee of the Mississippi Republican Party a petition contesting Mrs. Gunasekara's qualifications to be a candidate for Public Service Commissioner.² [CP 8-22]. Mrs. Gunasekara submitted a response to the petition with the State Executive Committee on February 15, 2023. [CP 68-75].

² Mr. Barton is a candidate for District Attorney in DeSoto County. Throughout the course of his challenge to Mrs. Gunasekara's qualifications to run for Public Service Commissioner, Mr. Barton repeatedly has drawn attention to his opponent for District Attorney, the incumbent, having only recently moved to DeSoto County. Mr. Barton appears to have brought this challenge to Mrs. Gunasekara's candidacy in whole or in large part to attack his opponent and burnish his own electoral prospects. *See* CP 62-64 (Mrs. Gunasekara's response to Mr. Barton's petition for judicial review).

On February 16, 2023, the State Executive Committee conducted a hearing on the merits of Mr. Barton's challenge and heard evidence.³ During the hearing, consistent with Miss. Code Ann. § 23-15-961(2), Mr. Barton was given an unlimited amount of time to present his challenge and evidence, as was Mrs. Gunasekara in response. Numerous Committee Members from around the State traveled to Jackson to participate in the hearing, and they were given the opportunity to ask questions of both Mr. Barton about his challenge and of Mrs. Gunasekara about her qualifications, and several Committee members did so. Mississippi Republican Party General Counsel Mike Wallace instructed the Committee Members on the legal requirements for being qualified to run for Public Service Commissioner and asked questions of Mrs. Gunasekara as well. At the conclusion of the hearing, Committee Members were given the opportunity to speak to the Committee and voice any final questions or concerns they had. Committee members then cast secret ballots on whether to accept Mrs. Gunasekara's qualifications or reject them. Once voting ended, it was announced that the Committee had voted to accept Mrs. Gunasekara's qualifications.

On February 24, 2023, Mr. Barton filed a petition for judicial review of the State Executive Committee's decision in the Circuit Court of Hinds County, Mississippi, pursuant to Miss. Code Ann. § 23-15-961(4). [CP 5-24]. On February 27, 2023, Hon. Michael K. Randolph, Chief Justice of the Mississippi Supreme Court, issued an order appointing Hon. Lamar Pickard to preside over Mr. Barton's petition for judicial review. [CP 26-27]. Also on February 27, 2023, the trial court entered an order setting a hearing on Mr. Barton's petition for March 22, 2023. [CP 28]. On March 6, 2023, Mrs. Gunasekara filed a response to Mr. Barton's petition. [CP 62-75]. On March 7, 2023, the trial court signed an order permitting limited discovery. [CP 114-115]. On March 9, 2023, the

³ While there is no written transcript of the State Executive Committee's hearing, the hearing was recorded by video, and a copy of the video was submitted to the trial court by the Mississippi Republican Party along with the written record before the State Executive Committee. *See* Trial Docket Entry Nos. 18 & 19 and CP 83-110.

State Executive Committee filed with the trial court the record of the proceedings before the Committee when it heard and denied Mr. Barton’s challenge to Mrs. Gunasekara’s qualifications. [CP 83-110.]

On March 22, 2023, a hearing was conducted before the trial court. The bulk of the hearing consisted of Mrs. Gunasekara providing testimony. [CP 159-232]. Mr. Barton also offered brief testimony. [CP 235-239]. The record of proceedings before the State Executive Committee was admitted into evidence [Exhibit P-1], along with other documents [Exhibits P-2 – P-7, R-9].

On March 23, 2023, the trial court sent a letter to the parties informing them he had concluded Mrs. Gunasekara did not meet the pertinent citizenship requirement and therefore was not qualified to be placed on the Republican primary ballot. [CP 134-135]. On March 27, 2023, the trial court entered an order disqualifying Mrs. Gunasekara’s candidacy. [CP 141].

