

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

Matthew Charles Cardinale (Pro se)	)	
1326 Bernard St. NW	)	Case Number
v. Atlanta, GA 30314	)	
	)	
Foris Webb, III, in his official capacity as	)	2019CV316797
Superintendent of Elections of the City	)	
Of Atlanta 55 Trinity Ave SW	)	
Atlanta, GA 30303	)	

**PETITION FOR EMERGENCY HEARING, EMERGENCY STAY OF CANDIDATE  
DISQUALIFICATION, AND APPEAL TO OVERTURN CANDIDATE DISQUALIFICATION  
PURSUANT TO O.C.G.A. 21-2-6(e)**

NOW INTO COURT, SEEKING DEMOCRACY, JUSTICE, AND EQUALITY UNDER THE LAWS OF GEORGIA AND THE STATE AND FEDERAL CONSTITUTIONS, comes Matthew Charles Cardinale (Pro se). Cardinale seeks, pursuant to O.C.G.A. 21-2-6(e), for this Court to grant an emergency hearing; issue a stay for good cause; to overturn the erroneous candidate disqualification decision of Foris Webb III that he made on February 18, 2019, in his capacity as the Elections Superintendent for the City of Atlanta, Georgia. Exhibit 1; and to grant other relief as appropriate and deemed necessary by this Court. ***The emergency stay request is extremely time-sensitive because Early Voting begins this Friday, February 25, 2019.*** The residency challenge brought by Mr. Webb has been plagued by errors of both law and process. Cardinale alleges violations of Georgia law and the State and Federal Constitutions, as contemplated by O.C.G.A. 21-2-6(e)(1); a ruling that erroneously exceeds the statutory authority of the superintendent, as

contemplated by O.C.G.A. 21-2-6(e)(2); unlawful procedures, as contemplated by O.C.G.A. 21-2-6(e)(3); other errors of law that affect the ruling, as contemplated by O.C.G.A. 21-2-6(e)(4); clear error in view of the reliable, probative, and substantial evidence on the whole record, as contemplated by O.C.G.A. 21-2-6(e)(5); and arbitrariness and capriciousness characterized by an abuse of discretion or a clearly unwarranted exercise of discretion, as contemplated by O.C.G.A. 21-2-6(e)(6).

### **OVERVIEW**

Matthew Charles Cardinale was a candidate for Atlanta City Council from January 23, 2019, until he was disqualified on Monday, February 18, 2019 by Mr. Webb, on his own motion. Exhibit 1.

The Charter of the City of Atlanta Sec. 2-102 requires that a candidate for City Council live in the District for one year prior to qualifying. Cardinale qualified on January 23, 2019. One year prior to January 23, 2019, is January 23, 2018. Therefore, the date, on or before which Cardinale has to have lived in District 3, in order to run for office in the March 19, 2019 Special Election, is January 23, 2018.

From January 14, 2018, to February 14, 2018, Cardinale dwelled at 217-2 16th Street NW Atlanta, Georgia 30363, as noted by Webb's Findings of Fact and analysis (Exhibit 1, pgs. 4-5). This apartment, rented through AirBNB, is in District 3. (Exhibit 1, p. 4).

From February 14, 2018, through present, Cardinale has lived at his current home at 1326 Bernard Street NW, Atlanta, Georgia 30314, as noted in Webb's Findings of Fact and analysis. (Exhibit 1, p. 5). This house, now owned by Cardinale, is in District 3. *Id.*

Therefore, Cardinale is qualified to run.

Municipal Clerk/Superintendent Webb decided that Cardinale is not qualified to run because he says Cardinale's residency at the 16th Street Apartment cannot qualify as a residence because it is as AirBNB and because AirBNBs are a lower class of dwellings, even though this is unsupported by legal authority (Exhibit 1, p. 6); and because Cardinale did not intend to reside at the AirBNB for the rest of his life, even though that is not what the statute requires (Exhibit 1, p. 6; O.C.G.A. 21-2-217(a)(1); *Williams v. Williams* 226 Ga. 734 at 736, 177 S.E.2d 481 (Ga. Supreme Court, 1970) citing *Worsham v. Ligon*, 144 Ga. 707, 711 (87 SE 1025)). Webb accepts that Cardinale's current home is valid towards meeting the residency requirements; he also accepts that Cardinale was physically present at the 16th Street Apartment prior to the current home. However, Webb relies on his admittedly personal, clearly condescending opinion towards AirBNBs to conclude, even though Cardinale was physically present there, it does not matter. In addition to these errors of law, Cardinale alleges numerous errors of process, abuse of discretion, and other errors.

## ERRORS OF LAW

Cardinale enumerates errors of law below, pursuant to O.C.G.A. 21-2-6(e)(1) (Court may consider violations of Georgia law and Constitution) and O.C.G.A. 21-2-6(e)(4) (Court may consider other errors of law).

The primary errors of law in this matter relate to Webb's assertion that Mr. Cardinale's physical habitation and dwelling at an AirBNB in District 3 from January 14, 2018, to February 14, 2018, does not count as a residence, despite Webb's finding that Cardinale was physically present there during that time period. First, Webb erroneously contends that, in his personal opinion, an AirBNB as a class of dwelling cannot qualify as a residence. Exhibit 1, p. 6. Second, Mr. Webb also misapplies O.C.G.A. 21-2-217(a)(3) despite its inapplicability to the facts of Cardinale's residency. *Id.* Third, Mr. Webb adopts an absurd construction of O.C.G.A. 21-2-217(a)(1) that is not supported by the plain language of the statute. *Id.* Additional errors of law will be outlined below.

**ERROR OF LAW #1 - ERRONEOUS OPINION, UNSUPPORTED BY AUTHORITIES,**

**THAT AIRBNBS, AS A CLASS, CANNOT QUALIFY AS A RESIDENCE**

Mr. Webb wrote:

“My decision is also based on (what I consider) the inherently temporary nature of obtaining housing through a service such as Airbnb. Unlike hotels, Airbnb bookings are not generally considered to be of a continuous nature based on the guests desire to remain and ability to pay. It is my opinion that a rental through Airbnb is short-term and not indefinite or continuous.” *Id.*

This personal opinion of Mr. Webb, as he admits is what *he* considers, is unsupported by any authority and is therefore an error of law, as well as an abuse of discretion. He makes assumptions about Cardinale’s “ability to pay,” without any related findings. *Id.* As a matter of fact, the fact that Cardinale paid \$2,533.97 for the 31 day stay (Webb Exhibit 3 from record; Hearing transcript p. 24) would suggest Cardinale could have stayed longer if necessary. In his opinion, Webb asserts that, as a class of dwelling, that AirBNBs can never qualify as residences. If that were true, then even somebody who rented an AirBNB for an entire year or five years, or even if somebody intended to spend the days of their days on this Earth there, it would not matter.

Cardinale rented his AirBNB apartment for 31 days and had the option to renew. Exhibit 1, p. 2; Webb Exhibit 3 from record. As a 31 day resident of the AirBNB, Cardinale qualified as a “**permanent resident**” per City of Atlanta Code of Ordinances, Part II (Sec. 146-76 “Definitions”) and was exempt from hotel/motel occupancy tax (Sec.

146-83 "Exemptions"), a fact presented during the hearing and ignored by Mr. Webb. Exhibit 1; Exhibit 3 from Record, p. 2; Exhibit AK from Record; Hearing transcript p. 24-25.

Treating people who live in AirBNBs differently as a class of people by presuming their inability to qualify to serve in elected office, is a violation of the Equal Protection clauses of the Fourteenth Amendment to the Federal Constitution and Article I of the Constitution of the State of Georgia.

As a matter of law and policy, we, the City of Atlanta, should not automatically rule out AirBNBs, or other hotel rooms or motel rooms, as a class of lodging that is somehow inherently incapable of satisfying residency requirements in the State of Georgia. Such differential treatment violates the Equal Protection clauses of the State and Federal Constitutions. Citizens across this country are increasingly turning to hotel and motel rooms as a source of permanent lodging, a fact introduced in the hearing and ignored by Mr. Webb. U.S. Census Bureau, "*People who live in hotels: An Exploratory Overview*" May 31, 2006, Hearing Transcript p. 66-67; Exhibit AM on record; Exhibit 1. This reality is recognized by the State of Georgia and the City of Atlanta, both which have adopted a term, "**permanent resident**," which was, in fact, applicable to Cardinale at the 16th Street Apartment (AirBNB) due to the length of stay being more than thirty days. City of Atlanta Code of Ordinances, Part II, Section 146-76, 146-83; O.C.G.A. 48-13-51(h)(4); Exhibit I on record; Exhibit AM on record; Hearing Transcript p. 24-25. Even *former President of the United States Herbert Hoover resided at a Waldorf*

***Astoria hotel in New York City for 31 years, from 1933 until his death in 1964.***

Exhibit AB on record; Hearing Transcript p. 64-65. He resided in a suite on the hotel's 34th floor. *Id.* Former President Dwight Eisenhower and his wife, Mamie, lived at the same hotel, in a suite on the seventh floor, for two years, from 1967 until his death in 1969. *Id.* As Mr. Webb judicially noticed during the hearing, our current President of the United States, Donald Trump, resides at Trump Tower, which is a hotel. Hearing Transcript p. 64.

