



P.O. Box 77208, Atlanta, GA 30357
[770.303.8111](tel:770.303.8111) | syoung@acluga.org



1500 K Street NW, Suite 900, Washington, DC 20005
202.662.8389/jpowers@lawyerscommittee.org

September 25, 2019

Members of the DeKalb County
Board of Registration and Elections
1300 Commerce Drive
Decatur, GA 30030
voterreg@dekalbcountyga.gov

Erica Hamilton, Director
DeKalb County
Board of Registration and Elections
1300 Commerce Drive
Decatur, GA 30030
ehamilton@dekalbcountyga.gov

Via Certified Mail and E-mail

**Re: Voter Purge of Residents at the Peer Support, Wellness, and Respite Center,
and Open Records Request**

To the DeKalb Board of Registration and Elections,

The ACLU of Georgia and Lawyers' Committee for Civil Rights Under Law write on behalf of the New Georgia Project and the Georgia Coalition for the Peoples' Agenda, to follow up our August 20, 2019 letter concerning the illegal removal of registered voters approved during your August 1, 2019 meeting based on unfounded allegations about their residency.

We have since learned that, contrary to what the Board Minutes reflect, the City of Decatur never filed any challenge at all. Instead, the challenge was actually initiated by an employee of the DeKalb Board of Registration and Elections who had a personal interest in the property at issue. It also appears as if you invited the City of Decatur to file challenges. (*See Exhibit A.*) Even putting aside these procedural problems, the purge was illegal for the reasons set forth in our August 20, 2019 letter.

To put this matter behind us and ensure that the DeKalb County Board of Registration and Elections complies with federal and state law concerning the proper handling of residency-based voter qualifications challenges in the future, we propose that you adopt the policies and procedures appended immediately after this letter. We are happy to answer any questions you may have and look forward to resolving this matter both amicably and expeditiously.

Sincerely,

A handwritten signature in black ink, appearing to read "David Young".

A handwritten signature in black ink, appearing to read "John Powers".

Sean J. Young
Legal Director
ACLU of Georgia
Atlanta, GA 30309
Telephone: (770) 303-8111
Email: syoung@acluga.org

John Powers
Counsel
Lawyers' Committee for Civil Rights
Under Law
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: (202) 662-8389
Email: jpowers@lawyerscommittee.org

CC by e-mail and certified mail:

Mayor Patti Garrett
patti.garrett@decaturga.com

Mayor Pro Tem Tony Powers
tony.powers@decaturga.com

Decatur City Commissioners Brian Smith, Kelly Walsh, and Scott Drake
brian.smith@decaturga.com
kelly.walsh@decaturga.com
scott.drake@decaturga.com

Decatur City Hall
509 North McDonough St.
Decatur, GA 30030

Proposed List Maintenance Procedures for Residency-Based Challenges to Voters' Qualifications

The DeKalb County Board of Registration and Elections and its employees (“BORE”) will adhere to the following formal procedures, policies, and guidelines set forth herein in response to residency-based challenges to voters’ qualifications and while performing list maintenance procedures to prevent the removal of qualified registered voters from the voter registration list in violation of federal or state law.

The BORE recognizes that residency-based challenges to the eligibility of registered voters under Georgia law may conflict with, and be preempted by, federal laws including Section 8 of the National Voter Registration Act of 1993 (52 U.S.C. § 20507, *et seq.*) (“NVRA”); the Voting Rights Act of 1965 (52 U.S.C. § 10301, *et seq.*) (“VRA”); and the First, Thirteenth, Fourteenth, and Fifteenth Amendments of the United States Constitution.

The BORE also recognizes that legal residents of DeKalb County who are eligible to vote may be struggling with homelessness or face other challenges causing them to live on the streets or in shelters, vehicles, trailers, transitional housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other DeKalb County residents in need of housing assistance in the county.¹

The procedures set forth below are intended to ensure that eligible registered voters are not removed from the voter registration list in violation of federal or state law as a result of residency-based challenges or list maintenance procedures.

I. THRESHOLD REQUIREMENTS FOR RESIDENCY-BASED CHALLENGES TO VOTER ELIGIBILITY

A. Preliminary Legal Considerations

1. A Challenge Must be Brought by a Registered Voter of the Same County or Municipality as the Challenged Voter

Challenges to the qualifications of a registered voter to remain on the voter registration list pursuant to O.C.G.A. § 21-2-229(a) must be made by an elector (i.e., a registered voter, *see* O.C.G.A. § 21-2-2(7)) ***of the same county or municipality as the registered voter whose qualifications are being challenged.***

Accordingly, such challenges must contain sufficient facts, including name, date of birth, address and other identifying information to enable BORE to determine whether the challenger has standing to bring the challenge. Challenges cannot be made by voters who are not registered in the same county or municipality as the challenged voter.