In the above-mentioned letter and order, the trial court emphasized Mrs. Gunasekara’s vote in the D.C. election on November 6, 2018, in concluding she was a citizen of D.C. as of that date, and reasoned that nothing occurred the following day, when the pertinent five-year period began, resulting in her citizenship changing. [*Id.*] The trial court ruled as such despite also finding it “clear” that earlier in 2018, Mrs. Gunasekara had decided to relocate to Mississippi and in August of 2018 agreed to purchase a home for that purpose. [CP 137 at ¶ 6]. The trial court also found it “clear” that “shortly after November 7, 2018,” several events occurred confirming Mrs. Gunasekara had in fact relocated to, and became a citizen of, Mississippi, such as registering to vote in Mississippi in January of 2019. [CP 137-138 at ¶¶ 6 & 10]. Thus, the trial court effectively found that but for a couple months at the beginning of the term, Mrs. Gunasekara met the five-year citizenship requirement.

On March 30, 2023, Mrs. Gunasekara filed a notice of appeal together with a bill of exceptions and \$300 cost bond, as required under Miss. Code Ann. § 23-15-961(6). [CP 121-140]. On April 3, 2023, the Honorable Leslie D. King, Presiding Justice, entered an order expediting preparation of the record and the briefing schedule. [CP 141].

SUMMARY OF THE ARGUMENT

The trial court applied an erroneous standard for determining whether Mrs. Gunasekara met the five-year durational-citizenship requirement to run for Mississippi Public Service Commissioner. The appropriate standard to determine citizenship is domicile, yet the trial court failed to apply that standard.

In concluding Mrs. Gunasekara was not qualified to run for Public Service Commissioner, the trial court failed to follow this Court’s 2015 decision in *Hale v. State Democratic Exec. Comm.*, a decision directly on point with the instant one. A faithful application of the *Hale* decision requires a finding that Mrs. Gunasekara is qualified to run for Public Service Commissioner.

The trial court’s application of the five-year durational citizenship to disqualify Mrs. Gunasekara’s candidacy under the facts of this case violates the Fourteenth Amendment to the U.S. Constitution. Fundamental rights are at issue, and the trial court’s ruling does not withstand strict scrutiny because disqualifying Mrs. Gunasekara’s candidacy does not serve legitimate interests.

LAW AND ARGUMENT

Pursuant to Miss. Code Ann. § 77-1-1, Public Service Commissioners “shall each possess the qualifications prescribed for the Secretary of State.” The qualifications prescribed by the Mississippi Constitution for the Secretary of State are, in pertinent part, that he or she must “be a citizen of the state five years next preceding the day of [his or her] election.” Miss. Const. Art. 5,

§ 133. The Mississippi Constitution declares that “[a]ll persons, resident in this State, citizens of the United States, are . . . citizens of the State of Mississippi.” Miss. Const. Art. 3, § 8. For election law purposes, and likely too for purposes of the above-quoted Constitutional provision, an individual is a resident of that place where they establish their domicile. *Hinds County Election Comm'n v. Brinston*, 671 So. 2d 667, 668 (Miss. 1996). *Domicile*, therefore, is the pertinent standard in the instant case.

While a person may have residences in multiple locations, he or she can be domiciled in, and therefore a citizen of, only one. *McLeod v. Allstate Ins., Co.*, 789 So. 2d 806, 810 (Miss. 2001). Domicile is that place of residence where someone has the “bona fide intention of remaining . . . , if not permanently, at least indefinitely.” *Simmons v. Town of Goodman*, 346 So. 3d 847, 851 (Miss. 2022). New domiciles are established when there is a “clear indication of intent to abandon the existing domicile and to establish another.” *Aetna Cas. & Sur. Co. v. Williams*, 623 So. 2d 1005, 1009 (Miss. 1993).

In election contests, questions of law are reviewed *de novo*. *Glenn v. Powell*, 149 So. 3d 480, 482 (Miss. 2014). Whether a candidate meets durational-citizenship requirements is a question of fact reviewed for manifest error, under which standard a trial court’s findings will be upheld “if supported by substantial, credible, and reliable evidence.” *Meredith v. Clarksdale Democratic Exec. Comm.*, 340 So. 3d 315, 321 (Miss. 2022). “However, if findings of fact were the result of an erroneous legal standard,” the review is *de novo*. *Id.*

I. The trial court applied an erroneous legal standard for citizenship.

Although the trial court passingly acknowledged that the proper standard for determining citizenship was domicile, the court proceeded to apply an erroneous standard less nuanced than

domicile and seemingly based simply on mere residence.⁴ This was erroneous because, as referenced above, while a person may have residences in multiple locations, he or she can be domiciled in, and therefore a citizen of, only one. *McLeod*, 789 So. 2d at 810.