If we don't automatically rule out hotels as a class of dwellings incapable of satisfying residency requirements, then we must look to the applicable elements provided under O.C.G.A. 21-2-217(a) to see whether a candidate's stay at a hotel meets the one year residency requirements. O.C.G.A. 21-2-217(a)(1), which applies here, requires fixed habitation and no present intention of removing therefrom, both elements of which Cardinale has demonstrated with regard to the 16th Street Apartment/AirBNB (see below - Error of Law #3).

**ERROR OF LAW #2 - MISAPPLICATION OF O.C.G.A. 21-2-217(a)(3)**

Mr. Webb cites O.C.G.A. 21-2-217(a)(3) in support of his conclusion; however, the section is inapposite to the facts of this matter.

O.C.G.A. 21-2-217(a)(3) states: "A person shall not be considered to have gained a residence in any *county or municipality* of this state into which such person has come

for temporary purposes only without the intention *of making such county or municipality* such person's permanent place of abode." (emphasis added)

The plain language of this subsection applies to someone's intention to make a county or municipality their home; not to a specific Council District.

However, Mr. Webb writes: "*It is my decision that, in accordance with O.C.G.A. § 21-2-217(a)(3), you did not gain residence in Atlanta City Council District 3 on or prior to January 23, 2018, as you occupied the 16th Street residence for temporary lodging purposes only without the intention of making that residence, or City Council District 3, his (sic) permanent place of abode.*" (emphasis added).

And yet, O.C.G.A. § 21-2-217(a)(3) does not apply to residency in a particular home or a particular Council District; it only applies to residency in a particular municipality or county.

Webb basis his decision on his opinion that it was not Cardinale's intent to permanently live at the *16th Street apartment or in District 3*, even though the subsection, O.C.G.A. § 21-2-217(a)(3), applies to one's intent to live in *a municipality or county*. Therefore, he misapplies the statute. The subsection is inapposite here.

Actually, both of Cardinale's residences (former and latter) *and* his P.O. Box during the time period at issue here have *all* been in District 3, as admitted by Mr. Webb in his Findings of Fact. Exhibit 1. They've all been in the City of Atlanta. And they've all been in Fulton County. But even if they weren't, this subsection doesn't apply.



**ERROR OF LAW #3 - MISAPPLICATION OF PLAIN LANGUAGE OF O.C.G.A.**

**21-2-217(a)(1) "PRESENT INTENTION" CLAUSE AS TO REFER TO "FUTURE**

**INTENTION," MISAPPLIED PER PLAIN LANGUAGE AND GEORGIA APPELLATE CASE**

**LAW; OR, ALTERNATIVELY, AN ABSURD CONSTRUCTION OF "PRESENT INTENTION"**

Mr. Webb makes a third error of law in interpreting the Georgia statutory requirement that a person seeking to run for office, with regard to their residence, of having no "present intention of removing therefrom," (O.C.G.A. 21-2-217(a)(1)), to somehow also refer to their *future intention* to possibly remove therefrom. This does not follow a plain language reading of the statute or Georgia appellate case law, and it leads to absurd results.

Webb writes:

"Further, I find that you did not reside at the 16th Street address without any present intention of removing therefrom as required by O.C.G.A. 21-2-217(a)(1). It is evident from the testimony and documentary evidence that you, even prior to being a guest at the 16th Street residence, had the intention of removing himself (sic) to another residence through the Divvy Homes lease-to-own program... [w]hile the timing of that removal was uncertain."

Here, Webb is referring to the present intention of therefrom requirement as if it refers to one's future intentions of possible removal therefrom.

The State of Georgia's definition of resident, specific to residency challenges, requires that a person's habitation be fixed, without any *present* intention of removing

therefrom; it does not say without any *future* intention of removing therefrom. O.C.G.A. 21-2-217(a)(1).

The Georgia Supreme Court has ruled that *present intention* does not include *future intention*. "***[I]f a person changes his domicile without any present intention of removing therefrom, it is none the less (sic) his domicile, although he may entertain an floating intention to return, or to move somewhere else at some future period.***" *Williams v. Williams* 226 Ga. 734 at 736, 177 S.E.2d 481 (Ga. Supreme Court, 1970) (emphasis added), citing *Worsham v. Ligon*, 144 Ga. 707, 711 (87 SE 1025).

Any construction that would purport to preclude the possibility of future intentions of removing therefrom, would lead to absurd and sometimes classist results, violating the Equal Protection clause of the Fourteenth Amendment to the Federal Constitution and Article I, Paragraph 2 of the Constitution of the State of Georgia. It would mean that a homeless woman living at City of Refuge more than a year in District Three could not run for Atlanta City Council because homeless shelters are generally considered short-term and one day she hoped to leave the shelter. It would mean that a tenant with a twelve month lease, or a month-to-month lease, on the private rental market, could not have any hope of moving to another apartment at the end of the lease, and could only wish for a renewal, if they wished to run for City Council. It would mean that homeowners could not aspire to one day sell their starter house and upgrade to a bigger home, or perhaps downgrade in their senior years, and run for City Council. For Candidate Matthew Charles Cardinale, who has dedicated some thirteen-plus years of

his life to advocating for the people of Atlanta, it would mean that Cardinale would somehow be punished for wanting to become a homeowner in District 3, instead of resolving to stay at the 16th Street Apartment (AirBNB) in District 3 for the rest of his days. Absurd, indeed.

It would be unreasonable and *absurd*--and it would violate Georgia appellate case law and the plain language of Georgia statutory law--to construe Georgia's definition of residency as to require that Cardinale or anyone else have an intention to permanently remain at any one address.

The issue should be whether the two sequential residences are constrained by the geographical borders of District 3. They are. Just because Cardinale did not intend to stay at the 16th Street Apartment (AirBNB) forever, does not mean any less that it was Cardinale's home, residence, or domicile during that time. In fact, it was Cardinale's home, residence, and domicile during that time, as demonstrated at the hearing.

#### **PROCEDURAL ERRORS**

Cardinale hereby alleges eight procedural errors by Webb that each warrant overturning Webb's decision, pursuant to O.C.G.A. 21-2-6(e)(3) ("Made upon unlawful procedures").

**PROCEDURAL ERROR #1 - INSUFFICIENCY OF COMPLAINT DUE TO  
NON-EXISTENCE OF REFERENCED ATTACHMENT AND NON-EXISTENCE OF  
FORMAL COMPLAINT AS REFERENCED BY WEBB**

Cardinale received a notification letter from Mr. Webb dated January 28, 2019, stating: "on my own motion I am filing a challenge" (Exhibit 2, p. 1), and "any written response to the attached challenge should be filed here," (*Id at 2*), twice referencing a separate complaint. However, the letter had no attachment and there was no separate challenge, despite being twice referenced in the letter. Mr. Webb stated orally and confirmed in writing that there is no separate complaint, only the letter notifying Cardinale that a complaint would be filed and was attached. Exhibit AG on the record; Exhibit 2 (Webb notification letter Jan. 28, 2019); Exhibit 3, p. 2 (Webb response to records request Feb. 05, 2019).

The fact that the letter was drafted to include two references to a complaint suggests that Mr. Webb at one point intended to draft a complaint, but decided against doing so. Therefore, there never actually was a formal complaint in this matter, despite Webb's representations in the notification letter to the contrary. Cardinale argued this in his Reply, responding only out of an abundance of caution. Cardinale Reply, p. 29,

Hearing Transcript pgs. 76-77 (procedural concerns incorporated by reference, accepted by Webb, at hearing).

**PROCEDURAL ERROR #2 - INSUFFICIENCY OF COMPLAINT DUE TO FAILURE TO STATE REASONS FOR ARTICULATED BELIEF OF NON-RESIDENCY, AS REQUIRED BY O.C.G.A. 21-2-6(B) AND THE NOTICE AND OPPORTUNITY TO RESPOND CLAUSES OF THE FOURTEENTH AMENDMENT TO FEDERAL CONSTITUTION**

Mr. Webb's notification letter failed to comply with O.C.G.A. 21-2-6(b) and violated the basic standards of Procedural Due Process under the Fourteenth Amendment to the Constitution of the United States; and Article I, Paragraph 1 of the Constitution of the State of Georgia, by failing to provide, in his letter to Cardinale or in his non-existent complaint, any notice of the reasons that he at the time did not believe that Cardinale meets the residency requirements to run in the March 19, 2019 Special Election. Exhibit 2.

