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November 8, 2018

Lynn Ledford
Elections Director
Gwinnett County Board of Voter Registrations and
Elections
Lynn.ledford@gwinnettcountry.com

CC: All Other County Elections Officials¹

Via E-mail and Publication

Re: Demand to Count Absentee Ballots Missing Birthdate Information

To Gwinnett County Board of Voter Registration & Elections, and all other county elections officials,

Publicly available data indicates that Gwinnett County is the only known county that is rejecting absentee ballots solely for failing to include birthdate information, and that nearly 1,200 ballots have been rejected on this basis. However, according to an internal memo from the Georgia Attorney General's Office, attached as Exhibit A, this is illegal.

The opinion from the Georgia Attorney General's Office, relying on an opinion from the Georgia Supreme Court, states that while O.C.G.A. § 21-2-386(a)(1)(C) provides that "failure to furnish required information" is a "ground for rejection" of an absentee ballot, that provision "does not mandate the automatic rejection of any absentee ballot lacking the elector's place and/or date of birth." *Jones v. Jessup*, 279 Ga. 531, 533 n.5 (2005). Thus, as the Attorney General's Office concluded, "an election official *does not* violate O.C.G.A. § 21-2-386(a)(1)(C) when they accept an absentee ballot despite the omission of a date and month of birth, . . . *if* the election official can verify the identity of the voter with the voter's signature." See Exhibit A.

Most importantly, the Attorney General's Office concluded that rejecting absentee ballots solely based on missing birthdate information violates federal law. As the Georgia Attorney General's Opinion goes on to state, "federal law . . . *prohibits* the denial of the right to vote 'because of an error or omission on any record or paper . . . if such error or omission is not *material* in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101. "Where the election official can verify the identity of the voter by comparing their signature on the absentee ballot envelope with the voter's signature on file, **the**

¹ The ACLU of Georgia will be transmitting this letter by e-mail to all county elections officials for whom we have an email address on file.

omission of the additional information . . . day and month of birth would not be material to that voter’s qualifications and the absentee ballot should be counted.” Exhibit A (emphasis added). And as your office is aware, voters whose signatures are deemed not to match must be provided an opportunity to confirm their identity pursuant to court order.

For the reasons provided by the Georgia Attorney General’s Office, we demand that Gwinnett County, and all county officials, count all absentee ballots even if they are missing birthdate information.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean J. Young". The signature is fluid and cursive, with a large initial "S" and "Y".

Sean J. Young
Legal Director
ACLU of Georgia

EXHIBIT A

STATE ELECTION BOARD

PUBLIC MEETING AND HEARINGS
SEPTEMBER 11, 2018



STATE CAPITOL, ROOM 341
ATLANTA, GEORGIA 30334

MEETING MATERIALS FOR:
DAVID WORLEY

Telfair County, 2012-31

Respondents¹: Fred Haymons
Linda Cartwright
Betty Johnson
Rebecca Widner
Telfair County Board of Registrars

Jurisdiction and Election: Telfair County, July 31, 2012 general primary

Complainant: John Dopson

Proposed Resolution: CO with Telfair County Board of Commissioners

Summary:

The Board voted to refer this case to the Attorney General's office at its March 12, 2015 meeting.

Fred Haymons was charged with violating O.C.G.A. § 21-2-571 for voting while *knowing* he was not registered. At the time of the alleged violation, there were three (3) Fred Haymons registered living at the same address. Mr. Haymon appeared at the polls to vote, showed *his* own identification and was allowed to vote. There is no evidence that Mr. Haymons was aware that he was not registered. I recommend dismissing the charge against Fred Haymons.

Linda Cartwright was the poll manager in the polling place where Fred Haymons was allowed to vote during the July 31, 2012 general primary. Betty Johnson is the former probate judge for Telfair County. Both were charged with a violation of O.C.G.A. § 21-2-590(1) because a poll worker mistakenly gave Fred Haymons a ballot. A violation of O.C.G.A. § 21-2-590(1) requires knowledge, by the poll worker, that the person is unregistered. There is no evidence here that Betty Johnson, Linda Cartwright, or the poll worker that actually gave Haymons his ballot, *knew* he was not registered to vote. I recommend dismissing the charge against Linda Cartwright and Betty Johnson. *

Rebecca Widner was the Chief Registrar for Telfair County in 2012. Her office accepted four (4) absentee ballots without all of the requested information. Both Widner and the Telfair County Board of Registrars was charged with a violation of O.C.G.A. § 21-2-386(a)(1)(C) which requires the rejection of absentee ballots when not all of the requested identifying information is provided. However, the Georgia Supreme Court has held that while O.C.G.A. § 21-2-386 provides a basis upon which an election official *may* reject an absentee ballot, rejection is not mandatory where a voter has failed to provide all "required information." *Jones v. Jesup*, 279 Ga. 531, 533 n. 5 (2005). In *Jones* the omitted information was the place, day and month of birth. However, nothing in O.C.G.A. § 21-2-386 makes an address more or less required than a

¹ The Board voted to dismiss the charges against Respondents Linda Clemons Floyd, Patsy Vaughn, Alice Strong, and Beulah Dollar at its April, 2018 meeting.

day and month of birth, both are used to assist the local election official in confirming the identity of the voter where comparison of the voter's signature is insufficient. Therefore, an election official *does not* violate O.C.G.A. § 21-2-386(a)(1)(C) when they accept an absentee ballot despite the omission of a day and month of birth and/or an address, *if* the election official can verify the identity of the voter with the voter's signature and whatever other information is provided.

