

# DeKalb County Board of Registration and Elections

## Meeting Minutes

February 19, 2021

\*via zoom platform

Start Time: 12:00 p.m.

End Time: 2:52 p.m.

Board Attendees: Chair Samuel Tillman  
Vice-Chair Baoky Vu  
Dele Lowman Smith  
Anthony Lewis  
Susan Motter

Other Attendees: Erica Hamilton, Director  
Viviane Ernstes, County Attorney  
Terry Phillips, Deputy County Attorney  
Irene Vander Els, Senior Assistant County Attorney  
Shelley Momo, Senior Assistant County Attorney

### **APPROVAL OF AGENDA**

Mr. Tillman called the meeting to order at 12:00 p.m. Motion by Ms. Smith and seconded by Mr. Lewis to approve the agenda. Motion carries by unanimous vote.

### **ADOPTION OF MINUTES**

- |  |                                       |
|--|---------------------------------------|
| A) August 21, 2020                     | D) December 30, 2020 – Special Called |
| B) September 14, 2020                  | E) January 15, 2021                   |
| C) September 25, 2020 – Special Called | F) February 18, 2021 – Special Called |

Motion by Ms. Smith and seconded by Ms. Motter to adopt the minutes for items A-F. Mr. Lewis asked that Kara Palmquist's public comment be added to the January 15, 2021 minutes. Motion carries by unanimous vote.

### **PUBLIC COMMENTS**

Ms. Baker read the rules for live public comment.

To make a comment, join the Zoom meeting using the link in the meeting announcement on our website, [dekalbvotes.com](http://dekalbvotes.com). You can also call 888-270-9936 and enter conference code 171493. For those joining the meeting by telephone, please be aware that your phone number may be displayed to the public viewing or participating in the online meeting. Citizens who attend the meeting via the Zoom link may join the public comment queue by raising their hand in the Zoom application, while citizens who attend the meeting via telephone may join the comment queue by pressing # followed by 2. There will be no comment cards, so when you are called upon, please state your name and address for the record. Also, please be conscious of speaking time so that everyone has an opportunity to provide input in the allotted

time. Comments must be two minutes or less. Abusive, profane, or derogatory language will not be permitted.

The following individuals provided comments:

- Elizabeth Burns
- Liz Throop (see attached)

Ms. Smith suggested the Board provide a statement in response to Ms. Throop's comment about the Elections Integrity Committee's legislation.

### **COMMISSIONER COMMENTS**

Commissioner Edward "Ted" Terry addressed the Board.

### **EXECUTIVE SESSION**

Motion by Mr. Lewis and seconded by Ms. Smith to recess for executive session to discuss litigation. Motion carries by unanimous vote. The Board exited executive session and resumed the regular meeting. No votes were taken during executive session.

### **VOTER CHALLENGES**

Motion by Ms. Motter and seconded by Ms. Smith to adopt the written procedures for voter challenges in the form approved by the Law Department, which will allow the Board and Department staff to implement best practices for these challenges consistent with the requirements of federal and state law; provide clarity for the public as to the applicable procedure; and balance the Board's interests in maintaining accurate and current voter rolls and protecting the individual right to vote. I ask that the written procedures be included in the minutes for this meeting. Motion carries by unanimous vote.

Ms. Vander Els explained these written procedures to the public.

### **NEW BUSINESS**

#### A) Advanced Voting Time and Locations for March 9

Ms. Hamilton proposed advanced voting take place February 24 through March 5 at the DeKalb Voter Registration & Elections Office and the Wesley Chapel-William C. Brown Library from 8:00 a.m. to 4:30 p.m.

#### B) Advanced Voting Time and Locations for March 16

Ms. Hamilton reported that the advanced voting dates, February 22 through March 12, were set by the City of Clarkston. The City of Clarkston has requested one advanced voting location at the DeKalb Voter Registration & Elections Office from 8:00 a.m. to 4:30 p.m.

Motion by Ms. Smith and seconded by Ms. Motter to approve the recommended advanced voting times and locations for both the March 9 and March 16 runoff elections. Motion carries by unanimous vote.