O.C.G.A. 21-2-6(b) provides that the complainant shall give "*the reasons why the elector believes the candidate is not qualified to seek and hold the public office for which the candidate is offering*" and that the Superintendent, if filing of their own motion, must explain the "*reasons therefor.*"

This procedural defect has had real consequences for Cardinale and his ability to prepare for the hearing. Cardinale, unfairly, had been completely in the dark as to whether he was to be addressing a question of fact, or a question of law, or both; and

what the questions, if any, might be. As noted below, Webb even evaded questions and then gave deceptive answers regarding the impetus for this challenge. In retrospect, in reading Webb's disqualification letter (Exhibit 1), Cardinale sees issues he could have addressed with additional evidence and arguments, if only he knew what the actual issues or concerns were. This is why the State and Federal Constitutions, and Georgia statutory law, provide for notice and opportunity to respond.

Webb has violated the Fourteenth Amendment to the Federal Constitution, Article 1 to the Georgia Constitution, and O.C.G.A. 21-2-6(b) because Cardinale did not receive meaningful notice of what he was responding to, in terms of the basis for Webb's belief; and Cardinale has therefore also been deprived of a meaningful opportunity to respond.

### **PROCEDURAL ERROR #3 - APPARENT DECEPTION BY ELECTION**

#### **SUPERINTENDENT IN OPEN RECORDS ACT RESPONSES**

Cardinale attempted on several occasions to ascertain the factual or legal bases for the articulated belief by Mr. Webb related to Cardinale's residency, through two Georgia Open Records Act requests. Exhibit 3; Exhibit 4. First, on January 31, 2019, Cardinale asked Webb to provide any authorities, documents, or facts, respectively, that Webb relied upon in reaching his conclusion, if any. Exhibit 3, requests A, I, and J. In Webb's first reply, he stated thrice--in response to three separate items in the ORA request--that he had not reached a conclusion. Exhibit 3, requests A, I, and J. Finding

this response to be evasive, on February 06, 2019, Cardinale made a second request in which the word "conclusion" was substituted for how Webb reached his "assertion" of nonresidency. Exhibit 4, Requests A, B, C. In response to this second request, Webb stated that he only relied upon the Charter of the City of Atlanta Sec. 2-102: no other facts, documents, or authorities. Exhibit 4, Requests A, B, C. However, in his disqualification letter, Webb reveals--contradicting his earlier claims that he only relied on the Charter--that he formed the basis of his belief regarding Cardinale's residency based on statements that Cardinale made about a repair dispute with the former owner of his current home, Divvy Homes. Exhibit 1, p. 2. Therefore, it is clear that Mr. Webb has deceived Cardinale at least once in his answers, after first attempting to evade the questions; *and is not credible*. This procedural error has also deprived Cardinale of reasonable due process under the State and Federal Constitutions, Article I and Amendment 14, respectively.

**PROCEDURAL ERROR #4: CITATION OF VOTER REGISTRATION AS RATIONALE,  
BUT NO EVIDENCE OF VOTER REGISTRATION ENTERED INTO RECORD, AND NO  
FINDING OF FACT RELATED TO VOTER REGISTRATION**

Mr. Webb cited Cardinale's voter registration as part of his rationale (Exhibit 1, p. 6), despite not entering any exhibits at the hearing regarding Cardinale's voter registration, nor enumerating a finding of fact regarding the same. Hearing Transcript; Exhibit 1, pgs. 2-5.

**PROCEDURAL ERROR #5 - FUNDAMENTAL UNFAIRNESS OF MUNICIPAL CLERK  
HEARING HIS OWN COMPLAINT (TO THE EXTENT A COMPLAINT EVEN EXISTS)**

O.C.G.A. 21-2-6(b) and (c), in combination, appear to contemplate the Municipal Clerk/Superintendent acting as both the antagonist and the judge and jury in candidate residency matters ("The superintendent upon his or her own motion may challenge..." / "The superintendent shall determine..."). However, this juxtaposition of provisions--allowing Mr. Webb to initiate the case of his own motion, and allowing Mr. Webb to hear the case--is a violation of Cardinale's rights to a fair and impartial judge under the guarantee of procedural due process under the Fourteenth Amendment to the Constitution of the U.S.; and Article 1, Paragraph 1 of the Georgia Constitution. Cardinale asked Webb to recuse himself for this and other reasons because of his inability to receive a fair and impartial hearing, and Webb refused to do so. Exhibit 5 (request); Exhibit 3, p. 2 (response). Cardinale asked City Attorney Nina Hickson to



appoint a replacement to Mr. Webb for this and other reasons, and Hickson replied that she lacks the authority to do so. Exhibit 5 (request); Exhibit 6 (response). Cardinale is asking this Court to find that O.C.G.A. 21-2-6(b) is therefore unconstitutional in part, and that the provisions allowing a Superintendent to bring and hear their own residency challenge, are hereby null and void in combination.

**PROCEDURAL ERROR #6 - PROCESS TAINTED BY "INFORMAL INQUIRY"**  
**CONDUCTED BY MUNICIPAL CLERK WEBB WITHOUT AUTHORIZATION BY LAW**

Mr. Webb began what he called an "Informal Inquiry," on January 23, 2019, even though such an inquiry is not contemplated by O.C.G.A. 21-2-6. Exhibit AG on the record; Exhibit 1, p. 2; Exhibit 3, p. 1. Mr. Webb has admitted that he relied on no authorities or rules of procedure in conducting his so-called "Informal Inquiry." Exhibit 3, p. 1, Response to Request C. "No guidance documents, written rules, or written procedures were used." *Id.*

If Webb had a genuine concern and wanted to be transparent about the basis therefor, he should have simply filed a complaint pursuant to his authority under O.C.G.A. 21-2-6(b). Instead, Webb interrogated Cardinale and requested and obtained documents from him, for the purpose of using the information against him, without due process of law, and in a non-public forum.

It appears that, if Cardinale had not provided the requested documents to Webb under the "Informal Inquiry" process not authorized by law, Mr. Webb would have had

no basic facts to reference in forming the basis of his assertion. After all, when Cardinale later asked Webb to provide copies of any documents in Cardinale's candidate file, there were no documents provided related to Cardinale's residency other than those that Cardinale to Webb provided during the "Informal Inquiry." Exhibit 3. At the hearing, Webb only introduced the documents Cardinale had previously provided to him. Hearing Transcript, pgs. 11-14, Exhibits 1, 2, and 3 on the record.

The Informal Inquiry was a violation of Cardinale's Due Process under both O.C.G.A. 21-2-6(b), which does not authorize an Informal Inquiry; the Fourteenth Amendment to the Federal Constitution; and Article 1, Paragraph 1 of the Constitution of the State of Georgia, and therefore has tainted this process to the point of being unsalvageable.

#### **PROCEDURAL ERROR #7 - HOSTILE COMMUNICATIONS BY MR. WEBB**

On Thursday, January 31, 2019, Cardinale observed that Mr. Webb came across as hostile and contemptuous to Cardinale, when Cardinale came into the Office of the Municipal Clerk requesting a copy of the (non-existent) complaint and (non-existent) attachment that Mr. Webb wrote that he had filed against Cardinale. These characteristics were obvious in his facial expressions, tone of voice, and demeanor, further undermining Cardinale's ability to receive a fair hearing. Exhibit AG on the record; Exhibit 2; Exhibit 5.

## **PROCEDURAL ERROR #8 - REFUSAL BY WEBB TO PROVIDE INFORMATION**

### **REGARDING HEARING PROCESS UNTIL HEARING ITSELF**

Webb did not provide Cardinale with any information regarding the hearing process. Exhibit 2. Cardinale requested that Webb provide Cardinale with information about the hearing process. Exhibit 3, p. 1, Request D. Webb only responded: "Pursuant to O.C.G.A. 21-2-6(b)." *Id.* This statute only states that a hearing shall be set, and provides no information about process or procedures such as discovery rights. O.C.G.A. 21-2-6(b). Only at the hearing was it revealed that there would be no opening statement, that Cardinale's closing statement would be arbitrarily limited to three minutes (Webb later allowed Cardinale to finish after Cardinale rushed through most of his presentation), and that other procedural rules existed but were withheld from Mr. Cardinale when requested. Hearing Transcript pgs. 8-9 (explanation of process), 81-87 (rushed closing statement).