This interpretation of O.C.G.A. § 21-2-386(a)(1)(C) is also consistent with federal law which *prohibits* the denial of the right to vote "because of an error or omission on any record or paper . . . if such error or omission is not *material* in determining whether such individual is qualified under State law to vote in such election." 52 U.S.C. § 10101 (emphasis added). Where the election official can verify the identity of the voter by comparing their signature on the absentee ballot envelope with the voter's signature on file, the omission of the additional information of residence address and/or day and month of birth would not be material to that voter's qualifications and the absentee ballot should be counted.

I recommend that the Board dismiss the charge against Rebecca Widner and the Telfair County Board of Registrars.

Finally, Betty Johnson, the former probate judge was referred to the Attorney General's Office for a possible violation of O.C.G.A. § 21-2-451(a) when 162 voter certificates were found to be missing some piece of information. There is no evidence that Betty Johnson was "the poll officer that examined" each voter certificate, as described in O.C.G.A. § 21-2-451(a). However, Ms. Johnson was the probate judge/election superintendent during the July, 2012 general primary. Ms. Johnson retired at the end of 2012 and is currently over 80 years old. Telfair County Board of Commissioners and the current superintendent of elections have agreed to accept responsibility for the prior errors and enter into the attached consent order.

I recommend the Board accept the proposed consent order with the Telfair County Board of Commissioners and the current Telfair County Probate Judge as a final resolution to the charges against Betty Johnson.

**BEFORE THE STATE ELECTION BOARD
STATE OF GEORGIA**

In the matter of:

**Fred Haymans, Linda Cartwright,
Rebecca Widner, Betty Johnson
and the Telfair County Board of
Registrars.**

Respondents.

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**SEB Case No. 2012-31
Telfair County**

FINAL ORDER

COMES NOW the State Election Board, having considered the facts and circumstances surrounding the alleged violations of the State Election Code by Fred Haymans, Linda Cartwright, Rebecca Widner, Betty Johnson, and the Telfair County Board of Registrars, Respondents, and hereby **DISMISSES WITH PREJUDICE** the claims against Respondents regarding violations of the State Election Code.

Approved by the State Election Board this _____ day of _____, 2018.

STATE ELECTION BOARD

BY: _____
BRIAN KEMP
CHAIRPERSON

**BEFORE THE STATE ELECTION BOARD
STATE OF GEORGIA**

In the matters of:

**Betty Johnson, former Probate Judge
and Election Supervisor of Telfair County,**

Respondent.

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SEB Case 2012-31

CONSENT ORDER

COMES NOW the State Election Board, by and through counsel, and Dianne Walker, Probate Judge and Election Superintendent of Telfair County, Georgia, and the Telfair County Commission, and hereby enter into the following Consent Order for use in this matter before the State Election Board in lieu of an evidentiary hearing.

FINDINGS OF FACT and CONCLUSIONS OF LAW

The SEB considered this case at its March 12, 2015 meeting and found probable cause with regard to a violation of the Georgia Election Code by the former Probate Judge and Election Superintendent, Betty Johnson. Telfair County desires that the above-captioned case be resolved in its entirety in order to avoid further litigation. Telfair County acknowledges that there is evidence of a *prima facie* case supporting the following assertions and enters into this negotiated Consent Order to resolve the issues that arose during the July 31, 2012 General Primary Election.

1.

During the July 31, 2012 general primary, Respondent, Betty Johnson, was the Probate Judge and Election Supervisor for Telfair County.

2.

During the July 31, 2012 general primary, election officials under Ms. Johnson's supervision failed to record all required information on one hundred and sixty two (162) voter certificates. This constitutes a violation of O.C.G.A. § 21-2-451(a).

3.

The State Election Board has found that Respondent Betty Johnson has violated O.C.G.A. § 21-2-451(a).

4.

Respondent retired from the office of Probate Judge and Election Supervisor of Telfair County on December 31, 2012.

5.

The Telfair County Commission accepts responsibility for the civil fine assessed against the office of Probate Judge and Election Supervisor in this Consent Order.

ORDER

1.

This Consent Order addresses and resolves all matters regarding Respondent in connection with the July 31, 2012 general primary.

2.

The Georgia State Election Board, having considered the particular facts and circumstances of this case, inclusive of the within and forgoing "Findings of Fact and Conclusions of Law" hereby ORDERS that Respondent cease and desist from further violations of the Election Code, and hereby publicly reprimands Respondent. Because the

This 22 day of May, 2018.

Sworn to and subscribed
before me this 22 day
of May, 2018

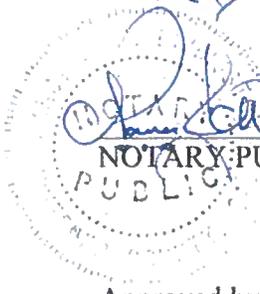


Phyllis H Long
NOTARY PUBLIC

CONSENTED TO:

Dianne M Walker
DIANNE WALKER
Telfair County Probate Judge and
Election Superintendent

Sworn to and subscribed
before me this 22nd day
of May, 2018



Annie C Williams
NOTARY PUBLIC
My Commission Expires Aug. 25, 2019

CONSENTED TO:

Annie C Williams
ANNIE C. WILLIAMS, CHAIRPERSON
Telfair County Board of Commissioners

Approved by the State Election Board this _____ day of _____, 2018.

STATE ELECTION BOARD

BY: _____
HON. BRIAN KEMP, CHAIRPERSON