A. The trial court failed to give adequate, if any, weight to Mrs. Gunasekara’s declaration of intent.

This Court long ago established that “[t]he foundation of domicile is intent.” *Stubbs v. Stubbs*, 211 So. 2d 821, 825 (Miss. 1968). Because “a domicil[e] may be acquired by a longer or shorter residence, depending upon the circumstances of the case, *its true basis and foundation must be the intention*, the quo animo of evidence.” *Hairston v. Hairston*, 27 Miss. 704, 719 (1854) (emphasis added). Thus, “[t]he apparent or avowed intention of residence, *not the manner of it*, constitutes domicil[e].” *Id.* “[I]ntention may be established by physical presence, declaration of intent, and all relevant facts and circumstances, *[but] the declarations of the party himself are most important.*” *Stubbs*, 211 So. 2d at 825 (emphasis added).

Mrs. Gunasekara specifically testified that in early 2018 she and her husband decided to leave D.C. and relocate to Mississippi permanently. She testified *it was for that very purpose* that they agreed to purchase the property in Mississippi in August of 2018, and began work on it shortly thereafter. Additionally, Mrs. Gunasekara testified that in October of 2018 she began commuting back and forth between Mississippi and D.C., living in her childhood home while in Mississippi, in order to facilitate her and her family’s full-time relocation to Mississippi. In sum, Mrs. Gunasekara’s testimony is clear that she intended for her new residence in Mississippi, acquired in August of 2018, to be her permanent home.

⁴ Indeed, excluding quotations from legal authorities, the trial court’s order referenced the term “domicile” only once, whereas it referenced “resident” or “residency” nine times. Moreover, the trial court’s letter to counsel announcing its decision prior to entering the order did not reference “domicile” a single time.

That Mrs. Gunasekara continued to maintain a residence in D.C. is a red herring. As the trial court in *Hale v. State Democratic Exec. Comm.* found in an order affirmed by this Court, Mrs. Gunasekara did “not have to sell [her D.C. property] or quit using the property to establish” her domicile in Mississippi. 168 So. 3d 946 (Miss. 2015). So too is the fact that she could not actually move into the new Mississippi residence until later, because of the work being done to it, and therefore had to reside with her parents next door. What matters most, pursuant to the case law, is not the manner or duration of the residences at issue; rather, it is the declaration of the party herself as to which place she intended to be permanent.

To the extent the trial court even accounted for Mrs. Gunasekara’s testimony concerning her intent, it certainly did not give it adequate weight as required under this Court’s precedent for a proper domicile analysis. The trial court’s order should be reversed on this basis alone.

B. The trial court overlooked or failed to give adequate weight to evidence of Mrs. Gunasekara establishing her domicile in Mississippi prior to November 7, 2018.

In its order, the trial court acknowledged that in August of 2018 Mrs. Gunasekara agreed to purchase property in Mississippi, but then jumps ahead in time to January of 2019 when she registered to vote in Mississippi, as if nothing there was nothing in the record concerning events in the interim. As stated above, Mrs. Gunasekara testified that the property needed substantial work and that she began working with a contractor in September of 2018 to complete the work and that the work began in October of 2018 and continued into 2019. Moreover, Mrs. Gunasekara testified that beginning in at least October of 2018, she began commuting between Mississippi and D.C., living in her parents’ home adjacent to her new home when she was in Mississippi. These acts clearly establish Mrs. Gunasekara’s intent to abandon D.C. and remain in Mississippi indefinitely, and it constituted reversible error for the trial court to ignore them.

