
Subject: FW: Open Record Requests-Received, Elections Communications
Date: Thursday, January 28, 2021 at 7:56:41 AM Pacific Standard Time
From: Kayla Correa
To: records@americanoversight.org
Attachments: image001.jpg, SKM_C65821012811460.pdf, SKM_C65821012811470.pdf, SKM_C65821012811471.pdf

EXTERNAL SENDER

Good Morning,

The attached records are records which we have in response to your requests received on December 22, 2020. The responsive records are specific to the request(s) for the following:

“Email communications... between Henry County Board of Election Officials and any of the Secretary of State officials listed in Column B” (refer to your request #20-2950); and

“Email communications... between county officials listed in Column A below and... parties listed in Column B” (refer to your request #20-2981, specifically relating to Barbara Jessop and/or Donna Crumbley); and

“Email communications... between county officials listed in Column A below and... parties listed in Column B” (refer to your request #20-2965, specifically relating to True the Vote (@truethevote.org)).

Please note that there is information from the records which has been redacted in accordance with O.C.G.A §50-18-72(20)(A). If there are any questions or if I may be of further assistance, please let me know.

Thank you,

Kayla Correa

Records Administrator | Constituent Services
140 Henry Pkwy. McDonough, GA 30253
(P) 770.288.6082 | (F) 770.288.8008
www.co.henry.ga.us

Kayla Correa

From: Ameika Y. Pitts
Sent: Friday, December 11, 2020 3:40 PM
To: Arch Brown;Charles A. Callaway;Donna Crumbley;Donna McBride;Mildred Schmelz
Cc: Ameika Y. Pitts;Brook L. Schreiner;Hunter Hatfield;Jan Mayo;Janet S. Moore;Katherine Hicks;Luane Fesmire;Terrika M. Davis
Subject: Notice - Intent to Process and Tabulate Early
Attachments: Notice Early Processing of Absenttee Ballots01052021.docx; ITPE-01052021.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Happy Friday!

Please see attachments. Have a great weekend 😊

Best,

Ameika Pitts

Director

Henry County Elections and Voter Registration

Phone: 770-288-6448

Fax:770-288-6468

NOTICE TO VOTERS
Henry County, Georgia
Intent to Process Absentee Ballots Prior to Close of Polls
January 5, 2021 General Runoff Election

Pursuant to State Election Board Emergency Rule 183-1-14-0.9-.15, you are hereby notified that it is the intent of the Henry County Board of Elections and Registration to begin processing accepted paper absentee ballots cast during the January 5, 2021 General Runoff Election for Federal Office on Monday, December 21, 2020. The opening of ballot envelopes and scanning of ballots will continue daily from 8:00 AM until 8:00 PM at Henry County Elections and Voter Registration, 40 Atlanta Street, McDonough, GA 30253 until all accepted absentee ballots are processed. A sign will be posted on the front door notifying the public if there is any change to this schedule or if activities are suspended for any period.

The early processing of absentee ballots before the close of the polls shall be a controlled process to maintain the secrecy of all ballots and to protect against the collection or disclosure of any ballot information before the close of the polls at 7:00 PM on Election Day which is strictly prohibited.

BY ORDER OF Henry County Board of Elections and Registration

Ameika Pitts, Director

Intent to Process or Tabulate Early for the January 5, 2021 General Election Runoff for Federal Office Election

O.C.G.A. § 21-2-386(a)(3) - A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and begin tabulating the absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary, election, or runoff, the Secretary of State of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process.

☐ We are holding an election, but will not be processing or tabulating absentee ballots early.

☒

Yes, we intend to tabulate absentee ballots early for the election we are holding.

Location: 40 Atlanta St., McDonough, GA 30253 Date/Start Time: 01/05/2021 8:00 a.m.

RULE 183-1-14-0.7-.15 - Beginning at 8:00 a.m. on the third Monday prior to Election Day, county election superintendents shall be authorized to open the outer envelope of accepted absentee ballots, remove the contents including the absentee ballot, and scan the absentee ballot using one or more ballot scanners, in accordance with this rule, and may continue until all accepted absentee ballots are processed. However, no person shall tally, tabulate, estimate or attempt to tally, tabulate or estimate or cause the voting equipment to produce any tally or tabulation, partial or otherwise, of the absentee votes cast until the time for the closing of the polls on Election Day.

☒

Yes, we intend to process absentee ballots early for the election we are holding.

Location #1 (Street Address/City/Zip Code) 40 Atlanta St., McDonough, GA 30253

Date(s): 12/21-30/2020 Start Time: 8:00a End Time: 8:00p Early Processing ☒ Adjudication ☐

Location #2, if applicable: 40 Atlanta St., McDonough, GA 30253

Date(s): 12/22-30/2020 Start Time: 8:00a End Time: 8:00p Early Processing ☐ TRANSPOSE ☒

Location #3, if applicable: 40 Atlanta St., McDonough, GA 30253

Date(s): 01/2-4/2021 Start Time: 8:00a End Time: 8:00P Early Processing ☒ TRANSPOSE ☒

Location #4, if applicable: _____

Date(s): _____ Start Time: _____ End Time: _____ Early Processing ☐ Adjudication ☐

Name: AMEIKA PITTS Signature: [Signature]

County: HENRY Date: December 11, 2020

Please complete and fax or email back to your Liaison.

Kayla Correa

From: Donna McBride
Sent: Wednesday, December 16, 2020 3:09 PM
To: Charles A. Callaway;arch brown;Mildred Schmelz;Donna Crumbley;donna380@aol.com
Cc: Ameika Y. Pitts;Brook L. Schreiner
Subject: Fw: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County
Attachments: 2020.12.12 Letter to HENRY County Election Officials re Runoff Advance Voting.pdf; Patrick Jaugstetter.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good Day Board,

This request is to see if you are available for a special called meeting at 1:00 pm, on Tuesday, December 22. Kindly let me know of your availability as soon as possible. Additionally, see the attachments above.

