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Gwinnett County Board of Voter Registrations & Elections  
75 Langley Drive  
Lawrenceville, GA 30046

Via E-mail and Publication

**Re: Dismissing Pending Mass Voter Challenges**

Dear Gwinnett County Board of Voter Registrations & Elections,

The ACLU of Georgia writes in response to your recent decision at a September 21, 2022 Board meeting (“the Meeting”) to continue investigating several thousand<sup>1</sup> voter challenges filed in late August. While we applaud the Board’s decision to dismiss a majority of these challenges, we are troubled that the Board continues to entertain thousands of remaining challenges. Continuing to investigate these challenges is illegal because: (1) the challengers have failed to meet their burden of proof under state law; (2) systematic, non-individualized challenges cannot be sustained within 90 days of an election; and (3) any further inquiry into these baseless mass challenges violates the process laid out by state law.

**Accordingly, you must immediately dismiss the remaining challenges to Gwinnett voters.**

Strict state and federal processes exist to safeguard the accuracy of our voter rolls. In recent years, third-party groups have attempted to bypass these processes by lodging mass challenges against hundreds of thousands of voters across the state at the eleventh hour.<sup>2</sup> These challenges, like the Gwinnett challenge in question, are often based on attempts to match information from the voter rolls to unverified,

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<sup>1</sup> Gwinnett County’s Elections Supervisor reported at the Meeting that 937 outstanding change-of-address challenges remained under investigation, as well as “a few thousand” challenges which alleged that certain addresses did not exist. Gwinnett Board of Elections Monthly Meeting 9.21.22, Gwinnett County Government at 1:17:37, 1:38:40, <https://viewer.earthchannel.com/PlayerController.aspx?&PGD=gwinetcoga&eID=988> (last visited Sep. 26, 2022).

<sup>2</sup> See, e.g., Mark Niese, *Eligibility of 364,000 Georgia Voters Challenged Before Senate Runoff*, Atlanta Journal-Constitution (December 22, 2020), <https://www.ajc.com/politics/eligibility-of-364000-georgia-voters-challenged-before-senate-runoff/3UIMDOVRFVERXOJ3IBHYWZBWYI/>.

third-party information. This tactic attempts to outsource the challengers' burden of proof to overworked elections staff, by forcing elections workers to do the individualized research challengers have failed to do. But neither federal nor state law sanctions the ability for any private citizen to commandeer the resources of an entire elections office based on mere suspicion. Such a system not only burdens elections workers who face extraordinary resource constraints, it also runs counter to the law for the reasons detailed below.

*First*, challenges that rely on database-matching and non-individualized evidence do not meet the high burden required to sustain a voter challenge. O.C.G.A. § 21-2-230(a) requires the Board to find “probable cause” to move forward with a challenge. As the County Attorney correctly noted at the Meeting, the probable cause standard is one that is imported from criminal law, and meeting this standard requires “more than mere suspicion.”<sup>3</sup> As the Elections Supervisor also pointed out, “all of the onus is on the challenger, and we don’t usually do any research.”<sup>4</sup>

Thus, when a challenger simply presents a list of voters that have been matched to a National Change of Address (“NCOA”) list, for example, they have not established probable cause. A Georgia voter may have chosen to have their address changed temporarily for any number of valid reasons, such as staying with a relative to provide care for a short period of time. Without any other individualized evidence provided, a mass challenge can be dismissed and elections staff need not expend additional resources to help a challenger make their case.

*Second*, any systematic removal of voters within 90 days of a federal election violates the National Voter Registration Act (“NVRA”). This applies to any removal that may result from a process that is non-individualized, whether it is pursuant to O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2-230. As the County Attorney noted at the hearing, evidence to sustain a removal within the 90-day window must be “individualized and rigorous.”<sup>5</sup> The County Attorney further noted that even if a voter is simply flagged as “challenged,” if they cast a ballot but are not able to attend a challenge hearing before certification, “chances are that that vote is not going to get counted.”<sup>6</sup> A mass challenge like this one is a systematic challenge, and any removals resulting from it would be strictly prohibited by federal law.

*Third*, continuing to devote staff resources to researching thousands of unsupported claims violates the challenge process laid out by state law. O.C.G.A. §

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<sup>3</sup> 9.21.22 Meeting at 1:28:04.

<sup>4</sup> 9.21.22 Meeting at 1:25:24.

<sup>5</sup> 9.21.22 Meeting at 1:43:22.

<sup>6</sup> 9.21.22 Meeting at 1:47:20.

21-2-230(b) lays out a simple two-step framework in evaluating a challenge. First, “the board of registrars shall *immediately* consider such challenge and determine whether probable cause exists to sustain such challenge” (emphasis added).<sup>7</sup> If the Board does not find that probable cause exists after immediate consideration, “the challenge shall be denied.”<sup>8</sup> If the Board does find that probable cause exists, it must initiate certain notice and hearing processes.<sup>9</sup> The Board has already fulfilled its obligations under Step 1: to “immediately consider” the challenges by carefully examining the categories of challenges filed in August. Having found no evidence sufficient to establish probable cause after completing its initial evaluation, the Board must move straight to Step 2: to deny the challenge.

The Board is not required to conduct further supplemental, individualized research that the challengers themselves have failed to provide. Such a requirement would be unsustainable and is unsupported by any rational interpretation of existing law. As a Board Member noted at the Meeting, there is a distinct possibility that other challenges will continue to be filed between now and Election Day.<sup>10</sup> The Board cannot possibly outsource its staff to conduct additional, labor-intensive research on behalf of current and future mass challengers, while simultaneously administering a general election and likely runoff.

For these reasons, we urge you to dismiss the remainder of the outstanding challenges pending before the Board. Any other course will leave the Board in blatant violation of state and federal law.

Sincerely,



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Senior Voting Rights Attorney



Caitlin May  
Voting Rights Attorney

cc: Melanie Wilson, County Attorney

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<sup>7</sup> O.C.G.A. § 21-2-230(b).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 9.21.22 Meeting at 1:51:20.