C. The trial court improperly treated the act of voting as a determinative factor.

The trial court’s letter to counsel announcing its decision and the subsequent order make clear that the trial court treated Mrs. Gunasekara’s vote in the D.C. election on November 6, 2018, as a determinative factor in its analysis. *E.g.*, Order at ¶ 8 (“The Court finds that this vote clearly expressed her declaration of her continued citizenship in the District of Columbia”). While the Mississippi Supreme Court has certainly recognized the “exercise of political rights” as a factor in determining one’s domicile, it is only one factor of many. *Johnson v. Johnson*, 191 So. 2d 840, 842 (Miss. 1966). There is no authority for voting being more determinative than any other factor. And this is even more so the case in this matter given that the vote took place one day outside the pertinent five-year time period.

Indeed, to the contrary, as referenced below, the candidate at issue in *Hale v. State Democratic Exec. Comm.* was still registered to vote briefly during the relevant time period in the county where he continued to maintain a residence but sought to abandon as his permanent home. Despite this fact, this Court found he already established his domicile in the county to which he chose to relocate, relying in large part on the candidate’s declaration of intent. The trial court here departed from this Court’s precedent and erred in elevating the act of voting to a determinative factor in the analysis.

D. The trial court improperly found Mrs. Gunasekara was a citizen of D.C. as of November 7, 2018.

The trial court concluded that as of November 7, 2018, Mrs. Gunasekara was a “resident” or “resident citizen” of D.C. and therefore was not qualified under the five-year durational-citizenship requirement. Order at ¶ 9. This was not the proper analysis. To find that Mrs. Gunasekara did not meet that requirement, the trial court must have necessarily found that she was

“domiciled” in D.C. during the relevant time period, not merely that she used her residence there. The record in this case does not permit such a finding.

As explained above, domicile is that place where one plans to remain indefinitely with no plans to leave. *Simmons*, 346 So. 3d at 851. This is opposed to a mere residence, which “is a transient place of dwelling.” *Aetna Cas.*, 623 So. 2d at 1010. One can only have one domicile, and it is axiomatic that it cannot be a place that one has abandoned and/or is in the clear process of abandoning. That Mrs. Gunasekara cast a vote in a D.C. election did nothing to alter the fact that by that date she had: decided to abandon D.C. as her primary residence; agreed to purchase a home in Mississippi as her primary residence; and begun commuting back and forth between Mississippi and D.C. while work was being completed on her Mississippi residence. As of November 7, 2018, Mrs. Gunasekara’s D.C. property had become for her a mere residence of two, the other of which (*i.e.*, Mississippi) she intended to remain in permanently. Accordingly, Mrs. Gunasekara’s domicile during the entire five-year period was Mississippi, not D.C., and the trial court committed reversible error by concluding otherwise.

II. The trial court failed to follow this Court’s 2015 decision in the *Hale* case.

The trial court’s ruling that Mrs. Gunasekara did not meet the five-year durational-citizenship requirement conflicts with this Court’s 2015 decision in *Hale v. State Democratic Exec. Comm.*, 168 So. 3d 946, a case bearing key similarities to this one.

The *Hale* case involved a state senator from Benton County named Bill Stone. In 2012, the legislature redrew the senate lines and a large portion of Mr. Stone’s district in Marshall County was put in a new senate district. *Id.* at 948. Mr. Stone wanted to continue to represent that portion of his district, so he decided to move to Marshall County. *Id.* The first step he took to do so was rent a house in Marshall County that his brother owned with the eventual plan to purchase a home

in the County. *Id.* at 949. He began renting the house in October of 2013, but he spent little time there because his duties as a legislator required him to be in Jackson. *Id.* at 949 & 953.

Continuing into 2014, Mr. Stone took several steps showing he had indeed decided to relocate to Marshall County permanently, including registering his car tags in Marshall County, changing his voter registration from Benton County to Marshall County, and listing the address of his rental property on his 2014 tax return. *Id.* at 949. Eventually, in July of 2014, Mr. Stone purchased a home in Marshall County, although he kept the home he owned in Benton County with plans to eventually use it as a rental property. *Id.* When Mr. Stone was out of town, his wife sometimes slept at the house in Benton County and used it for various other purposes, and his grandchildren played there and used the pool. *Id.*

Stone's qualifications were eventually challenged by his primary opponent, Steve Hale. *Id.* at 950. Mr. Hale alleged Mr. Stone had not been domiciled in the new district for the requisite two years prior to the November 3, 2015 election, *i.e.*, since November 3, 2013. *Id.*

