

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

Kerrie Dickson

Hugh Esco

Petitioners,

Civil Action #:

2000-CV-27164

v.

The State of Georgia

Secretary of State of Georgia

The Superintendent of Elections for Rabun, Towns, Union and White Counties

Defendants

**PLAINTIFF'S RESPONSE
TO DEFENSE MOTIONS**

Comes now Kerrie Dickson and Hugh Esco and makes this, their response to the Defendant's filings of September 7th, including their Motion to Quash Subpoena, Objections to Discovery and Response in Opposition to plaintiffs' pleadings served on August 21st by showing and stating the following:

**I. Plaintiff Esco Has Standing in this Matter
and the Court Should Deny State's Motion that he be Dismissed.**

1. Hugh Esco is an officer of the Georgia Green Party, which nominated plaintiff Kerrie Dickson as its candidate for State Representative, House District #8. Esco is also a registered elector of House District #8 who desires to vote for Green Party candidates in the November 7th General Election. Further, plaintiff Esco, in his role as Canvas Director of the Georgia Green Party is authorized by a resolution of the Party's state Coordinating Council to litigate the Constitutional issues arising from the barriers to ballot access encountered by Ballot Access Petition Circulators of the Party.

II. Statement of the Case

2. Plaintiffs agree with the Defendant's Statement of the Case, as far as it goes, but would add that the threats of arrest encountered by the Party's petition circulators while exercising Constitutionally protected petitioning activities in traditional public fora, including state, county and municipal parks is also intricately linked to this case and its consideration is necessary to a just resolution of this matter.

III. Standard of Review

3. Plaintiffs disagree with Defendants that the appropriate standard of review is to treat this petition as a judicial review of an administrative decision, utilizing the *any evidence* rule. The pleadings which gave rise to this case address fundamental Constitutional issues and circumstances that are beyond the scope of the ministerial duties of Secretary of State Cathy Cox. Justice requires a broader view of the issues presented by this case. So does U.S. Supreme Court precedent. The appropriate standard of review in this matter was articulated by the U.S. Supreme Court in *Anderson v Celebrezze* 460 US 780, at 789, where Justice Stevens, speaking for the majority, wrote:

Constitutional challenges to specific provisions of a State's election laws therefore cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions. (Citation omitted.) Instead, a court must resolve such a challenge by an analytical process that parallels its work in ordinary litigation. It must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional. (citations omitted.)

IV. Discovery Requests are within the Scope of this Action and Reasonably Calculated to Lead to the Discovery of Admissible Evidence

4. Respondents object to Plaintiff's discovery requests and seek an order protecting them from any obligation to respond to them. Petitioners maintain that the Admissions, Production of Documents and Interrogatories served on the Defendants on August 29th are narrowly drawn and reasonably calculated to lead to the discovery of admissible evidence. Most of the Admissions and Documents sought are to demonstrate that while the Court's have upheld Georgia's ballot access laws on a theoretical basis. On a more practical basis, upon an examination of the record of Independent candidates who have sought, won or been denied

ballot access, the real lack of choice that plagues Georgia voters and leaves us with fewer reasons to go to the polls will become apparent. If the Respondents are so sure of the ballot access regime in Georgia, surely it can stand this minimal scrutiny.

**V. Defects in Service of Subpoena Are Correctable and
Testimony of Secretary of State is Germane to these Proceedings**

5. If in fact, the scope of this inquiry is limited to an application for a writ of mandamus, then surely the testimony of the public official who has an official duty to perform would be relevant. But plaintiffs maintain that this case is broader in scope and needs to address not just Secretary Cox's ministerial duties, but also what Justice requires of her given the actions of other agents of the State who's official actions created barriers to plaintiff's attempts to comply with O.C.G.A. 21-2-170 et seq. Secretary Cox swore an oath to "protect the constitution of the United States and of Georgia." Plaintiffs assert that as a consequence of this, she has a duty to redress the barriers encountered by plaintiff Dickson. Still we maintain that her testimony on this question is relevant to this action and urge this Court to deny Defendant's Motion to Quash Subpoena and for a Protective Order on Behalf of Secretary of State Cathy Cox. Plaintiffs object to paying mileage to Secretary Cox, who while she may reside in Bainbridge, works just two blocks from this Court and who we believe has a duty to answer this subpoena. To require service of subponae on a public official at her residence imposes an unnecessarily difficult burden on the person seeking that testimony, and, in fact, subjects the public official to an invasion of privacy unwarranted by the process. At any rate, the defects in the service of her subpoena are correctable and plaintiffs stand ready to do so once the Court denies the Defense motion to quash.

Respectfully submitted this ____ day of _____, 2000.

Kerrie Dickson
1426 Abe Cove Rd.
Hiawassee Georgia 30546

Hugh Esco
1426 Abe Cove Rd.
Hiawassee Georgia 30546