

# DeKalb County Board of Registration and Elections

## Special Called Meeting Minutes

May 6, 2022

\*via zoom platform

Start Time: 1:04 p.m.

End Time: 4:04 p.m.

Board Attendees: Chair Dele Lowman Smith  
Vice-Chair Nancy Jester  
Anthony Lewis  
Susan Motter  
Karli Swift

Other Attendees: Keisha Smith, Executive Director  
Twyla Hart, Registration Supervisor  
Tiffani Gilbert, Elections Supervisor  
Terry Phillips, Deputy County Attorney  
Shelley Momo, Senior Assistant County Attorney  
Irene Vander Els, Assistant County Attorney  
Tristen Waite, Assistant County Attorney

### **APPROVAL OF AGENDA**

Chair Lowman Smith called the meeting to order at 1:01 p.m. Ms. Austin read the roll by calling each board member by name. All members were in attendance.

Motion by Vice-Chair Jester and seconded by Mr. Lewis to approve the agenda. The Motion carried by a unanimous vote.

### **PUBLIC COMMENTS**

Ms. Austin read the rules for public comment:

Public comments of two minutes or less may be made live via the teleconference. For those joining the meeting by telephone, please be aware that your phone number may be displayed to the public viewing or participating in the online meeting. Citizens who attend the meeting via the Zoom link above may join the public comment queue by raising their hand in the Zoom application, while citizens who attend the meeting via telephone may join the comment queue by pressing # followed by 2. There will be no comment cards, so when you are called upon, please state your name for the record. Also, please be conscious of speaking time so that everyone has an opportunity to provide input in the allotted time. Abusive, profane, or derogatory language will not be permitted.

There were no public comments.

### **ITEMS FOR DECISION**

A) Challenges Brought by Gail A. Lee

Click here to view BRE meetings: [Video On Demand | DeKalb County, GA \(dekalbcountyga.gov\)](https://www.dekalbcountyga.gov)

Chair Lowman Smith stated that the primary reason for the meeting was an additional set of challenges brought forward by a challenger. She went on to make the following announcement introducing the challenges:

We are now going to proceed with the voter challenge hearings. We received correspondence on March 28, 2022 from DeKalb County voter Gail A. Lee in which she challenged the eligibility of certain electors to vote in DeKalb County based on the use of a non-residential property at the time of registration. Upon review of the challenged voters' individual voter files, department staff determined that for the majority of challenged voters, there is no valid challenge on the stated basis because the voter has a residential address on file and the non-residential address is simply a mailing address; the voter has been transferred out of DeKalb County or has left the state; the voter is deceased; the voter has been cancelled due to no activity under the state's voter list maintenance program; or because the voter was improperly transferred to DeKalb from another county based on the addition of the non-residential mailing address, in which case staff has requested that those voters be transferred back to the county of origin.

We are therefore going to consider the remaining 26 challenges in the order listed on the agenda for today's meeting. The challenger, Gail Lee, has the burden of proof for each challenge pursuant to O.C.G.A. 21-2-229. Staff will present information regarding the initial registration of the challenged voter. Ms. Lee will have an opportunity to present evidence that the challenged voter was not eligible to vote in DeKalb County at the time of registration, and the challenged voter will then have an opportunity to present evidence that he or she was eligible to vote in DeKalb County at the time of registration. Each party will have three minutes to present his or her evidence. The Board members may ask questions of either party during or following the presentation of evidence. At the conclusion of the presentation of evidence and any examination by the Board members, the Board may vote on the challenge, request additional evidence from either party, and/or defer decision on the challenge to allow further consideration of the evidence presented.

The Chair asked Ms. Vander Els to provide context for the full set of challenges. The challenges were on the same basis as those heard on April 22. In each case, the basis was the use of a nonresidential address. One group of challenges was based on the use of a commercial address, and the second was based on the use of the official address for Agnes Scott College. Federal case law indicated that a Registrar cannot apply different rules to college students than to other registrants. College students can register using either their college address or their home address. She confirmed that the subject matter of the challenges was substantially similar to the previous challenges.

The Chair asked Director Smith for any overall context regarding the challenges. The Director confirmed that one set of applicants had used the same address for Agnes Scott College and the others had registered using a nonresidential address through the Department of Driver Services.

Ms. Lee presented the State of Georgia Application for Voter Registration and noted that it asks for the applicant's residential address; that it was separate from the mailing address; that it requires an oath that the applicant resides at the listed address; and that the provision of false information is a felony.

