

DeKalb County Board of Registration and Elections

Meeting Minutes

July 8, 2022

*via zoom platform

Start Time: 10:00 a.m.

End Time: 11:16 a.m.

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

Other Attendees: Keisha Smith, Executive Director
Mereda Davis Johnson, County Commissioner
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 10:00 a.m. Director Smith read the roll by calling each board member by name. All members were in attendance.

Motion by Vice-Chair Jester and approved by Ms. Motter to approve the agenda. The motion carried unanimously.

APPROVAL OF MINUTES

Motion by Ms. Motter and seconded by Mr. Lewis to approve the May 6 Special Called Meeting Minutes. The motion carried unanimously.

PUBLIC COMMENTS

Ms. Vander Els 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.

The following citizens provided public comment:

- Sonya Collette Frix

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- Judy Sophianopoulos
- Chana Harris

ITEMS FOR DECISION

A) Voter Challenges

Director Smith introduced two sets of voter registration challenges sent by DeKalb County residents: ten by Gail Lee and ten by Roger Wycoff. She explained that when challenges are received, registration staff first reviews them to identify the basis of the claim. The challenger and challenged voters are both notified by certified mail, first class mail, and email if an email address has been provided.

She noted that the challenges on the agenda were derived from the National Change of Address database. Under federal law and guidance from the state, removals based on change of address can only be performed through the state's list maintenance procedures. Therefore, she recommended rejecting the challenges.

Ms. Lee explained that the ten people on her list had indicated to the post office that they wished to relocate to the state of Florida. She had also submitted documentation showing that each of them had registered to vote in Florida. She cited O.C.G.A. 21-2-217, arguing that the challenged voters were considered to have lost their residence in Georgia when they registered to vote elsewhere.

The board agreed to let Ms. Jester ask Ms. Lee's attorney, David Baker, a question. He argued that the board's rules obviated O.C.G.A. 21-2-229 by allowing challenges only through the state's list maintenance procedures. He reiterated that under O.C.G.A. 21-2-217 (a)(2), a voter's residency ends when they register to vote elsewhere. He argued that this evidence in combination with the NCOA list was sufficient for the board to cancel the challenged voters' registrations.

Ms. Swift disagreed with Mr. Baker's interpretation, arguing that it accounted for neither the full list maintenance procedure given in the code, nor for federal preemption. She stated that case law would be needed before the board could remove these voters.

Ms. Vander Els added that the state's list maintenance procedures do contemplate the possibility of voters moving out of state and that removal of a voter under those circumstances requires documentation from the foreign secretary of state including the voter's signature and a copy of their application.

Mr. Lewis asked if the rules regarding foreign secretaries of state inhibited receiving information in other ways. Ms. Vander Els responded that per guidance from Georgia's secretary of state, it did.

Mr. Lewis asked if any of the challenged voters had voted in 2022. Director Smith responded that of the ten voters challenged by Ms. Lee, nine had last voted in 2021 and one had voted in 2020. She also mentioned that since publication of the agenda, three of the challenged voters—Zenobia Williams, Terri Tanner, and Robert Blair—had contacted the Department confirming that they had moved and that their registrations had already been cancelled.

Ms. Motter reminded the public of the issues with voter challenges dating back to 2019. At the time, she asked how state law interacted with the federal National Voter Registration Act and objected to how the board was handling challenges. Ultimately the board was sued over that issue. After advice from the county attorneys, the affected voters were added back to the voter rolls. Her current view was

that the situation remained unchanged, and that additional clarity could only come from new legislation or case law.

Chair Lowman Smith commented that it was clear to her that NCOA removals could only occur through the state's list maintenance procedure, which was currently happening and which she believed could be allowed to proceed without being supplemented by challenges. She also reiterated that federal law placed additional requirements on the board. She stressed the danger of cancelling a registration based on the same name and birthdate; and that challenges should only be upheld based on personal knowledge of the challenged voter. She reminded listeners that the burden of proof is on the challenger and argued against setting the precedent that the staff would research when challenged voters last voted because it would distract the staff from their jobs. She asked challengers to present this information themselves if they intended to make a challenge.

Mr. Lewis commented that in his opinion, the board should have gone to court instead of settling the 2019 case out of court. This would have given the clear guidelines which Ms. Motter was looking for. He disagreed with the Chair and argued that residents who bring challenges should not be expected to be investigators due to the position it would put them in of needing to contact challenged voters or other secretaries of state directly.