¹ Note that this is a non-exclusive list of possible alternative locations where DeKalb County’s eligible voters may be living in the county.

Challenges cannot be made by public or private entities including the State of Georgia, counties, municipalities, BORE itself, businesses, political committees, PACs, political parties, nonprofit organizations, or other organizations. Individuals filing a challenge may not file on behalf of, or as a representative or stalking horse of, any public or private entity.

Thus, before acting upon a challenge submitted to the BORE pursuant to O.C.G.A. § 21-2-229, the BORE must determine whether the challenger has standing to bring the challenge and, if not, the BORE must reject the challenge on this basis.

2. The Challenge Must be in Writing and Specify Distinctly the Grounds of the Challenge

O.C.G.A. § 21-2-229(a) requires that a challenge “be in writing and specify distinctly the grounds of the challenge.”

Challenges that are not in writing or which consist of vague, generalized, speculative assertions or conjecture do not satisfy this standard and must be rejected. In particular, residency-based challenges must allege facts sufficient to specifically and distinctly identify the grounds for the challenger’s contention that a registered voter has not satisfied the residency requirements of O.C.G.A. § 21-2-217. Nonexclusive examples of challenges that that would fail to meet the minimum standards required by Section 21-2-229(a) include:

- a. Non-individualized or generalized claims that the relevant address is (1) not a residence for people generally, (2) is a business, (3) does not appear to be a residence, or (4) other categorical assertions not based on the individual challenged voter’s specific circumstances. This includes challenges arising from claims asserting or suggesting that homeless voters or voters living on the street, in a shelter, vehicle, trailer, transitional housing, non-traditional housing or at a business serving homeless, ill, displaced, economically challenged or other facility providing housing assistance are generally not qualified to remain on the voter registration list;
- b. Assertions that a challenged voter’s name is not affiliated with the registered address in any governmental database. For instance, challenges based on the allegation that the voter’s name is not associated, or no longer associated, with the utility bill for an address are insufficient because there could be many residents at a particular address who do not pay the utility company;
- c. Reliance upon address data on file with the Georgia Department of Driver Services (“DDS”) or other government databases, which are often outdated because voters often fail to immediately notify all government entities about addresses changes and even if they do, there are often lag times before the government entity updates its files; and,
- d. “Voter caging” challenges—that is, blanket challenges to large numbers of people living in certain neighborhoods (typically lower-income), which appear targeted at voters based on race or political affiliation (i.e., participation in past primaries of a particular

political party)—shall be rejected because they fail to specify distinctly the basis for the challenge.

3. An Elector Bringing a Residency-Based Challenge Bears the Burden of Proving that the Challenged Voter is Not Qualified to Remain on the Voter Registration List and Must also Rebut the Presumption that the Registrar Correctly Determined the Residency of the Voter at the Time the Registration Application was Made

Under O.C.G.A § 21-2-229 (c), the challenger bears the burden of proving the challenged voter is not qualified to remain on the voter registration list. In addition, because O.C.G.A. § 21-2-217(b) gives *presumptive effect* to the decision of the registrar in determining the residence of the challenged voter at the time the registration application is made, a challenger bringing a residency-based challenge must produce evidence sufficient to rebut this presumption in order to sustain his or her burden of proving that the challenged voter is not qualified to remain on the voter registration list. If the challenger fails to do so, the challenge fails and should be summarily rejected by the BORE pursuant to O.C.G.A. § 21-2-229(c) and 21-2-217(b).

4. Section 8 of the NVRA Preempts Residency-Based Challenges Brought by An Elector against another Registered Voter Arising from a Claim that the Challenged Voter Has Moved from the Address Listed on the Voter's Registration Record

Under Section 8 of the NVRA, the BORE is *prohibited* from removing a registered voter from the registration list based upon a claim that the voter has moved (unless the voter has themselves requested removal from the registration list). 52 U.S.C. § 20507(d). The list maintenance and address confirmation process set forth in Section 8 of the NVRA preempts residency-based challenges made by electors to the qualification of a voter to remain on the voter registration list arising from a claim that the challenged voter is no longer residing at the address listed in the voter's registration record.

Therefore, even if all of the above criteria are met, the BORE will categorically reject any challenge asserting or suggesting that the registered voter has *moved* from the address listed on the voter's registration record. Instead, BORE may initiate the list maintenance provisions of Section 8 of the NVRA – in particular, moving the voter to inactive status and permit the voter at least two federal election cycles to vote or otherwise contact the elections office.

II. PROCESSING CHALLENGES

1. If the submitted challenge does not violate any of the requirements of state and federal law identified above, as soon as possible after receiving the challenge, BORE will make at least two reasonable attempts, including during non-traditional working hours, to call and email (if the voter supplied a phone number or email address on the registration form) the challenged voter to see if the issue can be resolved quickly, efficiently, and informally. During this communication, BORE will if necessary find a mutually convenient time to hold any hearing, including if necessary holding the hearing outside business hours, e.g., on evenings or weekends, if the voter cannot easily take time off from work during business hours.