Respectfully,

Dr. Donna McBride

Chair

Henry County Board of Elections and Voter Registration
(770) 288-6448

From: Jasrasaria, Jyoti (Perkins Coie) <JJasrasaria@perkinscoie.com>
Sent: Saturday, December 12, 2020 10:02 AM
To: Donna McBride <dmcbride@co.henry.ga.us>
Cc: Adam M. Sparks <sparks@khlawfirm.com>; Stafford, Ben (Perkins Coie) <WStafford@perkinscoie.com>; Edlin, Elise (Perkins Coie) <EEdlin@perkinscoie.com>; Ramirez, Joel (Perkins Coie) <JoelRamirez@perkinscoie.com>; Charles A. Callaway <ccallaway@co.henry.ga.us>; Arch Brown. <archbrown@co.henry.ga.us>; Mildred Schmelz <mschmelz@co.henry.ga.us>; Ameika Y. Pitts <aypitts@co.henry.ga.us>; Henry Absentee <henryabsentee@co.henry.ga.us>
Subject: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Dr. Morris-McBride:

Please see the attached letter regarding advance voting dates for the rapidly-approaching runoff elections.

Given the urgency of the issue, we appreciate your prompt attention and look forward to your confirmation by 2:00 p.m. on Monday, December 14.

Best regards,
Jyoti

Jyoti Jasrasaria | Perkins Coie LLP

ASSOCIATE, Political Law Group
700 Thirteenth Street, N.W. Suite 800
Washington, DC 20005-3960
D. +1.202.654.1723
E. JJasrasaria@perkinscoie.com
She/her pronouns

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.



KREVOLIN HORST

One Atlanta Center
1201 West Peachtree Street, NW
Suite 3250 | Atlanta, GA 30309
Tel: 404-888-9700 | Fax: 404-888-9577
www.krevolinhorst.com

Adam M. Sparks
Tel: 404-835-8067
Email: sparks@khlawfirm.com

December 12, 2020

VIA EMAIL
Henry County Elections & Voter Registration
40 Atlanta Street
McDonough, GA 30253
dmcbride@co.henry.ga.us

Attn: Dr. Donna Morris-McBride, Chair

RE: Advance Voting for Georgia Runoff Election in Henry County

Dear Dr. Morris-McBride:

This firm represents the New Georgia Project ("NGP"). My co-counsel and I write to request clarification about the dates upon which you will provide advance voting in Henry County for the rapidly-approaching runoff elections. In particular, we seek assurance that, contrary to publicly-available information, Henry County will offer advance voting on every day that it is required to do so under Georgia law.

Based on information available to our client, it appears that Henry County does not intend to offer advance voting on December 24 or 31, 2020, and that the final day for advance voting in Henry County will be December 30, 2020. Were this so, it would violate clear mandates of Georgia law. Since the advance voting period begins this Monday, December 14, we hope to quickly obtain your assurance that Henry County will in fact offer advance voting on every day that it is required to do so under Georgia law, including on December 24 and 31, 2020 with the last day of advance voting being offered on January 4 (or alternatively, January 2), 2021. Absent this commitment, our client intends to file emergency litigation seeking compliance with the Georgia Election Code.

As you know, Georgia law provides for advance voting prior to an election, including runoffs from a general election. O.C.G.A. § 21-2-385; *see also* O.C.G.A. § 21-2-501 (describing types of runoff elections). When federal candidates are on the ballot, that period begins on the fourth Monday preceding the runoff election. O.C.G.A. § 21-2-385(d)(1)(C). This year, the first day of advance voting is December 14, 2020. The runoff election advance voting period typically ends on the Friday preceding the runoff election. O.C.G.A. § 21-2-385(d)(1). This year, that would be January 1, 2021.

The Georgia Election Code further provides:

Unless otherwise stated in a specific Code section of this chapter, time periods under this chapter include Saturdays, Sundays, and legal holidays. When the last day for the exercise of any privilege or the discharge of any duty prescribed or required by this chapter shall fall on a Saturday, Sunday, or legal holiday, the next succeeding business day shall be the last day for the exercise of such privilege or the discharge of such duty.



KREVOLIN HORST

Henry County Elections & Voter Registration

December 12, 2020

Page 2

O.C.G.A. § 21-2-14. Accordingly, voting should occur on December 24 and 31, 2020, in addition to January 2 or 4, 2021, for two reasons.

First, because Friday, January 1, 2021 is a legal holiday, *see* O.C.G.A. § 1-4-1 (setting forth official state public and legal holidays), under the operation of O.C.G.A. § 21-2-14, the last day for voters to exercise their right to vote by advance voting—and for Henry County to discharge its duty to provide such advance voting—is Monday, January 4, 2021. Given the unusual circumstances of how the holidays fall over the next few weeks, we believe the County could meet its statutory duty by designating Saturday, January 2, 2021 as a business day and providing advance voting on that date instead of January 4 (the day before in-person voting). In any event, Georgia law does not permit the County to end the advance voting period nearly a week before the runoff election, on December 30, 2020.

Second, because December 24 and 31, 2020 are not *State* legal holidays, Henry County must allow advance voting on these days in order to comply with the Georgia Code. *See* O.C.G.A. §§ 1-4-1, 21-2-385(d)(1).

We recognize that Henry County election officials have worked very hard to administer the General Election and subsequent recounts, to say nothing of additional elections earlier this year. The way the holidays fall this year is unfortunate. Nonetheless, Georgia law is clear, and ensuring that all Georgians in Henry County are able to exercise their right to vote on all dates for advance voting provided by Georgia law is compelling.

Again, we urge you to confirm that Henry County will comply with the Georgia Code and keep the polls open on these dates. If we do not hear back from you with this confirmation by 2:00 p.m. on Monday, December 14, 2020, our client intends to seek relief from the courts on an emergency basis ordering Henry County to comply with the Georgia Election Code by making advance voting available on all required dates. Please do me the favor of copying co-counsel on any reply.