The Mississippi Supreme Court affirmed the trial court's rejection of Mr. Hale's challenge, finding Mr. Stone had established his domicile in Marshall County before the relevant time period. In so doing, the Court relied on: (1) Mr. Stone's testimony that he intended to abandon his Benton County home and establish a permanent residence in Marshall County; (2) Mr. Stone's rental of a house in Marshall County for that purpose, which occurred a month before the relevant time period began; and (3) events occurring *after* the relevant time period began but demonstrating that when Mr. Stone rented the Marshall County house it was to relocate to that County indefinitely. *Id.* at 951-953.

Like Mr. Stone, Mrs. Gunasekara chose to permanently abandon a former jurisdiction in favor of a new one by acquiring property in the new one, with subsequent events—before and after

November 7, 2018—confirming she intended for her new residence to be permanent. Like Mr. Stone, Mrs. Gunasekara continued to maintain her former residence, even during the relevant time period, but not as her permanent home. And like Mr. Stone, that Mrs. Gunasekara remained registered to vote in the jurisdiction of her former residence for a brief time inside the relevant time period does *not* overcome her having already abandoned that location as her permanent residence in favor of another.

The trial court here failed to follow the very clear precedent set forth in *Hale* and should be reversed as a result.

III. The trial court’s application of the five-year citizenship requirement to disqualify Mrs. Gunasekara’s candidacy violates the Fourteenth Amendment of the United States Constitution.

For over 50 years, the U.S. Supreme Court has repeatedly struck down durational residency requirements. Beginning with *Dunn v. Blumstein*, 405 U.S. 330 (1972), the Court held that voter-residency rules burden the fundamental rights to vote and move between states and as such durational residency requirements must be narrowly tailored to their purported interest to withstand strict scrutiny. *Id.* at 344-60. *Dunn* concluded that voter-residency rules are not narrowly tailored and, therefore, are unconstitutional. *Id.* at 360. Indeed, it was on the basis of *Dunn* that the Mississippi Constitution of 1890’s “4-months registration for qualified electors” was deemed “unconstitutional, void and of no effect, as contrary to the Equal Protection Clause of the Fourteenth Amendment.” *Ferguson v. Williams*, 343 F. Supp. 654, 657 (N.D. Miss. 1972).

Dunn is one of the first in a long line of U.S. Supreme Court precedent treating durational residency rules with strict scrutiny: from welfare benefits,⁵ to medical care,⁶ to public employment

⁵ *Saenz v. Roe*, 526 U.S. 489, 504 (1999); *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

⁶ *Mem’l Hosp. v. Maricopa Cnty*, 415 U.S. 250, 269 (1974).

preferences,⁷ the Court has struck them all down.⁸ The fundamental undercurrent of these decisions is that laws conditioning rights and benefits on a period of residency hamper the ability to freely move between states and, “any classification which serves to penalize the exercise of th[e] right [to interstate travel], unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.” *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

Since *Dunn*, courts have tested residency rules for public office with strict constitutional scrutiny. While in some instances durational residency rules for serving in office have been upheld, *see, e.g., Howlett v. Salish & Kootenai Tribes*, 529 F.2d 233, 242 (9th Cir. 1976) (upholding a one-year tribal election residency requirement), courts have struck down such rules when applied more broadly than their policy justifications require. In *Robertson v. Bartels*, for instance, a federal court invalidated a one-year durational residency rule used to disqualify someone whose home had been drawn out of his district in redistricting. 890 F. Supp. 2d 519, 531-33 (D.N.J. 2012). This case was not isolated. The Third Circuit Court of Appeals and the supreme courts of California, Colorado, Connecticut, and Maryland have held that durational residency rules fashioned too broadly fail strict scrutiny.⁹

This Court should reject the trial court’s application of Art. V, § 133 to disqualify Mrs. Gunasekara’s candidacy because doing so burdens several important and fundamental rights and

⁷ *Att’y Gen. of New York v. Soto-Lopez*, 476 U.S. 898, 911 (1986).