### **RULING IN EXCESS OF STATUTORY AUTHORITY OF SUPERINTENDENT**

As noted in Error of law #1 (above), Webb relied on his **personal opinion** in finding that AirBNBs are somehow in a lower class than hotels and motels (Exhibit 1, p. 6)--even though AirBNBs are regulated under the City of Atlanta's hotel/motel occupancy tax regulation scheme (City of Atlanta Code of Ordinances, Part II, Sec. 146-76; 146-83; Exhibit AA (AirBNB help article for Atlanta, referring to Atlanta's hotel/motel regulations); Hearing Transcript pgs. 63-64)--**basing his opinion on no**

**law or other authority.** Therefore, in addition to committing an error of law, he also acted in excess of the statutory of the Superintendent, therefore also falling under this Court's jurisdiction to set aside Webb's decision under O.C.G.A. 21-2-6(e)(2) (acting in excess of statutory authority).

**CLEAR ERROR IN VIEW OF THE RELIABLE, PROBATIVE, AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD; AND ARBITRARINESS AND CAPRICIOUSNESS**

In view of the reliable, probative, and substantial evidence on the whole record, it is clear that Webb erred in finding that Cardinale does not meet the residency requirements. This Court's authority to overturn Webb's decision on this basis comes from O.C.G.A. 21-2-6(e)(5). In fact, there is a vast preponderance of evidence demonstrating that Cardinale meets both elements of O.C.G.A. 21-2-217(a)(1)--(1) fixed habitation, an objective element, and (2) no present intention of removing therefrom--with regarding to the 16th Street Apartment ("AirBNB").

**The Element of Fixed Habitation**

Fixed habitation means that during the time of residence in a particular place, that the person does not relocate, but generally stays physically present there. This is a question about sustained and continuous physical presence. Cardinale presented extensive evidence during the hearing to show fixed habitation at the 16th Street Apartment and the Bernard Street Apartment. Webb finds in his findings of facts that

Cardinale was physically present at the 16th Street Apartment (AirBNB) and was a resident of the Bernard Street Apartment, so this element is not in dispute. Exhibit 1, pgs. 4-5.

### **The Element of No Present Intention of Removing Therefrom**

The second element of determining residency under O.C.G.A. 21-2-217(a)(1) is that the individual have no *present* intention of removing therefrom. This element is about the resident's state of mind with regard to the place of dwelling.

Cardinale had no present intention of removing therefrom, for generally the same reasons that his habitation was fixed. Cardinale's former residence, the Briarcliff Apartment, was very cold due to the lack of working heat. Cardinale testified to this effect at the hearing, and read into the record sworn statements by three individuals, including a former neighbor, about my contemporaneous statements regarding the problems with the heat. Hearing Transcript pgs. 16-22; Affidavit of Matthew Charles Cardinale, Exhibit AG on the record; Affidavit of Dr. Dwanda Farmer, Exhibit AH on the record; Affidavit of Cheryl Rosenblum, Exhibit AI on the record; Affidavit of Sohaila Hokkamzadeh, Exhibit AJ on the record.

As noted above, the Georgia Supreme Court has ruled that *present intention* does not include *future intention*. ***"[I]f a person changes his domicile without any present intention of removing therefrom, it is none the less (sic) his domicile, although he may entertain an floating intention to return, or to move somewhere else at some***

**future period.** *Williams v. Williams* 226 Ga. 734 at 736, 177 S.E.2d 481 (Ga. Supreme Court, 1970) (emphasis added), citing *Worsham v. Ligon*, 144 Ga. 707, 711 (87 SE 1025).

In fact, Cardinale had already begun the process of winding down the Briarcliff Apartment, including by having filed a Change of Address form with the U.S. Postal Service on January 15, 2018. Exhibit AG on the Record; Exhibit A on the record. Cardinale shared this in the hearing (Hearing Transcript pgs. 25-27), and Mr. Webb did not consider it in his analysis as evidence of intent to change residence. Exhibit 1. Cardinale also provided eight pieces of mail received at the P.O. Box during January 2018 at the hearing (Hearing Transcript pgs. 27-32). Exhibits B, C, D, E, F, G, H, M on the record. Mr. Webb did not consider these in his analysis, even though O.C.G.A. 21-2-217(e)(15) provides statutory authority to consider personal mail and other bills. "The election superintendent may consider evidence of where the person receives significant mail such as personal bills and any other evidence that indicates where the person resides." *Id.*

Cardinale posted to social media on December 25, 2017, days before booking the 16th Street Apartment for a 31 day lease (with option of renewal), that he would miss Toco Hills, the neighborhood of the Briarcliff Apartment, when he moved back to intown Atlanta. Exhibit Z on the record, Hearing Transcript pgs. 22-23. "*I'm going to miss Toco Hills when I move back in town.*" *Id.* Webb ignored this. Exhibit 1.

When Cardinale established a new residence at the 16th Street Apartment (AirBNB), it was with his stated intent of residing there indefinitely. Exhibits AG, AH, AI

on the record (Affidavits of Matthew Charles Cardinale, Dr. Dwanda Farmer, Cheryl Rosenblum, respectively). Contemporaneous statements by an individual are probative evidence of their intent at the time, and are important here because the requirement of no present intention of removing therefrom is related to a person's intent or state of mind with respect to a dwelling. While Cardinale booked the first 31 days as an initial reservation, Cardinale would have booked more time if necessary, as there was nowhere else for Cardinale to go. Exhibits on the Record AG, AH, AI, V (email showing contention lease negotiations with Divvy Homes regarding the Bernard Street apartment), W (email showing tax lien issues regarding the Bernard Street Apartment that almost caused the deal to fall apartment), AC (email showing Cardinale withheld a deposit from Divvy Homes until two days before he had to decide whether to extend the stay at the 16th Street Apartment/AirBNB); Hearing Transcript pgs. 44-50; 62-63. This is all important to note, because, had the deal fallen through, Cardinale might still be living at the AirBNB today, in District 3. Webb ignored all these exhibits in his analysis. Exhibit 1.

Additionally, Cardinale cited sources of law and secondary sources to show that hotels and motels can be permanent residents, including City of Atlanta Code of Ordinances Part II, Secs. 146-76 and 146-83 (definition of "permanent resident" of hotels and motels as individuals who book a room for thirty days or more) (Hearing Transcript pgs. 23-35, Exhibit on the record AK); the Census Bureau report abstract on the increasing number of people in the United States who consider hotels and motels their permanent residences (Hearing Transcript pgs. 66-67, Exhibit on the record AM); and the fact that our current President lives in a hotel, Trump Tower, and that two former U.S. Presidents lives at the

Waldorf Astoria hotel in New York. (Hearing Transcript p. 64, Exhibit on the record AB).

Mr. Webb failed in his decision to consider any of the numerous numerous legal authorities, secondary sources, or exhibits, as detailed above in this section, and as cited by Cardinale during the hearing that weigh in Cardinale's favor, while focusing on Cardinale's voter registration, which was never entered onto the record; and facts that were never discussed at the hearing.

### **CONCLUSION**

In conclusion Cardinale seeks that this Court provide the following relief, pursuant to O.C.G.A. 21-2-6(e):

- (1) Set an emergency hearing for this matter;
- (2) Provide an emergency stay of the removal of Cardinale's name from the ballot by Webb, especially in light of Early Voting, which begins on February 25, 2019, Monday - this stay is critical to prevent the grave injustice of Early Voting beginning without Cardinale's name on the ballot;
- (3) Overturn the decision of Foris Webb and restore Cardinale's name to the ballot.
- (4) Provide any additional relief as appropriate and deemed necessary by this Court, including, if appropriate, the rescheduling of the March 19 Special Election, especially if Early Voting begins on February 25, 2019 without Cardinale's name on the ballot; and
- (5) Award court costs to Cardinale.



Respectfully submitted on this 20th day of February, 2019,

*Matthew Charles Cardinale*

**Matthew Charles Cardinale (Pro se)**

**1326 Bernard St. NW**

**Atlanta, Georgia 30314**

**(404) 983 6049**

**[friendsofmatthewcharles@gmail.com](mailto:friendsofmatthewcharles@gmail.com)**

IN THE Superior COURT OF Fulton COUNTY  
STATE OF GEORGIA

Matthew Charles Cardinale  
Plaintiff

<sup>vs</sup>  
Foris Welsch, III  
Defendant in his official capacity

Civil Action File No: \_\_\_\_\_

VERIFICATION

I, (your name) Matthew Charles Cardinale, personally appeared before the undersigned Notary Public, and say under oath that I am the (check one : )  Petitioner Plaintiff  Defendant in the above-styled action and that the facts stated in the (name of petition, motion, complaint) Petition for Emergency Hearing, emergency stay of Candidate Disqualification and Appeal Pursuant to O.C.G.A. 21-2-6(c). are true and correct.