Best regards,

Adam M. Sparks

Cc: Ben Stafford (wstafford@perkinscoie.com)
Elise Edlin (eedlin@perkinscoie.com)
Jyoti Jasrasaria (jjasrasaria@perkinscoie.com)
Joel Ramirez (joelramirez@perkinscoie.com)



JARRARD & DAVIS, LLP

Limited Liability Partnership

KEN E. JARRARD*
ANGELA E. DAVIS
CHRISTOPHER J. HAMILTON
MEGAN N. MARTIN
KENNETH P. ROBIN
PATRICK D. JAUGSTETTER
PAUL B. FRICKEY

222 Webb Street
Cumming, Georgia 30040
TELEPHONE: 678.455.7150
FACSIMILE: 678.455.7149

PATRICKJ@JARRARD-DAVIS.COM

† Also Admitted in Illinois & California
* Also Admitted in Tennessee † Also Admitted in Florida

SARAH VANVOLKENBURGH†
G. AARON MEYER
MOLLY N. ESSWEIN
SAM P. VANVOLKENBURGH
JEFFREY M. STRICKLAND
PATRICK DOYLE DODSON*
MELISSA A. KLATZKOW†
KAREN P. PACHUTA

MEMORANDUM

TO: AMIEKA PITTS
DR. DONNA MORRIS-McBRIDE

FROM: PATRICK D. JAUGSTETTER 

DATE: DECEMBER 17, 2020

RE: 2020 SENATE RUNOFF ELECTION ADVANCE VOTING DATES

I have reviewed the published schedule for Advance Voting as published on the website of the Henry County Board of Elections and Registration (the "Board") to determine if the dates available for Advance Voting conform to the requirements of Georgia law, specifically, those requirements set forth in O.C.G.A. §21-2-385(d)(1), which provides as follows:

There shall be a period of advance voting that shall commence:

- (A) On the fourth Monday immediately prior to each primary or election;
- (B) On the fourth Monday immediately prior to a runoff from a general primary;
- (C) On the fourth Monday immediately prior to a runoff from a general election in which there are candidates for a federal office on the ballot in the runoff; and
- (D) As soon as possible prior to a runoff from any other general election in which there are only state or county candidates on the ballot in the runoff but no later than the second Monday immediately prior to such runoff

and shall end on the Friday immediately prior to each primary, election, or runoff. Voting shall be conducted during normal business hours on weekdays during such period and **shall be conducted on the second Saturday prior to a primary or election during the hours of 9:00 A.M. through 4:00 P.M.**; provided, however, that in primaries and elections in which there are no federal or state candidates on the ballot, no Saturday voting hours shall be required; and provided, further, that, if

such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, **if such second Saturday follows a public and legal holiday occurring on the Thursday or Friday immediately preceding such second Saturday**, or if such second Saturday immediately precedes a public and legal holiday occurring on the following Sunday or Monday, such advance voting shall not be held on such second Saturday but **shall be held on the third Saturday prior to such primary or election**. Except as otherwise provided in this paragraph, counties and municipalities may extend the hours for voting beyond regular business hours and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option.

Based upon my review of the law, Advance Voting must be available on the following dates:

December 14-19;
December 21-23; and
December 28-31.

The Board is free to offer Advance Voting on any Sunday during the early Voting Period and on Christmas Eve, HOWEVER, Advance Voting on those days is **not** required. Below is the analysis that forms my opinion:

O.C.G.A. §21-2-385(d)(1) requires Advance Voting be permitted during “normal business hours on weekdays” during the Advance Voting Period. The law further requires that Advance Voting be available on the second Saturday (or, as noted below, on the third Saturday) prior to Election Day. The law does not, however, require Advance Voting on days which are “public and legal holidays” or on a Saturday which falls immediately before or after a “public and legal holiday”.

“Public and Legal holidays” are designated by Georgia law in O.C.G.A. §1-4-1(a) as follows:

The State of Georgia shall recognize and observe as public and legal holidays:

(1) All days which have been designated as of January 1, 1984, as public and legal holidays by the federal government; and

(2) All other days designated and proclaimed by the Governor as public and legal holidays or as days of fasting and prayer or other religious observance. In such designation, the Governor shall include at least one of the following dates: January 19, April 26, or June 3, or a suitable date in lieu thereof to commemorate the event or events now observed by such dates.

New Year’s Eve/Christmas Eve

Even though most local governments will be closed on New Year’s Eve, and despite the President’s Executive Order granting employees of the Executive Branch of the federal government the “day off” on New Year’s Eve, neither the federal government nor the State of Georgia have recognized December 31, 2020 as a “public and legal holiday”. The Governor of Georgia has, however, designated Christmas Eve (December 24, 2020) as a “public and legal holiday” to be taken in recognition of George Washington’s Birthday. Thus, the law demands that Advance Voting be permitted during normal business hours December 31, 2020. There is simply no legal authority which would authorize the Board to close Advance Voting on New Year’s Eve.

Saturday Voting

I understand that the Board has received email “guidance” from a staff member at the Secretary of State’s Office suggesting that Advance Voting need not be offered on Saturday. I find no legal authority supporting that position. Specifically, O.C.G.A. §21-2-385(d)(1) clearly requires that Advance Voting be permitted on at least one Saturday during the Advance Voting Period. Specifically, Advance Voting must be available on the second Saturday prior to Election Day, unless that Saturday falls on the day before or after a holiday, in which case Advance Voting must be made available on the third Saturday prior to Election Day. As illustrated on the calendar below, the second Saturday before Election Day is the day after a holiday (Christmas Day), therefore, Advance Voting must be made available, instead, on the third Saturday before Election Day (December 19, 2020).

To demonstrate, see the calendar below. Days shown in green are days in which Advance Voting MUST be made available. Days shown in red are days on which Advance Voting need not be made available (or in the case of December 26, SHALL not be made available).