⁸ Most recently, in a 7-2 decision authored by Justice Alito the Court held “Tennessee’s 2-year durational-residency requirement applicable to retail liquor store license applicants violates the Commerce Clause and is not saved by the Twenty-first Amendment.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 139 S. Ct. 2449 (2019).

⁹ *See Wellford v. Battaglia*, 485 F.2d 1151, 1152 (3d Cir. 1973); *Bruno v. Civ. Serv. Comm’n of Bridgeport*, 472 A.2d 328, 333-36 (Conn. 1984); *Bd. of Sup’rs of Elections of Prince George’s Cty. v. Goodsell*, 396 A.2d 1033, 1038-40 (Md. 1979); *Thompson v. Mellon*, 507 P.2d 628, 633-35 (Cal. 1973); *Cowan v. City of Aspen*, 509 P.2d 1269, 1273 (Colo. 1973). The California Secretary of State has also opined that California’s five-year gubernatorial residency requirement under Article V, section 2, of the California Constitution “violates the U.S. Constitution and is unenforceable.” Summary of Qualifications and Requirements for the Office of Governor at 1, n1 (Sept. 14, 2021), <https://elections.cdn.sos.ca.gov/statewide-elections/2021-recall/qualifications-requirements.pdf>.

serves no legitimate interests undergirding the five-year durational-citizenship requirement. As the record demonstrates, Mrs. Gunasekara moved to Washington D.C. after graduating from law school in Mississippi and gained invaluable knowledge about energy regulations, environmental quality, and broadband access working in the U.S. House, U.S. Senate, and U.S. Environmental Protection Agency. In returning to Mississippi in 2018, Mrs. Gunasekara now seeks to employ those experiences and her knowledge gained from them by serving her home state as Public Service Commissioner. As in *Dunn*, the trial court’s interpretation penalizes those who have exercised the freedom to move for work from Mississippi to D.C., burdening the fundamental right to interstate travel. *See Dunn*, 405 US at 338, 341. Courts have found this alone enough to trigger strict scrutiny. *See, e.g., Bd. of Comm’rs of Sarasota Cnty. v. Gustafson*, 616 So 2d 1165, 1168 (Fla. 2d DCA 1993) (finding a two-year residency requirement for county office inconsistent with equal protection, partly because the “evolution of communication and transportation that allows individuals to move easily between communities and states renders such a two-year residency requirement particularly onerous”).

Moreover, the trial court’s application of Art. V, § 133 unreasonably burdens the fundamental right to vote by tying the exercise of one right (to run for public office) to another fundamental right (Mrs. Gunasekara’s vote in the municipal election in D.C. on November 6, 2018). *See Dunn*, 405 US at 336 (holding that the right to vote is fundamental).¹⁰ The trial court’s application of the durational-citizenship requirement as it did would dictate that Mrs. Gunasekara should have forfeited the latter right to exercise the former right.

¹⁰ It is important to note, Mrs. Gunasekara has only ever voted, owned property, and paid taxes in one state – Mississippi. Under the U.S. Constitution Art. 1 § 8, D.C. is the federal seat of government under the exclusive control of Congress. All decisions of the D.C. City Council can be overridden by Congress. The only votes in D.C. which constitute actual suffrage are Presidential elections in accordance with the Twenty-third Amendment.

The trial court’s application of Art. V, § 133 here also burdens the collective rights of both candidates and voters. The important right to run for office is closely intertwined with voters’ rights to political expression and to vote for candidates of their choice. *See Bullock v. Carter*, 405 U.S. 134, 143 (1972) (“[T]he rights of voters and the rights of candidates always have at least some . . . correlative effect on voters.”); *see also Williams v. Rhodes*, 393 U.S. 23, 30 (1968) (“[T]he state laws [limiting ballot access] place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters . . . to cast their votes effectively. Both these rights . . . rank among our most precious freedoms.”). Strict scrutiny is appropriate where a restriction has a “real and appreciable impact” on both voters and candidates. *Bullock*, 405 U.S. at 143-44 (requiring courts to examine the impact of candidate restrictions “in a realistic light” regarding “the extent and nature of their impact on voters”); *Lentini v. City of Kenner*, 479 F. Supp. 966, 969 (E.D. La. 1979) (finding a realistic impact on exercise of the franchise where a residency requirement prohibited new residents from running for two years).