### **OLD BUSINESS**

#### A) NVAHI Update

Ms. Hall shared a presentation. See attachment(s).

## B) Communications Update

Mr. Burton provided brief updates on upcoming special elections and other key communications activities.

### **DIRECTOR'S REPORT**

Ms. Hamilton provided updates. See attachment(s).

Ms. Motter asked Ms. Hamilton to provide the Board with a breakdown of the grants received, including the amount of money spent and any amount remaining.

Ms. Smith asked that all documents received by the Board and referred to during this meeting be made available to the public.

### **BOARD COMMENTS**

Ms. Smith expressed her disapproval of the recent Elections Integrity Committee legislation as a Board member and as an individual voter as it is an effort to reduce voter access.

Mr. Tillman recommended Ms. Smith draft a letter to be delivered to the State Capitol in response to this voter suppression bills. Ms. Smith agreed to draft a letter supplemented with department data.

### **ADJOURNMENT**

Motion by Ms. Smith and seconded by Mr. Lewis to adjourn. This meeting is adjourned.

Adopted by the BRE on 2.19.21

## **DeKalb County Board of Registrations and Elections**

### **Procedures for Responding to Voter Challenges**

#### **Submitted Pursuant to O.C.G.A. § 21-2-229**

1. Challenges to the qualifications of a DeKalb County registered voter to remain on the voter registration list under O.C.G.A. § 21-2-229 may be made only by a registered voter of DeKalb County. Challenges may not be made by voters who are not registered in the same county or municipality as the challenged voter or by private entities, businesses, political committees, PAC, political parties, or other organizations. Therefore, before acting upon a challenge submitted to the BRE, the BRE must determine whether the challenger is registered to vote in DeKalb County and, if not, the BRE must reject the challenge on this basis.

2. Upon receiving a written challenge to a voter's eligibility based upon the allegation that he or she does not reside in DeKalb County or in one of its municipalities, the BRE shall require the challenger, under the authority of O.C.G.A. §21-2-229(a), to specify whether the challenge is based on the challenged voter's current residency status or the voter's residency status at the time the voter initially registered. The BRE shall inform the challenger of this requirement pursuant to written notice to the challenger at the address provided in the written challenge. A copy of these procedures shall be included with the notice.

3. The BRE shall not remove any voters from the DeKalb County voter registration list based on a challenge alleging that they were properly registered to vote in DeKalb County at the time of initial registration but may have moved from the address listed in their voter registration file. The sole procedure to be followed in this circumstance is to send the voter a confirmation notice and wait two federal election cycles for the voter to either vote or update his or her information before removing him or her from the rolls as outlined under Section 8(d) of the NVRA. If the challenger fails to affirmatively state in writing that the challenge is based upon the challenged voter's residency status at the time the voter initially registered to vote, the BRE shall follow the following protocols:

(a) If such written notice to the challenged voter is returned marked "undeliverable" by the United States Postal Service, the BRE shall send the challenged voter a confirmation notice pursuant to O.C.G.A. § 21-2-234(b).

(b) If no response to the BRE's written notice of challenge is received from the challenged voter, the BRE shall inform the challenger that the challenge does not

present grounds to contest the eligibility of the voter to remain on the DeKalb County voter list and no further action shall be taken on the challenge.

(c) If the challenged voter responds to the written notice with a written confirmation of a change of address, the BRE shall update the voter's record to reflect such change, including the removal of such voter from the active voter list if such written confirmation from the challenged voter reflects that such voter is no longer qualified to vote in DeKalb County.

4. If the challenger affirmatively states that the challenge is based upon the challenged voter's residency status at the time the challenged voter initially registered to vote, or that the challenge is based on grounds other than the challenged voter's residency status, the BRE shall send written notice via certified mail, return receipt requested, to the challenged voter of the challenge at the registered address of the challenged voter, and provide the challenged voter with a copy of the challenge, a copy of these procedures, and the opportunity to provide information in response to the challenge within ten (10) business days of the date of the notice.