This the 20th day of February, 2019.  
day month year

Matthew Charles Cardinale  
(Sign your name here in front of the Notary)

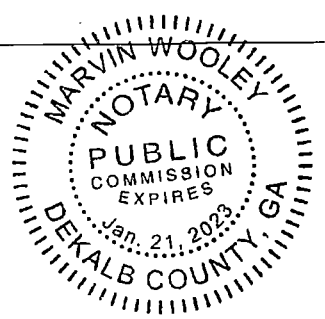
Name (print or type here): Matthew Charles Cardinale

Address: 1326 Bernard St. NW  
Atlanta, GA 30314

Telephone number: (404) 983 6049

Sworn to and subscribed before me, this  
20th day of Feb, 2019.

Marvin Wooley  
NOTARY PUBLIC  
My Commission Expires: 1/21/2023  
(Notary Seal)



EXH 1

|



**CITY OF ATLANTA  
OFFICE OF MUNICIPAL CLERK**

FORIS WEBB, III  
Municipal Clerk

55 TRINITY AVENUE, S.W.  
SECOND FLOOR, EAST  
SUITE 2700  
ATLANTA, GEORGIA 30303  
(404) 330-6031  
Fwebb@atlantaga.gov

February 18, 2019

**Via USPS Mail and Certified Mail No. 7014 2120 0001 5793 2462**

Mr. Matthew Charles Cardinale      [friendsofmatthewcharles@gmail.com](mailto:friendsofmatthewcharles@gmail.com)  
1326 Bernard Street, N.W.  
Atlanta, GA 30314

**Re: Superintendent's Decision Regarding the Challenge to Candidacy Qualifications of  
Matthew Charles Cardinale to Seek Election to the Office of Atlanta City Council  
Member - District 3**

Dear Mr. Cardinale:

This letter is to inform you of the decision made in your candidacy challenge.

I am the Municipal Clerk and Election Superintendent for the City of Atlanta. In my capacities, and pursuant to the provisions of O.C.G.A. § 21-2-6, I served as the hearing officer in an evidentiary hearing held on February 13, 2019 to consider the challenge to your candidacy for election to the office of Atlanta City Council District 3 Member seat.

As Election Superintendent I filed, on my own motion, said challenge on January 28, 2019, as authorized by O.C.G.A. § 21-2-6(b) which provides the Election Superintendent the authority to challenge the qualifications of any candidate prior to the election of such candidate. An official Notification of Challenge was sent to you on that date advising that your candidacy was being challenged.

Mr. Cardinale has attempted to qualify for the Special Election to fill the Atlanta City Council District 3 seat that was vacated upon the death of sitting Council Member Ivory Lee Young, Jr. The election has been set to take place on March 19, 2019 and qualifying took place on January 23 through 25 of 2019. You appeared on January 23, 2019 to submit your qualification documents.

Mr. Matthew Charles Cardinale  
February 18, 2019  
Page Two

The impetus of the challenge was information that came to me, in my capacity as the Municipal Clerk of the City of Atlanta, by encountering Mr. Cardinale on numerous occasions at various City Council and Committee meetings where he would speak about his personal issues with housing. Mr. Cardinale, a purportedly housing advocate, self-publicized a housing dispute he had regarding a rent-to-own contract that he entered into with Divvy Homes. Based on your self-reporting, I had an idea of when you moved into your current City of Atlanta residence, and that knowledge led me to challenge your candidacy.

Mr. Cardinale appeared on January 23, 2019, to qualify for the District 3 Special Election and I informed him of my concern as to whether or not he met the residency requirements. In response, you offered me various documents in support of your residency, all of which have been made part of this record.

On January 28, 2019, I sent notification of a challenge hearing to be held on February 13, 2019, at 10:45 a.m.

The notification of the challenge advised you that your candidacy was being challenged on my own motion as Election Superintendent, because it appeared that you did not meet the statutory residency requirements to hold said office, namely the requirement of the Charter of the City of Atlanta 2-102(2).

On February 13, 2019, you appeared at the scheduled 10:45 a.m. challenge hearing.

During the February 13<sup>th</sup> hearing, I introduced the following into evidence:

- Mr. Cardinale's lease with Kenco Briarcliff Apartments, at 2194 Briarcliff Road, Atlanta, GA, beginning January 10, 2017 and ending January 31, 2018.
- An email from [expres@airbnb.com](mailto:expres@airbnb.com) to [matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com) sent on January 6, 2018 containing a receipt for accommodations at 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363 for 31 nights.
- Mr. Cardinale's lease agreement with Divvy Homes Acquisitions, Inc., executed on February 1, 2018 for 1326 Bernard St., NW, Atlanta, GA.

Upon conclusion of the Election Superintendent Challenger's presentation of evidence, you were given the opportunity to present documentary evidence, call witnesses and make a closing statement to show why you should be allowed to continue as a candidate to fill the office of City Council District 3 Member in the City of Atlanta's March 19, 2019 Special Election. You did offer testimonial and documentary evidence, however, you did not call any witnesses.

The following documents were introduced into evidence by Mr. Cardinale:

- Affidavit of Cheryl Rosenblum.
- Affidavit of Dr. Dwanda Lee Farmer.
- Affidavit of Sohaila Hokkamzadeh.
- Affidavit of Matthew Charles Cardinale.

- A screenshot of a Facebook post by Mr. Cardinale purportedly from December 25, 2017, containing the message "The Kosher Gourmet is open! I'm gonna miss Toco Hills when I move back intown..."
- Sec. 146-76 of the Atlanta, GA Code of Ordinances.
- Change of Address Confirmation Letter from the United States Postal Service dated January 15, 2018 which forwards Mr. Cardinale's mail from 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 to P.O. Box 94973, Atlanta, GA 30377.
- An email from the United States Postal Service ([donotreply@usps.com](mailto:donotreply@usps.com)) to Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)), dated January 9, 2018, acknowledging receipt of his application and payment for a P.O. Box.
- Printouts of copies of various mail items addressed to Mr. Cardinale at P.O. Box 94793, Atlanta, GA 30377.
- Various photographs of a residence purporting to be 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363.
- Various receipts from deliveries made to Mr. Cardinale during the month of January 2018 at 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363.
- An email from Divvy Homes ([tiffany@divvyhomes.com](mailto:tiffany@divvyhomes.com)) to Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)), dated December 14, 2017 informing Mr. Cardinale that his application was being processed.
- An email from Divvy Homes ([tiffany@divvyhomes.com](mailto:tiffany@divvyhomes.com)) to Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)), dated December 15, 2017 informing Mr. Cardinale that his application was pre-approved.
- An email from Erin Glynn ([erin.glynn@harrynorman.com](mailto:erin.glynn@harrynorman.com)) to Adena Hefets ([adena@divvyhomes.com](mailto:adena@divvyhomes.com)) and carbon copied to Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)) dated January 4, 2018, which purportedly had an attachment including a "fully executed agreement"
- An email from Dwolla ([no-reply@dwolla.com](mailto:no-reply@dwolla.com)) to Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)) purporting to show a payment from Mr. Cardinale to Divvy Homes was being processed.
- A letter (unsigned and undated) purportedly written from Mr. Cardinale to "Adena" (presumably Adena Hefets at Divvy Homes) about changes that need to be made to his lease terms.
- An email from Adena Hefets ([adena@divvyhomes.com](mailto:adena@divvyhomes.com)) to Erin Glynn ([erin.glynn@harrynorman.com](mailto:erin.glynn@harrynorman.com)) and carbon copied to Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)), dated February 9, 2018, regarding a tax lien on the 1326 Bernard Street property.
- An email from Mr. Cardinale ([matthew.cardinale@gmail.com](mailto:matthew.cardinale@gmail.com)) to Adena Hefets ([adena@divvyhomes.com](mailto:adena@divvyhomes.com)) and Erin Glynn ([erin.glynn@harrynorman.com](mailto:erin.glynn@harrynorman.com)), dated February 12, 2018, showing a wire transfer from Mr. Cardinale to Divvy Homes.
- Limited Warranty Deed filed on June 28, 2018 showing the transfer of property from Divvy Homes to Mr. Cardinale.
- A letter from Georgia Power showing the initiation of electric service for Mr. Cardinale beginning on February 12, 2018 at 1326 Bernard Street.
- A letter from CapitalOne sent to Mr. Cardinale on March 26, 2018 at the 1326 Bernard Street address.

Mr. Matthew Charles Cardinale  
February 18, 2019  
Page Four

- A bank statement from CapitalOne, dated September 23, 2018 to October 22, 2018 showing Mr. Cardinale's address as 1326 Bernard Street.
- A credit card statement from Nordstrom dates May 26 to June 25, 2018 showing Mr. Cardinale's address as 1326 Bernard Street.
- A New York Times article from February 2015 about the Waldorf Astoria hotel.
- O.C.G.A. § 21-2-217
- The abstract of a report titled "People Who Live in Hotels: An Exploratory Overview" by Leslie A. Brownrigg, 2006.
- Atlanta City Council Ordinance 11-0-0513.
- O.C.G.A. § 48-13-51.
- Atlanta City Charter, Section 2-102.
- O.C.G.A. § 21-2-2.
- Smiley v. Davenport et al., 139 Ga. App. 753, 1976.
- O.C.G.A. § 19-2-1.
- O.C.G.A. § 21-2-6.
- Midkiff v. Midkiff, No. S02A0619, 2002.