Here, the trial court’s overly broad interpretation of Art. V, § 133 will deny voters the right to vote for their preferred candidate. She is widely considered a frontrunner in media reports and has the early lead in terms of resources. Excluding Mrs. Gunasekara from ballot access denies her many supporters the candidate of their choice.

As such, the trial court’s application of Art. V, § 133 here burdened fundamental and important constitutional rights. Thus, to be considered constitutionally proper, it must be shown that the trial court’s application of Art. V, § 133 as such was necessary to promote a compelling governmental interest. *Dunn*, 405 U.S. at 339.

States and courts ordinarily offer three justifications for durational requirements for public office: “first, to ensure that the candidate is familiar with his constituency; second, to ensure that the voters have been thoroughly exposed to the candidate; and third, to prevent political carpetbagging.” *Sununu v. Stark*, 383 F. Supp. 1287, 1290 (D.N.H. 1974). None of these interests are served by excluding Mrs. Gunasekara from the ballot.

As stated previously, Mrs. Gunasekara is a seventh-generation Mississippian who attended middle school, high school, college, and law school in the State. Her only absence from the State was a less-than-eight-year sojourn in D.C. gaining invaluable public service experience that she always intended to bring home to Mississippi. And even under the trial court’s flawed analysis, but for a mere couple months at the beginning of the pertinent five-year period, Mrs. Gunasekara met the durational-citizenship requirement.¹¹

To be sure, durational residency requirements for holding public office are not per se unconstitutional. But they must survive strict scrutiny when tailored to the purposes they aim to advance. The trial court’s application of Art. V. § 133 to disqualify Mrs. Gunasekara’s candidacy for public office fails strict scrutiny and therefore this Court should reverse the trial court’s order as being in violation of the U.S. Constitution.

¹¹ Under the trial court’s rationale and draconian application of Art. V. § 133, given that the next election for Public Service Commission after this year’s election is not until November of 2027, Mrs. Gunasekara would be a *renewed* citizen of Mississippi (after growing up and going to college and law school here) for nine years and ten months before she could appear on a general election ballot for that office. Given the fundamental rights at issue, this cannot pass muster. Mrs. Gunasekara has a “federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications.” *Turner v. Fouche*, 396 U.S. 346, 362 (1970).

CONCLUSION

Based on the foregoing, Mrs. Gunasekara respectfully asks this Court to reverse the trial court's decision and hold that she is qualified to be a candidate for Mississippi Public Service Commissioner.

Respectfully submitted this the 13th day of April, 2023.

AMANDA M. GUNASEKARA, Appellant

By: /s/ Spencer M. Ritchie
Spencer M. Ritchie (MSB No. 103636)
Forman Watkins & Krutz LLP
210 E. Capitol Street, Suite 2200 (39201)
P.O. Box 22608
Jackson, MS 39225-2608
(601) 960-8600

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2023, the foregoing was electronically filed with the Clerk of the Court using the MEC system, which sends notification of such filing to all counsel of record, and to the Special Judge in the trial court, the Honorable Lamar Pickard, by electronic mail.

/s/ Spencer M. Ritchie
Spencer M. Ritchie

Serial: 246887

IN THE SUPREME COURT OF MISSISSIPPI

No. 2023-EC-00377-SCT

AMANDA GUNASEKARA

Appellant

v.

**MATTHEW BARTON AND MISSISSIPPI
REPUBLICAN EXECUTIVE COMMITTEE**

Appellees

ORDER

Now before the undersigned Justice is Appellant's Motion for Stay or Recall of Mandate Pending Application for Certiorari. Also before the undersigned Justice is Appellee Matthew Barton's Response to Appellant's Motion for Stay or Recall of Mandate Pending Application for Certiorari.

After due consideration, the undersigned Justice finds the motion is not well-taken and should be denied.

IT IS THEREFORE ORDERED that the Motion for Stay or Recall of Mandate Pending Application for Certiorari is hereby denied.

SO ORDERED.

DIGITAL SIGNATURE
Order#: 246887
Sig Serial: 100007097
Org: SC
Date: 05/24/2023



Leslie D. King, Presiding Justice