5. If the voter supplied a phone number or email address on the registration form or in other writings such as an absentee ballot application received by the BRE, then in addition to the notice provided for in Paragraph 4 above, as soon as possible after receiving the challenge, the BRE will make at least three reasonable attempts, including at least one attempt during non-traditional working hours, to call or email the challenged voter to determine if the issue raised by the challenge can be resolved quickly, efficiently, and informally.

6. If the BRE determines that a hearing on the challenge is necessary, the BRE shall attempt to find a mutually convenient time to hold any hearing.

7. Pursuant to O.C.G.A. § 21-2-229, and in addition to the above efforts, the BRE will send a written notice informing the challenged voter and the challenger of the date, time, and place of the hearing along with a copy of the challenge, and shall state that either party may, but is not required to, be represented by counsel or another representative at the hearing. The notice will be sent by first-class mail and e-mail (if available) or in the manner provided in O.C.G.A. § 21-2-228(c). The notice must be mailed sufficiently in advance of the hearing to provide the person being challenged at least three days' notice of the date, time, and place of the hearing.

8. The challenged voter will have the right to at least one continuance of the hearing date upon request and may be granted additional continuances for good cause shown.

9. The written challenge will be posted on the BRE website within three business days of receipt of the challenge by the BRE.

10. O.C.G.A. § 21-2-229(a) requires that a challenge "be in writing and specify distinctly the grounds of the challenge." Challenges that are not in writing or which consist of vague, generalized, speculative assertions or conjecture do not satisfy this standard and must be rejected. In particular, residency-based challenges must allege facts sufficient to specifically and distinctly

identify the grounds for the challenger's contention that a registered voter has not satisfied the residency requirements of O.C.G.A. § 21-2-217.

11. Under O.C.G.A. § 21-2-229(c), the challenger bears the burden of proving the challenged voter is not qualified to remain on the registration list. Because O.C.G.A. § 21-2-217(b) gives presumptive effect to the registrar's decision in determining the residence of the challenged voter at the time the registration application is considered, challengers bringing residency-based challenges must produce evidence sufficient to rebut this presumption in order to sustain their burden of proving that the challenged voter is not qualified to remain on the rolls. If the challenger fails to do so, the challenge fails and it must be rejected by the BRE pursuant to O.C.G.A. § 21-2-229(c) and 21-2-217(b).

12. Nonexclusive examples of challenges that would fail to meet the minimum standards required by Section 21-2-229(a) include:

- (a) Non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address);
- (b) Assertions that a challenged voter's name is not affiliated with the address of registration in any governmental database. For instance, challenges based on the allegation that the voter's name is not associated with the utility bill for an address as the sole basis for challenge are insufficient because there could be many residents at a particular address who do not pay the utility company;
- (c) "Voter caging" challenges—blanket challenges to large numbers of people living in certain neighborhoods—shall be rejected if they fail to specify distinctly the basis for the challenge to each voter's qualifications.

13. In considering the evidence presented in support of or in opposition to a challenge based upon a change of residence, the BRE shall not rely exclusively upon address data on file with the Georgia Department of Driver Services ("DDS") or other government databases, because voters often fail to immediately notify all government entities about address changes and, even if they do, there are often lag times before the government entity updates its files.

14. Where a voter is a legal resident of DeKalb County and otherwise qualified to vote within the meaning of O.C.G.A. §§ 21-2-216 and 21-2-217, the BRE shall not remove such individual from the voter roll on the basis that the voter faces challenges causing them to live on the streets or in shelters, vehicles, trailers, transitional housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other DeKalb County residents in need of housing assistance in the county.<sup>1</sup> When adjudicating such challenges, the BRE shall consider the particular circumstances of the voter and the fact that the burden of proof is on the elector who brought the challenge to prove ineligibility.

15. Pursuant to O.C.G.A. § 21-2-229, the BRE will notify challenged voters, in writing by first class, forwardable mail, and by telephone and email (if available), of any change in registration status resulting from challenge proceedings. This notification letter will specify in detail any basis for upholding the challenge.

16. Any notice sent to challenged voters indicating that the BRE has upheld a challenge will include a voter registration form and shall inform the voter that they have a right to appeal the decision by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars and that such petition must be served upon the other parties to the challenge and the registrars. The notice shall also include contact information for the other parties to the challenge and the registrars to effectuate such service.