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
13	14 Advance Voting Begins (Fourth Monday immediately prior to the date of the runoff)	15	16	17	18	19 Third Saturday prior to Election Day (substituted in lieu of Second Saturday)
20	21	22	23	24 Christmas Eve (Public and legal holiday – designated by Governor as a holiday to celebrate Washington’s Birthday)	25 Christmas Day (Public and legal holiday)	26 Second Saturday prior to Election Day (Saturday following a public and legal holiday)
27	28	29	30	31	1 New Year’s Day (Public and legal holiday)	2 Advance Voting Ends (Saturday following a “public and legal holiday”)
3	4	5 Election Day	6	7	8	9

Accordingly, I recommend a that the Board add Advance Voting on December 31, 2020 during the hours of 9:00 am and 4:00 pm to its current schedule. Such Advance Voting, however, need

not be offered in ALL of the locations made available for Advance Voting. Further, I recommend that the Board continue in its plan to offer Advance Voting on Saturday, December 19, 2020. I have taken the liberty of preparing a revised Advance Voting Schedule reflecting my recommendations as follows:

HENRY COUNTY ADVANCE VOTING SCHEDULE

Elections & Voter Registration Main Office: 40 Atlanta St., McDonough

December 14th – 18th 8:00 am – 5:00 pm

December 19th 9:00 am – 4:00 pm

December 20th 1:00 pm – 5:00 pm

December 21st – 23rd 7:00 am – 7:00 pm

December 28th – 30th 7:00 am – 7:00 pm

December 31st – 9:00 am – 4:00pm

Merle Manders Conference Center: 111 Davis Rd., Stockbridge

December 14th – 18th 8:00 am – 5:00 pm

December 19th 9:00 am – 4:00 pm

December 20th 1:00 pm – 5:00 pm

December 21st – 23rd 7:00 am – 7:00 pm

December 28th – 30th 7:00 am – 7:00 pm

Fortson (Hampton) Library: 61 McDonough St., Hampton

December 14th – 18th 8:00 am – 5:00 pm

December 19th 9:00 am – 4:00 pm

December 20th 1:00 pm – 5:00 pm

December 21st – 23rd 7:00 am – 7:00 pm

December 28th – 30th 7:00 am – 7:00 pm

Locust Grove Library: 115 M.L.K. Jr. Blvd., Locust Grove

December 14th – 18th 8:00 am – 5:00 pm

December 19th 9:00 am – 4:00 pm

December 20th 1:00 pm – 5:00 pm

December 21st – 23rd 7:00 am – 7:00 pm

December 28th – 30th 7:00 am – 7:00 pm

Fairview Recreation Center: 35 Austin Rd., Stockbridge

December 14th – 18th 8:00 am – 5:00 pm

December 19th 9:00 am – 4:00 pm

December 20th 1:00 pm – 5:00 pm

December 21st – 23rd 7:00 am – 7:00 pm

December 28th – 30th 7:00 am – 7:00 pm

JP Mosley Recreation Center: 1041 Millers Mill Rd., Stockbridge

December 14th – 18th 8:00 am – 5:00 pm

December 19th 9:00 am – 4:00 pm

December 20th 1:00 pm – 5:00 pm

December 21st – 23rd 7:00 am – 7:00 pm

December 28th – 30th 7:00 am – 7:00 pm

Kayla Correa

From: arch brown
Sent: Thursday, December 17, 2020 11:49 AM
To: Donna McBride; Charles A. Callaway; Mildred Schmelz; Donna Crumbley
Cc: Ameika Y. Pitts; Brook L. Schreiner
Subject: Re: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County
Follow Up Flag: Follow up
Flag Status: Flagged

I will be

From: Donna McBride <dmcbride@co.henry.ga.us>
Sent: Wednesday, December 16, 2020 3:09 PM
To: Charles A. Callaway <ccallaway@co.henry.ga.us>; arch brown <archbrown@co.henry.ga.us>; Mildred Schmelz <mschmelz@co.henry.ga.us>; Donna Crumbley <dcrumbley@co.henry.ga.us>;
Cc: Ameika Y. Pitts <aypitts@co.henry.ga.us>; Brook L. Schreiner <bschreiner@co.henry.ga.us>
Subject: Fw: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

Good Day Board,

This request is to see if you are available for a special called meeting at 1:00 pm, on Tuesday, December 22. Kindly let me know of your availability as soon as possible. Additionally, see the attachments above.

Respectfully,

Dr. Donna McBride

Chair

Henry County Board of Elections and Voter Registration
(770) 288-6448

From: Jasrasaria, Jyoti (Perkins Coie) <JJasrasaria@perkinscoie.com>
Sent: Saturday, December 12, 2020 10:02 AM
To: Donna McBride <dmcbride@co.henry.ga.us>
Cc: Adam M. Sparks <sparks@khlawfirm.com>; Stafford, Ben (Perkins Coie) <WStafford@perkinscoie.com>; Edlin, Elise (Perkins Coie) <EEdlin@perkinscoie.com>; Ramirez, Joel (Perkins Coie) <JoelRamirez@perkinscoie.com>; Charles A. Callaway <ccallaway@co.henry.ga.us>; Arch Brown. <archbrown@co.henry.ga.us>; Mildred Schmelz <mschmelz@co.henry.ga.us>; Ameika Y. Pitts <aypitts@co.henry.ga.us>; Henry Absentee <henryabsentee@co.henry.ga.us>
Subject: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Dr. Morris-McBride:

Please see the attached letter regarding advance voting dates for the rapidly-approaching runoff elections.

Given the urgency of the issue, we appreciate your prompt attention and look forward to your confirmation by 2:00 p.m. on Monday, December 14.

Best regards,
Jyoti

Jyoti Jasrasaria | Perkins Coie LLP
ASSOCIATE, Political Law Group
700 Thirteenth Street, N.W. Suite 800
Washington, DC 20005-3960
D. +1.202.654.1723
E. JJasrasaria@perkinscoie.com
She/her pronouns

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Kayla Correa

From: Charles A. Callaway
Sent: Friday, December 18, 2020 10:02 AM
To: arch brown; Donna McBride; Mildred Schmelz; Donna Crumbley; donna380@aol.com
Cc: Ameika Y. Pitts; Brook L. Schreiner
Subject: Re: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

Follow Up Flag: Follow up
Flag Status: Flagged

Attending. Andy Callaway.