You argued, through testimonial and documentary evidence that you met the residency requirements as of January 14, 2018.

As the Election Superintendent I have carefully considered the testimony presented, and have further reviewed all documentary evidence.

**Findings Of Fact:**

- Mr. Cardinale had a valid lease at 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 through January 31, 2018
- 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 is not in Atlanta City Council District 3.
- Mr. Cardinale applied for a home through the Divvy Homes lease-to-own program on December 14, 2017.
- Mr. Cardinale was pre-approved for the lease-to-own program on December 15, 2017.
- Mr. Cardinale executed an agreement on or about January 4, 2018 to enter into their lease-to-own program.
- Mr. Cardinale was a guest at the residence at 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363, beginning on January 14, 2018, through "Airbnb."
- 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363 is within Atlanta City Council District 3.
- Mr. Cardinale applied and paid for a P.O. Box on January 9, 2018.
- Mr. Cardinale's had his mail forwarded from 2194 Briarcliff Road NE Apt. 9, Atlanta, GA 30329 to P.O. Box 94973, Atlanta, GA 30377 on January 15, 2018.
- Mr. Cardinale booked and paid for his stay at 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363 for 31 days on January 7, 2018.

Mr. Matthew Charles Cardinale  
February 18, 2019  
Page Five

- Mr. Cardinale received access to the residence at 1326 Bernard St., NW, Atlanta, GA, which he acquired through the Divvy Homes lease-to-own program, on February 12, 2018.
- Mr. Cardinale started electric service in his name through Georgia Power on February 12, 2018.
- Mr. Cardinale moved into the residence at 1326 Bernard Street on February 14, 2018.
- 1326 Bernard St., NW, Atlanta, GA is within Atlanta City Council District 3.

When Mr. Cardinale attempted to qualify for the 2019 special election on January 23<sup>rd</sup>, 2019, the relevant date for the purpose of establishing residency, in accordance with Atlanta City Charter, Section 2-102(2), is January 23, 2018.

It is clear to me that Mr. Cardinale did establish residency within Atlanta City Council District 3 on February 14, 2018, when he moved to the residence at 1326 Bernard Street. That residency is supported by his execution of a residential lease agreement, establishment of electric service in his name at that residence, and remittance of a down payment for that property.

The only pertinent question, for the purposes of this analysis, is whether or not you had established residency within Atlanta City Council District 3 as of January 23, 2018. For this purpose, I find that you did, in fact, did occupy the premises of 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363 between the dates of January 23, 2018 and February 14, 2018. I also find that 217 16<sup>th</sup> Street Northwest 2, Atlanta, GA 30363 is within Atlanta City Council District 3.

The question of whether you established residency as of January 23, 2018 in District 3 is governed by O.C.G.A. § 21-2-217. The relevant portions of that code section are as follows:

- (a) In determining the residence of a person desiring to register to vote or to qualify to run for elective office, the following rules shall be followed so far as they are applicable:
  - (1) The residence of any person shall be held to be in that place in which such person's habitation is fixed, without any present intention of removing therefrom;
  - (3) A person shall not be considered to have gained a residence in any county or municipality of this state into which such person has come for temporary purposes only without the intention of making such county or municipality such person's permanent place of abode;
  - (9) The mere intention to acquire a new residence, without the fact of removal, shall avail nothing; neither shall the fact of removal without the intention;
  - (15) For voter registration purposes, the board of registrars and, for candidacy residency purposes, the Secretary of State, election superintendent, or hearing officer may consider evidence of where the person receives significant mail such as personal bills and any other evidence that indicates where the person resides.



Mr. Matthew Charles Cardinale  
February 18, 2019  
Page Six

At the outset, I noted that as the challenged candidate, you had the affirmative obligation to establish your qualifications for office. Haynes v. Wells, 273 Ga. 106, 108-109 (2000). It is your entire burden to show that you are eligible to run for Atlanta City Council District 3.

You testified that on January 14, 2018, that you had moved from your apartment on Briarcliff Road into the Airbnb rental on 16<sup>th</sup> Street due to unaddressed heating issues. You did not present testimonial or documentary evidence that you took steps to terminate your lease at the Briarcliff address early as required by the "Early Termination" clause in your lease. Also, you did not present testimonial or documentary evidence that you took steps to not renew that lease, which required a 60 day notice (*see* the "Renewal Term" clause of said lease).

Prior to moving into the Airbnb, you initiated the process of buying a home through the Divvy Homes lease-to-own program, as evidenced by your application, pre-approval, and execution of an agreement with Divvy Homes. Through your own testimony, you did not know where that home would eventually be located prior to making your reservation at the Airbnb.

It is my decision that, in accordance with O.C.G.A. § 21-2-217(a)(3), you did not gain residence in Atlanta City Council District 3 on or prior to January 23, 2018, as you occupied the 16<sup>th</sup> Street residence for temporary lodging purposes only without the intention of making that residence, or City Council District 3, his permanent place of abode. This decision is based on a number of factors, including your existing lease at the Briarcliff location in Dekalb County that was not terminated, and your active agreement with Divvy Homes to obtain permanent housing elsewhere. My decision is also based on (what I consider) the inherently temporary nature of obtaining housing through a service such as Airbnb. Unlike hotels, Airbnb bookings are not generally considered to be of a continuous nature based on the guests desire to remain and ability to pay. It is my opinion that a rental through Airbnb is short-term and not indefinite or continuous.

Further, I find that you did not reside at the 16<sup>th</sup> Street address "without any present intention of removing therefrom" as required by O.C.G.A. § 21-2-217(a)(1). It is evident from the testimony and documentary evidence that you, even prior to being a guest at the 16<sup>th</sup> Street residence, had the intention of removing himself to another residence through the Divvy Homes lease-to-own program. While the timing of that removal was uncertain, it is evidence that you removed yourself from the Briarcliff Road address to the 16<sup>th</sup> Street address without the intention of making that your residence, as contemplated in O.C.G.A. § 21-2-217(a)(9) (removal without intention shall avail nothing).

It is my decision as the Election Superintendent that you established residency in City Council District 3 on February 14, 2018 when you moved into the Bernard Street address. At that point, you promptly changed your voter registration from Dekalb County to Fulton County on February 23, 2018, evidencing the permanency of your residency at that address.

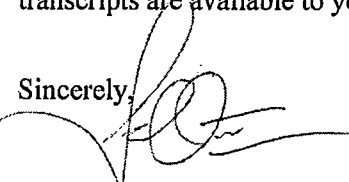
Mr. Matthew Charles Cardinale  
February 18, 2019  
Page Seven

***Therefore, after a thorough review, it is my decision as Election Superintendent that you, Mr. Matthew Charles Cardinale, are not qualified as a candidate to run for election to the office of City Council District 3 Member.***

**Please be advised that if you disagree with this decision, you have the right to file an appeal of my decision to the Fulton County Superior Court. Please note that the appeal must be filed within ten (10) days of the date of this decision.**

A court reporter was present at the challenge hearing and as stated at the time of your hearing, official transcripts are available to you from Elizabeth Gallo Court Reporting, LLC .

Sincerely,



Foris Webb III  
Municipal Clerk/Election Superintendent  
City of Atlanta

FW/pcm

Cc: Nina Hickson, City Attorney  
Reginald McClendon, Assistant City Attorney

EXH 2



CITY OF ATLANTA  
OFFICE OF MUNICIPAL CLERK

FORIS WEBB, III  
Municipal Clerk

55 TRINITY AVENUE, S.W.  
SUITE 2700  
ATLANTA, GEORGIA 30303  
(404) 330-6031  
[Fwebb@atlantaga.gov](mailto:Fwebb@atlantaga.gov)

January 28, 2019

**Via USPS and Certified Mail 7014 2120 0001 5392 6423**

Mr. Matthew Charles Cardinale      [friendsofmatthewcharles@gmail.com](mailto:friendsofmatthewcharles@gmail.com)  
1326 Bernard Street, N.W.  
Atlanta, GA      30314

Re:      Challenge to District 3 Candidacy

Dear Mr. Cardinale:

As the City of Atlanta's Municipal Clerk, I also serve as Election Superintendent and Qualifying Officer for the City's Special Election for Council District 3 to be held on Tuesday, March 19, 2019. It is my responsibility, pursuant to Georgia Code Section 21-2-6 (b), to notify a candidate when a challenge to his/her qualifications as a candidate for election has been filed.