17. A copy of each written challenge upon which the BRE acts will be appended to the Minutes of the BRE meeting at which the action was taken.

18. The BRE shall not take any action on a challenge received between the fifth Monday prior to a primary or election and the date of such primary or election, including any runoffs. Any challenges received during this period shall be processed as set forth above following the certification of the primary or election results by the BRE.

19. The procedures set forth herein shall apply to challenges to voter qualifications initiated pursuant to O.C.G.A. §§ 21-2-228 and 21-2-229.

20. The BRE will not remove any voter from the registration lists based on residency issues raised by rejected challenges. No state law will be construed to permit removals based on rejected challenges or residency issues raised by rejected challenges.

21. If any members of the BRE or employees or agents of the DeKalb County Department of Voter Registration and Elections challenge the eligibility of voters in their individual capacity while they remain in that position or have a personal or business interest in the mounting of such a challenge, they must recuse themselves from deliberating, voting or otherwise participating in any way in the BRE's consideration of such challenges.

22. The BRE will process all voter challenges expeditiously and objectively, while erring in all instances on the side of preserving the voter's right to remain on the registration lists, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.

## **Public Comment**

Dear Board Members:

All your efforts to make elections successful are in peril today. Barry Fleming's 48-page HB531 is being rushed through the Elections Integrity Committee with scant input from anyone who understands how elections actually work.

It has many problematic provisions, but a major effect will be to overwhelm Election Day voting.

HB531 chokes down Advance Voting by banning Sunday voting and severely restricting mobile voting units. It chokes back absentee voting by banning 24-hour dropboxes, reducing the time allowed for requesting and for returning absentees, and requiring voters send sensitive personal

information with their application and their ballot. Those who cannot vote by mail or during the Advance period will have no choice but to cast votes on Election Day.

When I poll watched for the Senate Runoff January 5, I visited a polling place where 5 of 15 BMDs were out of service. This did not delay anybody, because turnout was light due to our high rates of absentee and advance voting. If HB531 had been in place, there would have been long lines and citizens leaving without voting. HB531 also bans the kinds of grants that DeKalb used to make 11/3 and 1/5 run smoothly.

I have not even touched on all the problematic parts of this bill. Fleming always claims to act on behalf of county elections, and should listen to you. Please, immediately after your meeting, tell members of the Elections Integrity Committee to delay votes on this bill, at least until it receives full legal and fiscal analyses.

Committee members are

Barry Fleming	121st	Chairman
Alan Powell	32nd	Vice Chairman
Kimberly Alexander	66th	Member
Shaw Blackmon	146th	Member
Rhonda Burnough	77th	Member
Buddy DeLoach	167th	Member
Demetrius Douglas	78th	Member
Houston Gaines	117th	Member
Jan Jones	47th	Member
Chuck Martin	49th	Member
Bonnie Rich	97th	Member
Lynn Smith	70th	Member
Calvin Smyre	135th	Member
Rick Williams	145th	Member

Please also call Rules Committee Chairman Richard Smith at (404) 656-5141 and Vice Chairman Matt Hatchett at (404) 656-5025 and tell them to stop this bill.

Sincerely  
Liz Throop  
612 Clifton Rd., NE  
Atlanta, GA 30307

Public Comment (via email)

Members of the Board:

We renew our request for consistent factual updates in a written format as Director Erica Hamilton gives her reports. She relies on data to give her reports, but has not shared it in an easily referenced and consistent format. For example, when reporting during the prior election cycle, it would have been helpful to know a cunning number of voters registered in DeKalb, new applications received, and of those, how many applications were disallowed. Same for absentee



ballots, drop boxes, and so on. These are a few examples of data that would be helpful. We would be happy to provide additional suggestions for routinely needed data on an ongoing basis.

We also renew our request for an organizational chart for the Voter Registration and Elections Office (VRE).

Sincerely,

On Behalf of Indivisible Marching Buddies of Atlanta

Paula Bosworth, 2845 Whitby Dr., Doraville

Libby Howze, 3130 Westmart Ln., Tucker