From: arch brown <
Sent: Thursday, December 17, 2020 11:49 AM
To: Donna McBride <dmcbride@co.henry.ga.us>; Charles A. Callaway <ccallaway@co.henry.ga.us>; Mildred Schmelz <mschmelz@co.henry.ga.us>; Donna Crumbley <dcrumbley@co.henry.ga.us>;
Cc: Ameika Y. Pitts <aypitts@co.henry.ga.us>; Brook L. Schreiner <bschreiner@co.henry.ga.us>
Subject: Re: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

I will be

From: Donna McBride <dmcbride@co.henry.ga.us>
Sent: Wednesday, December 16, 2020 3:09 PM
To: Charles A. Callaway <ccallaway@co.henry.ga.us>; arch brown <brownarch@msn.com>; Mildred Schmelz <mschmelz@co.henry.ga.us>; Donna Crumbley <dcrumbley@co.henry.ga.us>;
Cc: Ameika Y. Pitts <aypitts@co.henry.ga.us>; Brook L. Schreiner <bschreiner@co.henry.ga.us>
Subject: Fw: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

Good Day Board,

This request is to see if you are available for a special called meeting at 1:00 pm, on Tuesday, December 22. Kindly let me know of your availability as soon as possible. Additionally, see the attachments above.

Respectfully,

Dr. Donna McBride

Chair

Henry County Board of Elections and Voter Registration
(770) 288-6448

From: Jasrasaria, Jyoti (Perkins Coie) <JJasrasaria@perkinscoie.com>
Sent: Saturday, December 12, 2020 10:02 AM
To: Donna McBride <dmcbride@co.henry.ga.us>

Cc: Adam M. Sparks <sparks@khlawfirm.com>; Stafford, Ben (Perkins Coie) <WStafford@perkinscoie.com>; Edlin, Elise (Perkins Coie) <EEdlin@perkinscoie.com>; Ramirez, Joel (Perkins Coie) <JoelRamirez@perkinscoie.com>; Charles A. Callaway <callyaway@co.henry.ga.us>; Arch Brown. <archbrown@co.henry.ga.us>; Mildred Schmelz <mschmelz@co.henry.ga.us>; Ameika Y. Pitts <aypitts@co.henry.ga.us>; Henry Absentee <henryabsentee@co.henry.ga.us>

Subject: [EXTERNAL] Advance Voting for Georgia Runoff Election in Henry County

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Dr. Morris-McBride:

Please see the attached letter regarding advance voting dates for the rapidly-approaching runoff elections.

Given the urgency of the issue, we appreciate your prompt attention and look forward to your confirmation by 2:00 p.m. on Monday, December 14.

Best regards,
Jyoti

Jyoti Jasrasaria | Perkins Coie LLP

ASSOCIATE, Political Law Group
700 Thirteenth Street, N.W. Suite 800
Washington, DC 20005-3960
D. +1.202.654.1723
E. JJasrasaria@perkinscoie.com
She/her pronouns

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Kayla Correa

From: Ameika Y. Pitts
Sent: Monday, December 21, 2020 6:59 PM
To: Arch Brown; Charles A. Callaway; Donna Crumbley; Donna McBride; Mildred Schmelz
Subject: Agenda BOE Special Meeting
Attachments: BOE SPECIAL December 22 2020 Agenda copy (002).docx; 12.18.20.Letter re GA Residency OEB.pdf; ACLU of Georgia Letter Regarding Mass Challenges_Henry.pdf; 2020.12.21 Brennan Center Letter to Georgia Counties Re Mass Challenges.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good evening!

Please see attachments of agenda and correspondence of challenge electors. See you all tomorrow.

Best,

Ameika Pitts

Director

Henry County Elections and Voter Registration

Phone: 770-288-6448

Fax: 770-288-6468



HENRY COUNTY
ELECTIONS & REGISTRATION

Board of Elections and Voter Registration
December 22, 2020 Special Board Meeting
Agenda

- I. Call to Order
- II. Approval of Agenda
- III. Early Voting Schedule
- IV. February Election
- V. Challenge Elector's
 - a. Consideration of Challenge to 3,778 +/-Electors' Eligibility to Vote filed by Vikki Townsend Consiglio pursuant to O.C.G.A. §21-2-230
 - b. Consideration of Challenge to 9271 +/- Electors Eligibility to Vote filed by Noelle Kahaian pursuant to O.C.G.A. §21-2-230
- VI. CTCL Grant Update
- VII. Public Comment
- VIII. Board Member Comments
- IX. Adjournment



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1500 K Street, NW
Suite 900
Washington, DC 20005

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

December 18, 2020

Via Email Only

Chris Harvey, Elections Division Director
Georgia Secretary of State's Office
2 MLK Jr. Dr., SE, Suite 315
Floyd W. Tower
Atlanta, GA 30334

Re: Official Election Bulletin dated November 24, 2020

Dear Mr. Harvey:

On behalf of the Lawyers' Committee for Civil Rights Under Law, I write today regarding the Official Election Bulletin you issued to all Georgia County Election Officials and County Registrars on November 24, 2020 (the "OEB"). We request that a corrected Official Election Bulletin be issued to ensure that voters who properly have registered to vote in Georgia will be allowed to vote in January.

As a nonpartisan organization working to ensure that all registered voters have an equal opportunity to vote and to have that vote counted, we appreciate all of the efforts of the Secretary of State's office to identify and investigate legitimate complaints of actual voter fraud. We do not want concerns with legitimate voter fraud, however, to result in the disenfranchisement of any legal Georgia voters.

The first paragraph of the OEB states that voters who voted in another state in November cannot thereafter "decide" to become Georgia residents. Under Georgia law, any otherwise qualified person who has moved to and intends to remain in Georgia can register and vote, regardless of the person's motive for moving. See O.C.G.A. § 21-2-217; *Dozier v. Baker*, 283 Ga. 543, 545, 661 S.E.2d 543, 545 (2008) (affirming finding of residency based on "intent" to remain notwithstanding candidate's "motive" for moving); *Cook v. Bd. of Registrars of Randolph Cnty.*, 320 Ga. App. 447, 452-53, 740 S.E.2d 223, 227-28 (2013) (following *Dozier*). We request immediate issuance of a corrected OEB clarifying that an

The Lawyers' Committee was formed at the request of President John F. Kennedy in 1963

Page Two

otherwise qualified person who has moved to and intends to remain in Georgia properly can register and, once registered, cast their vote.