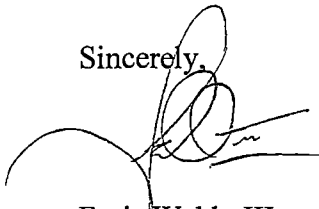
This letter serves as such notification that, as Qualifying Officer, on my own motion I am filing a challenge to your candidacy, it appears that you do not meet the constitutional and statutory requirements for an Atlanta City Council candidate. The reason for this challenge is due to your failure to meet the statutory requirement of The Charter of the City of Atlanta, Section 2-102(2), that requires that you must be a resident of the city and of the council district from which you seek to qualify for at least one year immediately preceding the date of filing of notice of candidacy to seek office.

Please be advised that a hearing on this challenge has been scheduled for February 13, 2019, at 10:45 a.m. in the Civil Service Board Room, Suite # 2174, of Atlanta City Hall, 68 Mitchell Street. At that time, you should be prepared to show proof that you are qualified to seek and hold the office of City Council Member District 3 and that your name should not be withheld from the March 19, 2019 City of Atlanta, District 3, Special Election ballot.

Mr. Matthew Charles Cardinale  
January 28, 2019  
Page Two

In advance of the scheduled hearing, any written response to the attached challenge should be filed here in the Office of Municipal Clerk, 55 Trinity Avenue SW, Suite 2700, Atlanta Georgia 30303, by close of business (5:00 PM EST) on Friday, February 8, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Foris Webb, III", written over a horizontal line.

Foris Webb, III  
Municipal Clerk/Elections Superintendent  
City of Atlanta

FW/pcm

Cc: Nina Hickson, City Attorney  
Reginald McClendon, Assistant City Attorney

EXH 3



CITY OF ATLANTA  
OFFICE OF MUNICIPAL CLERK

**Foris Webb, III**  
MUNICIPAL CLERK

55 TRINITY AVENUE, S.W. SUITE 2700  
ATLANTA, GEORGIA 30303  
Main: (404) 330-6031  
Email: [municipalclerk@atlantaga.gov](mailto:municipalclerk@atlantaga.gov)

February 5, 2019

Matthew Charles Cardinale  
Friends of Matthew Charles Cardinale  
1326 Bernard St. NW  
Atlanta, Georgia 30314

Dear Mr. Cardinale:

I am in receipt of your open records request delivered by hand on January 31, 2019 at 1:26 PM with details as set forth in your letter and as copied below with responses highlighted in yellow.

(A) Please provide me with any authorities (statutory, cases, guidance documents, etc.) that you have relied upon in reaching your conclusion that "it appears that you do not meet the constitutional and statutory requirements for an Atlanta City Council candidate." While it is clear you are referencing the one year residency requirement, I am asking for any authorities you have relied upon in determining that it appears I do not meet said requirement, especially given the documentation I have already provided to you. That basic principles of due process--notice and opportunity to respond--to be meaningful, mean that I need some way of knowing *to what* I am responding. It appears you are unsatisfied with the AirBNB, but it is not clear *why*.

I haven't drawn any conclusions.

(B) Please provide me with any and all documents in my candidacy file in your office, and any and all documents or correspondence in your records related to my residency, including date-stamped copies of the documents you have received from me on Jan. 25.

Copies of all documents on file in this office regarding your candidacy are attached.

(C) Please provide me with any guidance documents, written rules, or written procedures that relate to your internal/informal process for residency inquiries, such as the inquiry you appear to have begun at our Jan. 23, 2019 meeting.

No guidance documents, written rules, or written procedures were used.

(D) Please provide me with any rules of administrative procedure, other written rules, or other guidance documents that govern the hearing on my residency that you have scheduled for Feb. 13, 2019.

Pursuant to O.C.G.A. § 21-2-6(b).

(E) Please advise who will be conducting the Feb. 13, 2019 hearing.

Election Superintendent, Foris Webb, III

(F) Please provide me with the name of the employee from the Clerk's Office who sat in on our Jan. 23, 2019 meeting.

As I properly introduced to you at that time, A. Vanessa Waldon, Deputy Municipal Clerk

(G) Please advise whether any agents of any other Campaigns for Atlanta City Council District 3 have communicated with you about my residency or have requested you to file this challenge. If so, please list the persons, the dates of communication, and a description of the communications.

This office has not received any requests to challenge any candidate.

(H) Please provide a copy of any formal residency challenge that you have filed, in addition to any attachments, if any. (Your Jan. 28 letter says "I am filing a challenge...")

Pursuant to O.C.G.A. § 21-2-6(b) written notice was sent to you and filed in the Office of Municipal Clerk.

(I) Please provide a copy of any documents that you considered in reaching your conclusion as stated in your Jan. 28 letter, separate from the ones I provided you on Jan. 25, if any.

No conclusion has been reached.

(J) Please provide a description of any facts or factual allegations, if not contained in documents, that you considered in reaching your conclusion as stated in your Jan. 28 letter.

No conclusion has been reached.

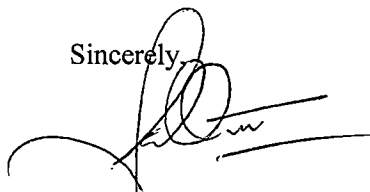
Your requested items are ready for pickup. The total cost for the printed material is \$6.30. However, that fee is being waived. The Office of Municipal Clerk is located at Atlanta City Hall, 55 Trinity Avenue, Suite 2700, Atlanta, GA 30303; and is open to the public Monday through Friday from 9:00 AM until 5:00 PM. There is no cost to view any records on-site.

Also, in response to your "new supplemental ORA request", submitted February 5, 2019 at 12:49 PM, I have not received any written or text communication, nor had any meetings with any persons internal or external to this office regarding your residency.

Furthermore, your request for an extension to submit documents to this office has been granted from February 8, 2019 to February 11, 2019 by 4:00 pm. However, the subsequent request that I recuse myself from the 10:45 AM February 13, 2019 Challenge Hearing is denied. I look forward to seeing you on February 13, 2019 at 10:45 AM sharp in the Civil Service Board Room, Suite # 2174, of Atlanta City Hall, 68 Mitchell Street.

Lastly, please be advised that any subsequent communications and inquiries related to this matter will be addressed at the scheduled hearing.

Sincerely,



Foris Webb III  
Municipal Clerk / Election Superintendent  
City of Atlanta



EXH 4



FRIENDS OF MATTHEW CHARLES CARDINALE &lt;friendsofmatthewcharles@gmail.com&gt;

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**ORA Request #3**

2 messages

**Clerk, Municipal** <municipalclerk@atlantaga.gov>

Mon, Feb 11, 2019 at 4:25 PM

To: "friendsofmatthewcharles@gmail.com" &lt;friendsofmatthewcharles@gmail.com&gt;

Cc: AtlantaElections &lt;AtlantaElections@atlantaga.gov&gt;

Matthew Charles Cardinale

Friends of Matthew Charles Cardinale

1326 Bernard St. NW

Atlanta, Georgia 30314

Dear Mr. Cardinale:

I am in receipt of your open records request sent via electronic mail on February 6, 2019 at 1:34 PM with details as set forth in your letter and as copied below with responses highlighted in yellow.

(A) Please provide me with any written authorities (statutory, cases, guidance documents, etc.) that you have relied upon in making your statement or assertion that "it appears that you do not meet the constitutional and statutory requirements for an Atlanta City Council candidate."

Pursuant to City of Atlanta Code Section 2-102.

(B) Please provide a copy of any documents that you relied upon in making your statement or assertion that "it appears that you do not meet the constitutional and statutory requirements for an Atlanta City Council candidate," separate from the documents you have already provided to me, if any.

Pursuant to City of Atlanta Code Section 2-102.

(C) Please provide a description of any facts or factual allegations, if not contained in documents, that you considered in reaching your statement or assertion that "it appears that you do not meet the constitutional and statutory requirements for an Atlanta City Council candidate," if any.

Pursuant to City of Atlanta Code Section 2-102.

Please be advised that any subsequent communications and inquiries related to this matter will be addressed at the scheduled hearing.

Sincerely,



**Foris Webb III, Municipal Clerk | Election Superintendent**

**Atlanta City Council | Office Of Municipal Clerk | City Hall 55 Trinity Avenue, S.W. | Suite 2700 |**

**Atlanta, GA 30303 | Office 404.330.6031 | Fwebb@atlantaga.gov**

**STATEMENT OF CONFIDENTIALITY:** The information contained in this electronic message and any attachments are intended for the exclusive use of the addressee(s) and may be confidential or privileged. If you are not the intended recipient, you do not have permission to read, print, copy or distribute this message or any attachments. If you have received this communication in error, please notify the sender by return e-mail or contact the sender if a phone number was provided and permanently delete this message and any attachments from your system.