2. Then, pursuant to O.C.G.A. § 21-2-229, and in addition to the above efforts, BORE will send a written notice informing the challenged voter of the date, time, and place of the hearing along with a copy of the challenge and 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. The notice will be sent by first-class mail and e-mail (if available), or in the manner provided in O.C.G.A. § 21-2-228. The letter shall provide the voter an opportunity to resolve the matter expeditiously and reschedule any hearing to a time convenient to them.

3. The challenged voter will have the right to at least one (1) continuance upon request, and will be granted additional continuances for good cause shown.

4. The written challenge will be posted on the BORE website within three business days of receipt.

5. If any members of the Board of Registration and Elections or employees of the DeKalb County elections office challenge the eligibility of voters in their individual capacity under O.C.G.A. § 21-2-229 while they remain in that position, they must recuse themselves from deliberating and voting or otherwise participating in any way in the BORE's consideration of their own challenges.

6. The Board of Registration and Elections and the Elections Supervisor will process all voter challenges made pursuant to O.C.G.A. § 21-2-229 expeditiously and objectively, while erring in all instances on the side of preserving the right to remain on the registration lists, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.

7. Pursuant to O.C.G.A. § 21-2-229, the Elections Supervisor will notify challenged voters of any change in registration status resulting from challenge proceedings in writing by first class, forwardable mail, and by telephone and email (if available). This notification letter will specify in detail any basis for upholding the challenge.

8. Any notice sent to challenged voters indicating that the BORE has upheld a challenge will include a voter registration form, and shall inform the voter that they have a right of appeal from the decision to the superior court by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars, and that the petition shall be served upon the other parties to the challenge and the registrars.

9. A copy of each written challenge upon which the BORE acts will be appended to the Minutes of any such Board meeting.

III. RESIDENCY ISSUES RAISED BY REJECTED CHALLENGES

The BORE will not initiate or invite challenges, either formally or informally, verbally or in writing. The BORE will not request that any individuals or entities (including municipalities) initiate challenges, send questionnaires inquiring about residences for potential

challenges (e.g., by sending “Municipal Street Maintenance Lists” that ask municipalities to identify whether an address is a “residence”), or take any other action to initiate challenges. BORE-initiated challenges are deemed to be challenges filed on behalf of an entity and therefore noncompliant with Georgia law, which requires that challenges be initiated by a registered voter of the relevant county or municipality. The BORE will not encourage, endorse, sanction or otherwise support the making of residency-based challenges by electors against other registered voters in light of the NVRA’s existing list maintenance procedures.

The BORE will not remove any voter from the registration lists based on residency issues raised by challenges that are rejected. No other state law, including O.C.G.A. § 21-2-228, will be construed to permit removals based on rejected challenges or for residency issues raised by rejected challenges.

The BORE will not immediately remove voters from the registration list based on mere knowledge that a voter has moved. Pursuant to state law, active or inactive voters who move from one county, municipality, or precinct to another after the fifth Monday prior to a primary or election may still vote in the county, municipality, or precinct in which such elector is registered to vote. O.C.G.A. §§ 21-2-218(e); 21-2-235(c).

The BORE will not remove any inactive voter from the registration list until the day after the second November federal general election held after the voter was placed on the inactive list. 52 U.S.C. § 20507(d)(1); *see* O.C.G.A. § 21-2-235(b). No voter will be removed from the registration list for inactivity or in the course of any list maintenance activities within 90 days of a federal primary or general election. 52 U.S.C. § 20507(c); O.C.G.A. § 21-2-234(i). If the voter does not vote, declines to otherwise confirm his or her address or update his or her registration information, and does not otherwise contact an election official by the day after the second November federal general election held after the voter was placed on the inactive list, the Board of Registration and Elections or Elections Supervisor may remove the voter from the inactive list. 52 U.S.C. § 20507(d)(1); *see* O.C.G.A. § 21-2-235(b).

EXHIBIT A



August 20, 2019

RE: Removal of Registered Voters from 444 Sycamore Drive, Decatur, GA

In May 2019, the City Clerk for the City of Decatur was asked to verify registered voters and the list of municipal streets by the DeKalb County Voter Registration and Elections (DCVRE) Office. City staff reviewed the files provided by the County to ensure that the list of municipal streets was correct and returned the files on June 26, 2019 to Deborah Christian, DeKalb County Election Coordinator. The City Clerk submitted the list of registered voters without a challenge.

The City Clerk notified DCVRE that 444 Sycamore Drive, which was included on the DCVRE municipal streets file, does not appear in the City's property database nor does it appear in the County's property database.