The OEB goes on to note that the county boards of registrars have the power to ensure the proper residence of new and existing voter registrants, stating that a voter's registration may be rejected if a registrar cannot determine "to his or her satisfaction" the voter registrant's residency. This language invites and may even encourage county election officials to refuse to register new voters, or to challenge and remove existing registered voters, based on the officials' arbitrary and capricious determination of their personal "satisfaction" as to the residency or non-residency of the new or existing voters. Such an arbitrary and uncabined process violates both federal and Georgia law.

The National Voter Registration Act ("NVRA") mandates that any activity "to protect the integrity of the electoral process" by ensuring an accurate voter roll "shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965." 52 U.S.C. § 20507(b)(1). Allowing individual officials to reject registrations if proof of residency has not been established to that official's individual "satisfaction" would not be "uniform" and would create the risk of discriminatory disenfranchisement. To the extent the OEB constitutes a systematic program across Georgia to prevent or remove ineligible voters, moreover, it violated the prohibition on implementing such a program less than 90 days before an election. *See id.* § 20507(c)(2)(A); *Arcia v. Fla. Sect'y of State*, 772 F.3d 1335 (11th Cir. 2014) (striking down program that violated 90-day rule).

Georgia law similarly precludes the arbitrary refusal to allow a voter to register and the arbitrary removal of an existing voter. Where an elector challenges another elector's qualifications, for example, the challenger bears the burden of proof. O.C.G.A. § 21-2-229. Any such challenge must be made in writing and specify distinctly the grounds of the challenge. *Id.* § 21-2-230(a). Unless the board of registrars finds probable cause for the challenge, the challenge must be denied; while if probable cause has been found, the elector must be notified and given the opportunity to dispute the grounds of the challenge. *Id.* § 21-2-230(b)-(c); *see also, e.g., McIntosh Cnty. Bd. of Elections v. Deverger*, 282 Ga. 566, 567, 651 S.E.2d 671, 673 (2007) (holding rebuttable presumption of legality attaches to registration of voter who has been on list of

Page Three

official electors for 10 years even where voter registration card cannot be located or lacks a signature) (citing, *inter alia*, O.C.G.A. § 21-2-522.1).

The OEB further states that, in determining residency, the county official “shall review all available evidence, including any identifying documents submitted along with the application.” Where an applicant has presented or can present the proof of residency required by Georgia’s official voter registration form (https://registertovote.sos.ga.gov/GAOLVR/images/reg_form.pdf), then county officials should only deny registration “‘based on information in their possession establishing the applicant’s ineligibility.’” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 15 (2013). Thus, unless county officials possess credible information calling into question the voter’s residency, they should not require additional proof of residency beyond that normally required for registration.

Finally, the last paragraph of the OEB states that any submission of false registration information, even if not done knowingly, “shall” be referred for criminal prosecution. Under Georgia law, however, an applicant must “knowingly” give false information to commit a crime. O.C.G.A. § 21-2-561(3). Thus, the OEB mandates seeking prosecution for conduct that may not constitute a crime. The NVRA and other federal voting laws preclude threats or the initiation of improper criminal prosecutions that could have a chilling effect on registration and voting. *See, e.g., United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967); *League of United Latin American Citizens – Richmond Region Council 4614 v. Public Interest Legal Foundation*, No. 1:18-cv-00423, 2018 WL 3848404, at *3-4 (E.D. Va. Aug. 13, 2018) (noting NVRA does not require intent to intimidate, only that actions have the effect of intimidating voters).

In addition to the NVRA, the Civil Rights Act prohibits concerted threats intended to dissuade any federal voter. *See* 42 U.S.C. § 1985(3); *see also* 5 U.S.C. § 10101(b) (barring threats intended to intimidate federal voters); 5 U.S.C. § 10307(b) (barring threats intended to intimidate persons encouraging others to vote). Federal law also criminalizes threats intended to interfere with any federal voter. 18 U.S.C. § 594; *accord* O.C.G.A. § 21-2-567 (criminalizing intimidation of voter registrants or electors).

Page Four

The Georgia registration form already requires applicants to affirm their residence and eligibility to vote in Georgia and correctly states that any person who "registers to vote *knowing* that such person does not possess the qualifications required by law, who registers under any name other than such person's own name, or who *knowingly* gives false information in registering shall be guilty of a felony." O.C.G.A. § 21-2-561 (emphasis added). Given this unambiguous existing prohibition, the OEB's threat of criminal prosecution is redundant and creates a substantial risk of chilling legitimate voter registration and participation. See generally *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963) (recognizing that "[p]eople do not lightly disregard public officers' thinly veiled threats to institute criminal proceedings against them . . .").

Accordingly, we request that you rescind the existing OEB and issue a corrected OEB stating that (a) a voter registrant who had moved to Georgia with the intent of remaining in Georgia can vote in the January election; (b) the voter registrant has no affirmative obligation to provide any documentary evidence of residency; (c) county election officials cannot arbitrarily refuse to register voters or remove existing voters, but can only do so where they possess evidence demonstrating the applicant's ineligibility; (d) any challenge to the residency of a registrant or voter must be supported by specific evidence demonstrating ineligibility; and (e) if the challenge is not immediately denied, the challenged registrant or elector has due process rights to defend their registration.

Thank you for your attention and consideration in this matter.

Regards,



Kristen Clarke
President and Executive Director

cc: County Boards of Election and Supervisors of Election



Georgia

P.O. Box 77208, Atlanta, GA 30357
678.439.9143 | syoung@acluga.org

December 19, 2020

Henry County Board of Elections and Registration
40 Atlanta Street
McDonough, GA 30253

Via E-mail

Re: Mass Challenges to Voter Eligibility

Dear Henry County Board of Elections and Registration,

The ACLU of Georgia has learned that True the Vote, an organization based in Texas, has filed baseless voter eligibility challenges to 364,541 Georgia voters in the middle of the ongoing runoff election. We write to warn you that participating in this charade violates state and federal law, as explained below. **Accordingly, you must reject such challenges because they lack probable cause, and you cannot force hundreds of thousands of Georgia voters to answer these baseless charges as a condition for having their ballot counted.** Otherwise, you will face legal consequences.