He asked whether challengers were prevented from using registration in another state as evidence in their challenge. Ms. Vander Els responded that it does not prevent them from bringing the challenge, but that per O.C.G.A. 21-2-233, the board could not remove a voter from the rolls based on a change of address, even if there is evidence of registration in another state unless that information came from the other secretary of state.

Motion by Vice-Chair Jester, seconded by Mr. Lewis, to remove the voters one through ten from the rolls if they had not already removed themselves. The motion failed 2-3. Vice-Chair Jester and Mr. Lewis voted aye. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted nay.

Motion by Ms. Swift, seconded by Ms. Motter, to reject the challenges against the same voters. The motion carried 3-2. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted aye. Vice-Chair Jester and Mr. Lewis voted nay.

Director Smith introduced challenges eleven through twenty, brought by Roger Wycoff. One last voted November 30, 2021. The other nine last voted January 5, 2021. As of this morning, Dominique Dessausure had responded that she had moved out of state and her registration had been cancelled.

Responding to a public comment, Mr. Wycoff criticized the claim that certain demographics were being targeted as offensive and inaccurate. He stated that the voters were identified through the National Change of Address database and had registered to vote in North Carolina.

Mr. Lewis asked if any of the voters had responded to the challenge. Director Smith responded that there had been no response aside from Ms. Dessausure.

Motion by Vice-Chair Jester, seconded by Mr. Lewis, to remove the voters eleven through twenty from the rolls if they had not already removed themselves. The motion failed 2-3. Vice-Chair Jester and Mr. Lewis voted aye. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted nay.

Motion by Ms. Swift, seconded by Ms. Motter, to reject the challenges against the same voters. The motion carried 3-2. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted aye. Vice-Chair Jester and Mr. Lewis voted nay.

BOARD COMMENTS

Ms. Swift thanked the staff for the research they had done. She reminded the public of the importance of the right to vote, and that the fact that someone had not voted in an election was not evidence that they had moved. Removing a voter from the rolls was a matter taken very seriously by the board, and, while they may not always agree, they were working together to ensure that DeKalb has the best election infrastructure and voter experience possible.

Ms. Motter also thanked the staff and asked the public to understand that the staff was called upon to do a lot of legwork. She welcomed any guidance from the state or litigation that might create case law to clarify the situation; but when in doubt, she preferred to lean on the side of enfranchisement.

Mr. Lewis echoed the thanks to the staff for working on these challenges amidst two elections and assured them that the board never wanted to create more work for them. He thanked the challengers and stated how important public input had been in alerting the department to problems. He described voter challenges as a protection of voters' right to vote by assuring that the voter rolls are up to date.

Vice-Chair Jester thanked the challengers and described the notion that discrimination was at work as ridiculous on its face. She described the outcome of the challenges and the advice from the county attorneys as the death of common sense and called it clear that voter rolls statewide were very ill-maintained. She predicted that challenges would continue to be rejected by a 3-2 vote and described any further challenges as a waste of time, advising potential challengers to pursue action through litigation or the state. She stated that when voter rolls were not maintained it dilutes everyone else's vote. She stated that there were no personal issues between her and the rest of the board and thanked the staff for their hard work.

Chair Lowman Smith recognized Commissioner Mereda Davis Johnson and yielded the floor to her for comments. Commissioner Davis Johnson addressed the board, thanking them for assisting the public with the voting process. She stated her interest in ensuring that everyone had a reasonable right to vote and that it could not be premised on the lie that the 2020 election had been stolen; that although legislation had been passed after that election, courts nationwide had determined that there was little to no fraud. She described the laws as voter suppression targeting certain people.

Chair Lowman Smith thanked the staff for providing context to the challenges. She restated that the burden of proof is on the challenger and that although the burden could be heavy, the staff was not intended to be investigators. The procedures were set by the state and the board is limited in its ability and willingness to take away someone's right to vote. She did not believe that her vote was diluted by the size of the voter rolls; that the only way a vote could be diluted is if someone else voted improperly, and there was no evidence of that occurring despite a lot of searching.

Chair Lowman Smith went on to state that as the descendant of people who fought for the right to vote, she preferred to err on the side of enfranchisement and refused to take away that right based on supposition. She asked future challengers to understand that the board recognizes its burden to consider this information before making a decision.

ADJOURNMENT

Motion by Ms. Motter, seconded by Mr. Lewis, to adjourn the meeting. The motion carried by a unanimous vote. The meeting was adjourned at 11:16 a.m.

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