The City Clerk was contacted by Election Coordinator Glenda Woods by telephone regarding the notice of 444 Sycamore Drive as a non-address. In her research Ms. Woods determined that 444 Sycamore Drive was owned by one of her colleagues, Administrative Coordinator Mary Frances Weeks, and that the legal address of the property was 207 Springdale Avenue. Ms. Woods informed the City that DCVRE would take care of notifying the voters with a 444 Sycamore Drive address about the address discrepancy.

The City of Decatur did not request a challenge to the voter list or the municipal streets list. Rather, the City notified DCVRE of the discrepancy in the addressing as was the charge in the Municipal Street Maintenance List Checklist form provided by the County. The County initiated the challenge of the voters at the address in question.

Andrea Arnold
City Manager

ERICA HAMILTON
VOTER REGISTRATION & ELECTIONS DIRECTOR
(404) 298-4020
FAX (404) 298-4038



BOARD MEMBERS
ANTHONY LEWIS
SUSAN MOTTER
DELE LOWMAN SMITH
SAMUEL E. TILLMAN
BAOKY VU

Board of Registration and Elections
4380 Memorial Drive, Suite 300
Decatur, Georgia 30032

August 21, 2019

Mr. Sean J. Young
Legal Director
ACLU of Georgia
Atlanta, GA 30309

Mr. John Powers
Lawyers Committee for Civil Rights Under Law
1500 K Street, NW, Suite 900
Washington, DC 20005

Dear Messrs. Young & Powers:

I am the retiring Administrative Coordinator for the DeKalb County Voter Registration & Elections office and feel I am the most qualified to answer your letter, as the property in question belongs to my husband and myself.

The initial reason for the challenge was because the City of Decatur could not identify 444 Sycamore as a legitimate address. Our Elections Coordinator in charge of mapping asked me to help her write a letter, and I recognized the address. There is no 444 Sycamore Drive, as the "legal address" is 207 Springdale Street; however, the driveway is at 444 Sycamore and is easier for the clients to locate it using the Sycamore address. Obviously, I was aware that no one resides there. If you need us to have the Director confirm that there is no one living there, we will be happy to do so. Please refer to Georgia Election Code 21-2-217 which determines residency. Regardless, there is no such address as 444 Sycamore Drive in Decatur.

Sincerely,

A handwritten signature in blue ink that reads 'Mary Frances Weeks'.

Mary Frances Weeks

Cc: Erica Hamilton, Director
DeKalb County Board of Registration & Elections
City of Decatur Mayor, Mayor Pro Tem & Commission
Bennett Bryan, County Attorney
Sharon Jenkins Tucker, Executive Director, Georgia Mental Health Consumer Network

Cynthia Burnett

From: Christian, Deborah <drchristian@dekalbcountyga.gov>
Sent: Thursday, May 2, 2019 10:03 AM
To: Meredith Roark
Subject: FW: Municipal Voter List and Street Maintenance List
Attachments: City of Decatur.xlsx; Street Maintenance List.pdf

Follow Up Flag: Follow up
Due By: Thursday, June 6, 2019 4:00 PM
Flag Status: Flagged

Good Morning Meredith,

Here is the list of registered voters for the City of Decatur. Please review it and advise us of any voters that you would like to challenge. We must receive the challenges at least thirty days prior to our July 11th Board meeting. A final listing will be provided before November Municipal Election. The cutoff to register for the Municipal Election is October 7th. I have also included the Municipal Street Maintenance List. Please send this checklist back before August 1st.

It is truly a pleasure to work with you. Please do not hesitate to contact our office if you need assistance or if you have any questions.

*Deborah R. Christian
Election Coordinator
DeKalb County Voter Registration and Elections
4380 Memorial Drive Suite 300
Decatur, Ga 30032
(404) 298-4032 Office | (404) 298-4038 Fax
www.dekalbvotes.com*



Municipal Street Maintenance List

Checklist

Municipality: _____ County: _____

1. Will your municipality have qualifying for the November Election? _____
2. Will the county conduct the Municipal Election? _____
3. If you are already working with your county on the municipal street list or municipal voter list, please sign below and return to your county.

Name Date

Instructions: Please review your municipal street list, if there are any changes to the street list send the corrections to the county. Questions that you need to consider as you review the street list:

1. Are the streets spelled correctly?
2. Are all previous annexations included?
3. Are any streets missing?
4. Are there any overlapping street segments?
5. Are the street ranges correct?
6. Are the zip codes correct?
7. Are the "sided" all, even, odd-correct?
8. Do any of the segments contain a business address?

Once you have completed the review and sent any necessary changes to your county registrar, please sign and return to your county.

I have reviewed the municipal street list and sent any necessary changes I have to the county.

Name Date