This mass challenge is one of the oldest tricks in the voter suppression handbook: a practice known as “voter caging.” Step one: target thousands of eligible voters based on a common characteristic that is perfectly legal: in this case, having your mail sent to a different address through the National Change of Address (“NCOA”) system. Any Georgia resident has the right to do this if, for instance, they are staying with relatives temporarily during the pandemic, are in the military, or go to college elsewhere. Step two: wait until an election is underway and suddenly challenge all of those voters at the same time. Step three: cause elections officials to send hearing “notices” to thousands of these voters last minute, forcing these voters to appear in-person at a hearing (usually on or near Election Day) where they must show up or be disenfranchised.

Those who engage in voter caging know that few voters will actually show up at these last-minute hearings, especially in the middle of a pandemic, and will thus have their ballots thrown out. And this assumes the voter even hears about them.

Participating in this kind of voter-caging scheme on the eve of an election is illegal because federal law prohibits any kind of systematic voter removal program less than 90 days before an election.¹ Moreover, federal and state law already have an elaborate, multi-year procedure for testing whether voters who register address changes with the NCOA have actually moved. 52 U.S.C. § 20507(d)(1); O.C.G.A. § 21-2-233. Elections officials cannot use voter caging to circumvent this legally required process for NCOA removals.

In order for these challenges to proceed, challengers must establish “probable cause.” O.C.G.A. § 21-2-230(b). Probable cause requires “a reasonable ground for belief” which is “something more than mere suspicion.”² “Rumor, suspicion, speculation or conjecture is not sufficient to show probable cause.”³ And importantly, probable cause must be “individualized”⁴ and “particularized with respect to that person.”⁵

The NCOA information provided by the challengers fails to establish probable cause, as the Cobb County Board of Elections and Registration found in a meeting held on December 18, 2020. This information cannot show whether a voter may have changed their mailing address without forfeiting their eligibility to vote. For example, as noted above, a voter may be a member of the armed forces validly voting from out of state, as was the case for hundreds of Nevada voters who were initially accused of improperly voting in the November general election.⁶ Alternatively, a voter may have moved for temporary purposes to stay with relatives during the pandemic or may be attending college in another part of the state. All of these circumstances, among others detailed by Georgia law, would allow a voter to cast their ballot from outside their voting jurisdiction. See O.C.G.A. § 21-2-217. Thus, elections officials cannot make a finding of probable cause based on the NCOA information.

For these reasons, this mass challenge must be rejected.

Sincerely,



Sean J. Young
Legal Director
ACLU of Georgia

¹ See *Arcia v. Fla. Sec. of State*, 772 F.3d 1335, 1344 (11th Cir. 2014); *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enft.*, No. 1:16CV1274, 2018 WL 3748172, at *7 (M.D.N.C. Aug. 7, 2018); 52 U.S.C. § 20507(c)(2)(A).

² *United States v. Cleckler*, 270 F.3d 1331, 1334 (11th Cir. 2001).

³ *Zimmerman v. State*, 207 S.E.2d 220, 222 (Ga. App. 1974).

⁴ *Autry v. State*, 277 Ga. App. 305, 309 (Ga. App. 2006).

⁵ *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979).

⁶ Jae C. Hong, *Nevada Election Results: the 3,000 Challenged Votes*, Wall St. J. (Nov. 8, 2020), <https://www.wsj.com/articles/nevada-election-results-the-3-000-challenged-votes-11604863720>.

BRENNAN CENTER FOR JUSTICE

December 21, 2020

Dear Members of the County Board of Elections & Registration,

We understand that you may have been presented with one or more mass challenges to the eligibility of hundreds, if not thousands, of voters in your County based on incomplete and unreliable data. Indeed, Cobb and Gwinnett Counties recently rejected several such mass challenges because they were not sufficiently supported by facts. On behalf of the Brennan Center for Justice at NYU School of Law, we write to urge you to similarly deny these mass voter challenges. Failure to do so could expose your County to legal liability under federal and state law on numerous bases. We lay out merely a few of these grounds below as examples.

I. The Information Is Unreliable

Space does not permit us to lay out all the ways in which the data presented by the challengers is unreliable.

The challengers purport to compare the County's voter rolls to the National Change of Address ("NCOA") Registry to identify voters who allegedly moved out of state. But, critically, the challengers fail to explain how they determined that the voters in the registration database are the same persons appearing in the NCOA Registry. If the challenger compared only the first and last names on the two lists, for example, there would be a high likelihood of false matches. And the challengers fail to provide *both* the voter's County address as listed in the state database and the County address provided on the NCOA form; thus, there is no evidence that these two addresses actually matched. In other words, there is no way to verify the information that the challengers submitted.

The Board cannot take this risk because faulty matching between lists disenfranchises voters. In 2012, Texas officials purged voters presumed to be dead, based on a comparison to the Social Security Administration's Death Master File. Texas used weak matching criteria (e.g., first name, last name, and date of birth) to target voters without further investigation. On these grounds, James Harris, Jr., a living Texas voter (and Air Force veteran) was flagged for removal because he shared information with Arkansan "James Harris," who died in 1996. According to one analysis, more than 68,000 of the

Brennan Center for Justice at New York University School of Law
120 Broadway, Suite 1750 New York, NY 10271

80,000 voters identified as possibly dead arose from weak matches.¹ Texas changed its policy after settling litigation based on the bad purge.

II. There Is No Probable Cause to Sustain These Mass Challenges

The Board cannot sustain these challenges without finding probable cause and that threshold is not met here. Probable cause under Georgia law means the existence of such facts and circumstances that would create a reasonable belief that an accused person committed the act alleged. *See Adams v. Carlisle*, 278 Ga. App. 777, 782 (2006). “Rumor, suspicion, speculation or conjecture is not sufficient to show probable cause.” *Zimmerman v. State*, 131 Ga. App. 793, 794 (1974). The probable cause threshold is not met precisely because of the unreliability of the data that the challengers have presented.

