

CHATHAM COUNTY BOARD OF REGISTRARS

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August 17, 2017

City of Tybee Island
Attn: Janet Leviner
403 Butler Avenue
Tybee Island, Georgia 31328

Re: City of Tybee Island's Municipality Challenge of Individual Elector Qualifications

Dear Ms. Leviner:

I serve as the Chairperson of the Chatham County Board of Registrars.

We received your recent voter challenge correspondence, seeking to disqualify and eliminate from the voting rolls the names of nine (9) voters from the rolls of registered voters in this county.

As you may be aware, the American Civil Liberties Union of Georgia ("ACLU Georgia") became involved in this challenge process when one of its clients notified ACLU Georgia of the challenge to her qualifications to vote, which sought to eliminate her registration from the voter records.

Laying aside the merits of the challenges, a likely deficiency was noted about the process, in that the challenge had been initiated in the name of a municipality, and not an individual elector, as O.C.G.A. §21-2-229 requires (see attached).

The larger issue with these municipality challenges, as well as the Board of Registrars' own process for reviewing voter qualifications, is that the removal process provided under Georgia law must also abide by the requirements of the National Voter Registration Act ("NVRA") under Federal law. The pertinent portion of the NVRA, prescribing the requirements for removal of voters, is attached herewith for your easy reference.

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The Georgia Secretary of State - Elections Division has recently weighed in, largely in response to the recent string of problems raised with the challenge process statewide. It has been recommended to us that, in light of discrepancies between the NVRA and the Georgia Election Code, we suspend all pending challenge hearings. The Secretary of State has indicated it will be issuing educational materials to ensure there is a uniform process throughout the state for voter removal that is consistent and compliant with the NVRA.

For that reason, we will be suspending indefinitely the August 30, 2017, challenge hearings currently set for the Tybee Island residents that you submitted to our office.

In conclusion, we at the Chatham County Board of Registrars take seriously our duty under the Georgia Election Code to ensure the qualifications of registered voters, and we are committed to remaining vigilant in that regard. The policy concern about maintaining an accurate and updated database must be counterbalanced by the parallel concern about the prospect of improperly removing a voter from the registration rolls. We look forward to streamlining this system so that municipalities, through individual electors, can assist us by reviewing future registered voter lists for signs of any unqualified voters. Please look for additional literature outlining that streamlining process in due time.

If there are any questions, you can contact our Executive Director Sabrina German at (912) 790-1520 or call me at (912) 944-1648 during business hours.

Sincerely,

CHATHAM COUNTY BOARD OF REGISTRARS



Colin A. McRae,
Chairperson

TITLE 21. ELECTIONS
CHAPTER 2. ELECTIONS AND PRIMARIES GENERALLY
ARTICLE 6. REGISTRATION OF VOTERS

O.C.G.A. § 21-2-229 (2017)

§ 21-2-229. Challenge of applicant for registration by other electors; notice and hearing; right of appeal

(a) Any elector of a county or municipality may challenge the qualifications of any person applying to register to vote in the county or municipality and may challenge the challenge shall be in writing and shall specify distinctly the grounds of the challenge.

(b) Upon such challenge being filed with the board of registrars, the registrars shall set a hearing on such challenge. Notice of the date, time, and place of the hearing upon the elector making the challenge. The person being challenged shall receive at least three days' notice of the date, time, and place of the hearing. Such notice shall be given by first-class mail to the person being challenged or to the person's last known address as shown on the records or in the manner provided in subsection (c) of Code Section 21-2-228.

(c) The burden shall be on the elector making the challenge to prove that the person being challenged is not qualified to remain on the list of electors. The board of registrars shall receive all papers, and other material upon application by the person whose qualifications are being challenged or the elector making the challenge. The party requesting such challenge shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court.

(d) After the hearing provided for in this Code section, the registrars shall determine said challenge and shall notify the parties of their decision. If the registrars uphold the challenge, as appropriate. The elector shall be notified of such decision in writing either by first-class mail addressed to the mailing address shown on the person's voter registration card.

(e) Either party shall have a right of appeal from the decision of the registrars to the superior court by filing a petition with the clerk of the superior court within ten days of the decision of the registrars. Unless and until the decision of the registrars is reversed by the court, the decision of the registrars shall stand.

HISTORY: Code 1981, § 21-2-229, enacted by Ga. L. 1994, p. 1443, § 3; Ga. L. 1997, p. 590, § 25; Ga. L. 1998, p. 295, § 1.



U.S. Code

TITLE 52 — VOTING AND ELECTIONS

SUBTITLE II — Voting Assistance and Election Administration (§§ 20101 to 21145)

CHAPTER 205 — NATIONAL VOTER REGISTRATION (§§ 20501 to 20511)

52 U.S.C. § 20507. Requirements with respect to administration of voter registration

(a) **In general** — In the administration of voter registration for elections for Federal office, each State shall—

(1) ensure that any eligible applicant is registered to vote in an election—

(A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except—

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of—

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of—

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) **Confirmation of voter registration** — Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) [now 52 U.S.C. 10301 et seq.]; and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual—

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) **Voter removal programs**

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which—

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that—

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(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.

(B) Subparagraph (A) shall not be construed to preclude—

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant—

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B) (i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2) (A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant—

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii) (i) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new

address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) **Change of voting address within a jurisdiction** — In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) **Conviction in Federal court**

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 20509 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include—

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined — For the purposes of this section, the term "registrar's jurisdiction" means—

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

Pub. L. 103-31, Sec. 8, May 20, 1993, 107 Stat. 82; Pub. L. 107-252, title IX, Sec. 903, Oct. 29, 2002, 116 Stat. 1728.

REFERENCES IN TEXT

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, which is classified generally to chapters 103 (Sec. 10301 et seq.), 105 (Sec. 10501 et seq.), and 107 (Sec. 10701 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1973gg-6 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section. Section is comprised of section 8 of Pub. L. 103-31. Subsec. (h) of section 8 of Pub. L. 103-31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107-252 inserted before period at end ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual -

"(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

"(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office "