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**FRIENDS OF MATTHEW CHARLES CARDINALE** <friendsofmatthewcharles@gmail.com> Mon, Feb 11, 2019 at 4:26 PM  
To: "Clerk, Municipal" <municipalclerk@atlantaga.gov>  
Cc: AtlantaElections <AtlantaElections@atlantaga.gov>

Thanks, got it!  
[Quoted text hidden]



image001.jpg  
4K

EXH 5

RECEIVED  
OFFICE OF  
MUNICIPAL CLERK

**Matthew Charles Cardinale**  
**Friends of Matthew Charles Cardinale**  
**1326 Bernard St. NW**  
**Atlanta, Georgia 30314**  
**(404) 983 6049**  
[friendsofmatthewcharles@gmail.com](mailto:friendsofmatthewcharles@gmail.com)

2019 FEB -4 PM 1:26

Received

FEB 4 2019

City of Atlanta Dept. of Law

**Foris Webb, Nina Hickson, Reginald McLendon**

[fwebb@atlantaga.gov](mailto:fwebb@atlantaga.gov)

[ninarhickson@atlantaga.gov](mailto:ninarhickson@atlantaga.gov)

Friday, February 01, 2019

**Re: Request for Webb Recusal due to Unfairness, Apparent Bias, and Partiality**

Dear Foris Webb, Nina Hickson, and Reginald McLendon,

Mr. Webb, following our conversation on yesterday, January 31, 2019, in the waiting area of the Office of the Municipal Clerk--in which I feel you were rude, hostile, and clearly contemptuous towards me--I hereby am requesting that you recuse yourself from hearing and deciding the residency matter that you have also initiated.

Ms. Hickson, I am further asking that you, as City Attorney, appoint an appropriate judge--whether a municipal judge, administrative law judge, or another type of judge--to hear the matter instead of Mr. Webb.

I have zero confidence in my ability to receive a fair hearing or decision from Mr. Webb; I am asking for the above actions to be taken for the following reasons:

- (1) On Thursday, January 31, 2019, I feel that Mr. Webb was rude, hostile, and contemptuous to me when I came in requesting a copy of the complaint he has filed against me - a complaint that, by his own admission, does not exist. These characteristics were obvious in his facial expressions, tone of voice, and demeanor.

(2) So far, Mr. Webb has been unfair in several ways. He has violated O.C.G.A. 21-2-6(b) and the basic standards of Due Process under the 14th Amendment to the Constitution of the United States, by failing to provide, in his letter to me or in his non-existent complaint, any notice of the reasons that he does not believe that I meet the residency requirements to run in the March 19, 2019 Special Election. O.C.G.A. 21-2-6 provides that the complainant shall give "the reasons why the elector believes the candidate is not qualified to seek and hold the public office for which the candidate is offering" and that the Superintendent, if filing of their own motion, must explain the "reasons therefor." This has real consequences for me and my ability to prepare for the hearing - I am currently completely in the dark as to whether I am addressing a question of fact, or a question of law, or both; and what the questions, if any, might be.

(3) Mr. Webb appears to have prepared to compose and file a formal complaint in this matter, but then decided against being that fair or transparent. Specifically, the letter he sent me on January 28, 2019 says "on my own motion I am filing a challenge" (p. 1), and "any written response to the attached challenge should be filed here," (p. 2), twice referencing a separate complaint. The letter had no attachment. On yesterday, Mr. Webb angrily stated that there was no separate complaint; only the notification letter itself; that he filed the letter with no attachment as the complaint. The fact that the letter was drafted to include two references to a complaint indicates that Mr. Webb at one point intended to draft a complaint, but decided against being that fair or transparent, especially inasmuch as I still have not received notice of why he does not believe I am a one year resident of District 3. This deliberate refusal to provide me with basic information also undermines my ability to have confidence in Mr. Webb.

(4) Mr. Webb began what he called an "informal inquiry," on Jan. 23, even though such an inquiry is not contemplated by O.C.G.A. 21-2-6. It is not clear to me that it is appropriate for him to have conducted this "informal inquiry," but if it was, I believe the process was unfair. He used this process to obtain documents from me to then use them against me, without ever stating the basis for his initial concerns; without giving me the opportunity to provide additional documents or legal arguments; while declining my offer to provide additional documents; and without ever stating the reason for his determination.

- (5) Mr. Webb began the "informal inquiry" without ever providing a clear explanation of the origin of his inquiry. It appears Mr. Webb was pursuing a personal agenda, singling me out, to go on a fishing expedition. I am concerned, therefore, that this entire matter may be personally or politically motivated.
- (6) Mr. Webb has failed to provide me with any information about the rules of the process governing this residency challenge, including the discovery process, which I believe any responsible municipal clerk should provide to any candidate facing a challenge. A candidate should be able to prevail on the merits of their issue; the intentional opacity of this process is an access to democracy issue that should concern us all.
- (7) Mr. Webb is now saying that he and I "should not be communicating," even though he is still the Municipal Clerk and I have to be able to direct my interrogatories and my document requests--both under any discovery rights I might have and under the Georgia Open Records Act--somewhere.
- (8) Finally, while O.C.G.A. 21-2-6 appears to contemplate the Municipal Clerk acting as both the antagonist and the judge and jury, I believe that this juxtaposition of provisions (allowing him to file, and allowing him to hear the case) is a violation of my rights to a fair and impartial judge under the 14th Amendment to the Constitution of the U.S. That is, there is a fundamental conflict of interest here that is only exacerbated by issues 1-7 as enumerated above.

I am still awaiting an answer to the letter I provided to Mr. Webb and Ms. Hickson on yesterday, making numerous document requests pursuant to the Georgia Open Records Act and any discovery rights that I may have; and making interrogatories pursuant to any discovery rights that I may have and pursuant to the principles of fairness in general.

I am also awaiting an answer to my request for an extension for my production of written responses, until Tuesday, Feb. 12. I hereby reiterate said extension request here. I am willing to provide anything I already have available on Feb. 08, but I believe the deadline is unreasonable given that I am in the time-consuming process of gathering evidence such as receipts and affidavits from witnesses on such short notice.

I am hopeful for a speedy resolution to this matter. The citizens of the City of Atlanta deserve better.

*Matthew Charles Cardinale*

Matthew Charles Cardinale



EXH 6



**CITY OF ATLANTA**  
**DEPARTMENT OF LAW**

**KEISHA LANCE BOTTOMS**  
MAYOR

SUITE 5000 • CITY HALL  
55 TRINITY AVENUE, S.W., ATLANTA, GEORGIA 30303-3520  
Telephone: 404-546-4100 MAIN

**NINA R. HICKSON**  
CITY ATTORNEY

February 7, 2019

**Sent via US Mail & Electronically**

Matthew Charles Cardinale  
Friends of Matthew Charles Cardinale  
1326 Bernard St. NW  
Atlanta, Georgia 30314  
(404) 983 6049  
[friendsofmatthewcharles@gmail.com](mailto:friendsofmatthewcharles@gmail.com)

Dear Mr. Cardinale,

I am in receipt of your letter dated February 1, 2019 requesting me or my office to remove Mr. Webb from his role as the Election Superintendent for the purposes of hearing challenging your ability to meet the qualification requirements to run for City Council, District 3. Section 66-1 of the City of Atlanta Code of Ordinance ("City Code") states "the municipal clerk is designated election superintendent in the city with all rights, powers and duties as provided by the Georgia Election Code, as now or hereafter amended (O.C.G.A. §21-2-1 et. seq.) and shall conduct all elections of the city in accordance with the Georgia Election Code, as not or hereafter amended." My office does not have the authority under the Code to remove Mr. Webb from a role codified by legislation.

Furthermore, pursuant to the Georgia Election Code, the superintendent upon his or her own motion may challenge the constitutional or statutory qualifications of anyone who files a notice of candidacy. O.C.G.A. §21-2-6(b). As the appointed superintendent of elections pursuant to city code, Mr. Webb has exclusive jurisdiction over challenges or certification of candidates, whether brought by a third party or by the superintendent himself. As such the office of the City Attorney does not have authority to supersede state law and place someone else in the role of superintendent or act in his place. However, state law does provide a challenged candidate a remedy. If you disagree with the process or outcome of a challenge, O.C.G.A. §21-2-6(e)(1) through (7) provides an appeal right from a decision of the superintendent by filing a petition in the superior court of the county in which the candidate resides within ten days after the entry of the final decision by the superintendent. In addition to providing a method to appeal a decision, O.C.G.A. §21-2-6(e)(1) through (7) sets forth the superior court the grounds for which the superior court may overturn said decision of the superintendent of elections.

I hope that this is responsive to your inquiry.

Nina R. Hickson

Atlanta City Attorney

Cc: Foris Webb