The unsubstantiated excel files that challengers have offered lack entire data fields from the Georgia voter file. And the information fails to demonstrate how any conclusion about a particular voter was reached. In other words, the information offered creates a reasonable belief *only* of the fact that the challengers are not presenting the whole picture.

Even if the challengers’ information accurately reflected NCOA forms submitted by County voters — which is unverifiable based on the data they presented — a voter’s change of address may reflect a temporary change that has no effect on the voter’s eligibility in the County.

There are many reasons why a voter might change their address with the Postal Service and still remain an eligible voter in the County. For example, a student who attends college out of state but intends to return home after the completion of his studies may file an NCOA form to receive mail at his school address during the semester. A member of the armed forces may be stationed outside of Georgia, but her permanent home remains in Georgia. Finally, some voters may have temporarily left the County to care for a sick relative—which could occur with some frequency during a global pandemic.

As these examples make clear, the challengers’ unsubstantiated spreadsheets do not establish probable cause that any of the voters they list have moved their *permanent* residence outside of the County.

III. These Mass Challenges Likely Violate the National Voter Registration Act

If sustained, these mass challenges — premised on unsound data analysis — could violate the National Voter Registration Act (“NVRA”) for at least two reasons.

¹ Lise Olsen, *Texas’ voter purge made repeated errors*, Chron, (Nov. 2, 2012), <https://www.chron.com/news/politics/article/Texas-voter-purge-made-repeated-errors-4001767.php>.

Prior Notice and Waiting Period Requirement

First, these mass challenges, if sustained, could amount to an unlawful purge of the voter rolls based on a change of residence. Under Section 21-2-230 of the Georgia code, challenges to voter eligibility can result in the removal of voters from the list of electors. *See* Ga. Code §§ 21-2-230(g)–(i), 21-2-229. But challengers cannot avoid the requirements of the NVRA by seeking to compel a systematic voter purge by another name.

The NVRA requires that one of three conditions be satisfied before removing a voter from the rolls due to a change in residence:

- (1) The voter has “request[ed]” to be removed;
- (2) The voter “confirm[ed] in writing” that he has changed residence; or
- (3) The voter failed to respond to a notice *and* failed to vote during the next two federal general election cycles after receiving the notice (“notice-and-waiting”).

See 52 U.S.C. § 20507(a)(3), (d). None of these conditions have been met here.

The alleged appearance of County voters on the NCOA Registry — a third-party database — does not constitute a request or a confirmation in writing from any of those voters. As a federal court has confirmed, “the request of the registrant” cannot be “twist[ed]” to encompass “indirect information from a third-party database.” *Common Cause Indiana v. Lawson*, 937 F.3d 944, 961 (7th Cir. 2019). Nor may the County “skip past” the requirement that the voter confirm the move in writing. *Id.* at 962. And there is no plausible argument that the County has provided notice *and* waited two federal election cycles here.

The NVRA expressly recognizes that NCOA information is not sufficient, on its own, to serve as the basis for cancelling a voter’s registration. The statute directs that a state would satisfy the NVRA’s requirements if it relies on “change-of-address information supplied by the Postal Service . . . to identify registrants whose addresses may have changed” **and** then “uses the notice procedure.” 52 U.S.C. § 20507(c)(1)(B). But a state may not rely on NCOA information *without* also providing notice and waiting two federal election cycles.

A federal court in North Carolina, when confronted with mass challenges that resulted in cancellations of voter registrations, found that the counties at issue “violated § 20507(d) of the NVRA in sustaining challenges to voter registrations based on change of residence . . . without complying with the prior notice and waiting period requirement.” *N. Carolina State Conference of NAACP v. Bipartisan Bd. of Elections & Ethics Enf’t*, No. 1:16-CV-1274, 2018 WL 3748172, at *4 (M.D.N.C. Aug. 7, 2018).

90-Day Prohibition on Systematic Removals

Second, with just fifteen days before the January 5, 2021 runoff elections, these mass challenges could also violate the NVRA's prohibition on the systematic removal of voters from the rolls on the grounds of change of residence within 90 days of a federal election. *See* 52 U.S.C. § 20507(c)(2)(A) ("A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters") (emphasis added).

As the Eleventh Circuit has recognized, the NVRA "permits systematic removal programs at any time *except* for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014) (emphasis in original). A process that could effectively purge numerous voters in the County is indisputably systematic. *See N. Carolina State Conference of NAACP*, No. 1:16-CV-1274, 2018 WL 3748172 (concluding that counties that sustained mass challenges also violated the NVRA's 90-day provision).

IV. Sustaining These Challenges Without Individualized Hearings Would Violate State and Federal Due Process

Georgia law and federal due process requirements demand that every challenged voter has the opportunity to answer the grounds of the challenge at an individualized hearing. *See* Ga. Code § 21-2-230(c) (providing a hearing for a challenged voter who seeks to vote in person) & (g) (providing a hearing for a challenged voter who seeks to vote absentee). The fundamental requirement of due process under the U.S. Constitution is that individuals be afforded the opportunity to be heard at a meaningful time and in a meaningful manner prior to being deprived of a governmental benefit. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). And when "the individual's fundamental right to vote" is at stake, that interest "is therefore entitled to substantial weight." *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1338 (N.D. Ga. 2018). Similarly, under Georgia's constitution, "[d]ue process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Coker v. Moemeka*, 311 Ga. App. 105, 107 (2011) (quotation marks omitted).

In other words, approving these mass challenges would require you to hold numerous individual hearings to avoid violating due process. The challengers' requests appear designed to either expose this Board to legal liability or to grind election administration in the County to a halt.

These are just a few of the ways in which granting these challenge requests could violate federal and state law.

With due respect to the Board, and recognizing your tremendous effort over the last months to ensure safe and secure elections, it would be impossible to undertake the steps needed to avoid these violations by January 15, 2021, the Board's certification deadline for the January runoffs. *See* Ga. Code § 21-2-493(k).

We strongly urge you to deny the mass challenges before you and we will be monitoring the situation closely to protect the rights of all Georgia voters. We would be happy to speak with you further about the concerns outlined above at your earliest convenience.

Sincerely,



Eliza Sweren-Becker, Counsel



Gowri Ramachandran, Counsel

