

DeKalb County Board of Registration and Elections

Special Called Meeting Minutes

April 22, 2022

*via zoom platform

Start Time: 1:01 p.m.

End Time: 2:25 p.m.

Board Attendees: Chair Dele Lowman Smith
Vice-Chair Nancy Jester
Anthony Lewis
Susan Motter
Karli Swift

Other Attendees: Keisha Smith, Executive Director
Terry Phillips, Deputy County Attorney
Shelley Momo, Senior Assistant County Attorney
Irene Vander Els, Assistant County Attorney
Tristen Waite, Assistant County Attorney

APPROVAL OF AGENDA

Chair Lowman Smith called the meeting to order at 1:01 p.m. Ms. Austin read the roll by calling each board member by name. All members were in attendance.

Motion by Ms. Swift and seconded by Mr. Lewis to approve the agenda. The Motion carried by a unanimous vote.

PUBLIC COMMENTS

Ms. Austin read the rules for public comment:

Public comments of two minutes or less may be made live via the teleconference. 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 above 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 for the record. Also, please be conscious of speaking time so that everyone has an opportunity to provide input in the allotted time. Abusive, profane, or derogatory language will not be permitted.

There were no public comments.

ITEMS FOR DECISION

A) Challenges Brought by Gail A. Lee

Chair Lowman Smith read a statement introducing the challenges. On March 28, the Board received correspondence from a DeKalb County voter named Gail A. Lee challenging the eligibility of certain registrants based on their use of a nonresidential address at the time of registration. Upon review,

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Department staff determined the majority of the challenges to be invalid for one of several reasons. The Board then proceeded to consider the remaining 26 challenges.

Chair Lowman Smith explained the challenge procedure. The challenger would present evidence that the challenged voter was not eligible to vote in DeKalb County at the time of registration. The staff would present information regarding the challenged voter's initial registration. The challenged voter would then have an opportunity to present evidence that they were eligible to vote. Pursuant to O.C.G.A. 21-2-229, the burden of proof would be on the challenger.

Ms. Vander Els introduced herself as the Board's legal representative for the hearing and explained that Ms. Momo would be acting as the staff's representative.

Ms. Lee presented her challenge to the first voter, David Knight, on the basis that the address on his registration, 977 Montreal Rd, is a Post Office and not a residence.

Ms. Motter asked Ms. Lee a series of questions. In response Ms. Lee explained that she did not know the challenged voters personally and had not contacted them. She had originally received the list from a researcher in Gwinnett County, but she had taken the photographs and visited the properties herself.

Director Smith informed the Board that Mr. Knight had registered to vote through the Department of Driver Services using a nonresidential address and had since voted twice in DeKalb County, at which time he certified that he was qualified to vote in DeKalb County.

Vice-Chair Jester asked what rules governed nonresidential addresses. Ms. Vander Els referenced O.C.G.A. 21-2-216 and 21-2-217 and responded that voters were required to be domiciled in DeKalb County but not necessarily to provide a residential address.

Mr. Lewis asked how the Board could determine residence in the absence of a residential address. Ms. Vander Els listed some of the factors in the code that the Board could consider in determining residency.

Ms. Swift asked how citizens could register if they were unhoused. Ms. Vander Els responded that case law establishes that citizens can register with a nontraditional address.

Ms. Motter asked about the legal presumptions involving the Registrar's initial determination of residence. Ms. Vander Els responded that Registrar's initial determination of residence was presumed by law to be correct unless the challenger could present evidence to overcome that presumption.

Ms. Motter alluded to voter caging. Chair Lowman Smith asked if this challenge falls under 12 (a) of the Board Bylaws, which states that "non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address)" must be rejected. Ms. Vander Els responded that the Board would make that determination.

Vice-Chair Jester rejected the characterization of the challenges as voter caging and registered her disagreement with the rules as written. She asked Ms. Lee if any of the challenges were based on evidence other than registration at a nonresidential address. Ms. Lee responded that there were not, but that in her interpretation a nonresidential address was valid grounds for a challenge. Ms. Lee added that nine of the challenged voters on her list were all using the same post office box.

Ms. Swift moved to reject the challenges based on the use of a nonresidential address and permit all 26 challenged voters to remain on the on the rolls. Ms. Motter seconded the motion.

Mr. Lewis commented on the importance of voter challenges in maintaining clean voter rolls. He questioned how the Department could establish the residency of a voter without requiring a residence.

Vice-Chair Jester agreed with Mr. Lewis and recommended the use of data techniques to maintain the quality of the voter rolls.

Ms. Swift stated the importance of the right to vote and expressed skepticism of wholesale challenges. She stressed that the burden of proof lies with the challenger.

The motion carried by a vote of 4-1, with Mr. Lewis voting nay.

BOARD COMMENTS

Vice-Chair Jester thanked counsel and stated her belief that the Board's decision had been made according to the law, but reiterated her disapproval of the rules as given.

Ms. Motter thanked Ms. Lee for bringing the challenge.

Mr. Lewis also thanked Ms. Lee and remarked on the importance of registering voters where they live.

Ms. Swift thanked Ms. Lee and the Board for the discussion.

Chair Lowman Smith commented as follows:

As anybody who has followed our meetings will know, I—as all of my colleagues do—feel very, very strongly about our responsibility to protect the sacred right of citizens who have that legal right, to vote; and not erecting any impediments to that. I think that maintaining the integrity of the process necessitates the ability to challenge someone's qualification to vote in a particular jurisdiction.

I want to be clear that the conclusion I came to after our inquiry and guidance by counsel was not that this met the standard for voter caging. There was another criterion in our procedure that talks about non-individualized or generalized claims, and I think that based on the motion that we passed, this very clearly meets that challenge.

I would simply state that we really need to have some very clear, dispositive evidence that demonstrates not that there is suspicion, but there is in fact clear evidence that somebody is not eligible to vote where they were registered. I think the other thing that should be acknowledged is that we simply do not have enough information. Even without Ms. Lee providing any additional evidence, what the Department receives from the Department of Driver Services does not contain any extraneous data; so, we don't know if what they used to register to vote is the same as what they used on their driver's license. They may have provided a residential address there and not provided one here for whatever reason.

But I appreciate the way that we were able to deliberate, as everyone else has said, and come to a conclusion, and it is a pleasure to work with you all.

ADJOURNMENT

Motion by Vice-Chair Jester and seconded by Ms. Swift to adjourn the meeting. The motion carried by a unanimous vote. The meeting was adjourned at 2:25 p.m.