She cited a publication from Judicial Watch regarding nonresidential addresses. She also noted that she had been informed that Gwinnett County had upheld challenges made to nonresidential addresses.

Vice-Chair Jester shared her understanding of the Department's existing registration policy. If an applicant does not provide a residential address, they are put into pending status and are asked to

provide a residential address within forty days. If they do not, their application is rejected. She asked if that process had not happened with the challenged registrants at commercial addresses.

Director Smith responded that the addresses in question were not marked in the system as commercial because they were either formerly residential or located on a street with residential addresses.

The Vice-Chair asked if the addresses were now flagged as nonresidential and if the Department would place the voters from the previous meeting into pending status. The Director responded that the addresses would be corrected in the Department's system. Ms. Hart responded that the voters had not been made pending out of deference to the Board's decision.

The Vice-Chair asked if there was a conflict between the Board's decision and Department policy. Ms. Vander Els responded that there was no legal prohibition against following the outlined procedures with respect to the previously-challenged voters.

The Vice-Chair objected to the advice the Board received in the last meeting, noting that other lawyers, members of the State Elections Board, and the minutes of the Fulton County Board of Elections all indicated that challenges could be upheld against registrants with nonresidential addresses. She apologized to Ms. Lee for voting against the challenges brought in the last meeting and called for staff to place registrants at nonresidential addresses into pending status notwithstanding the Board's decision. Ms. Hart stated that they would be placed into pending within a few days.

Ms. Swift asked a series of questions. Ms. Vander Els responded that the law did not require registrants to have a residential address; that she did not know if DDS required proof of residency or an oath before forwarding an application for voter registration; and that the challenger held the burden of proof in these hearings.

In response to Ms. Swift's questions, Ms. Lee responded that she had received the list of challenged voters from a resident of Gwinnett County.

Mr. Lewis asked Ms. Lee to list how many challenges came from each source. Ms. Lee responded that there were 98 challenges against Agnes Scott addresses, 1 from Walgreens, 2 from Kroger, 1 from an office building, and 55 from post office boxes.

Mr. Lewis asked if there was a difference between the code and the requirements of the state's registration form. Ms. Vander Els responded that there were other ways to register besides using the state form.

Mr. Lewis asked about the case *Abbott v. Carter*. Ms. Vander Els replied that the law did not require a street address to register to vote.

Mr. Lewis stated that, to his knowledge, DDS would issue a driver's license to an address other than the applicant's residence. Ms. Vander Els responded that she did not know the details of their process.

Mr. Lewis stated that applicants who are homeless or victims of domestic violence had other options for registration aside from using nonresidential addresses. He also commented that, to his knowledge, registering to vote at DDS required the same information as any other means.

Ms. Motter reminded listeners that it was the challenger's burden to prove that the challenged registrants were not eligible to vote in DeKalb County. She stood by the Board's decision at the last meeting. She argued against changing the procedures for handling challenges.

Responding to an earlier comment, Chair Lowman Smith took issue with Ms. Lee's description of Judicial Watch as a bipartisan group, characterizing it as a conservative think tank.

The Chair noted that in the past, the Board had regularly removed voters from the rolls in response to challenges. In many cases, the challenges were made without personal knowledge of the voters. In response to one challenge, the Department was sued. She asked Ms. Vander Els to review the basis of the suit. Ms. Vander Els responded that the suit involved voters who had used an address associated with transitional housing.

The Chair stated that although the specifics differed from the current hearings, an important issue in both cases was the recognition that the burden of proof remained with the challenger.

The Chair stated that in her opinion, neither the Department's policy nor the state's registration form were fully consistent with state law. The use of a residential address had been substituted for proof of residency in the process of turning law into procedure. She stated that DDS required two forms of proof of residency upon registration, and that for the Department to require more would be imposing a greater burden on DDS registrants than on others. She regretted that the Secretary of State and the State Elections Board had not published more guidance on how to deal with these issues.

Referring to Mr. Lewis's earlier comment, Ms. Swift responded that in *Abbott vs. Carter*, the court had ruled that it violated the Fourteenth Amendment to require a duration of residence before registering to vote. She argued that the concept of bona fide residency from the case was consistent with the Board's April 22 ruling.

Vice-Chair Jester stated that in her opinion, the burden of proof had been met by Ms. Lee. She had voted against the previous challenge based the advice of the Law Department. She now found that advice to be deficient. Before registration could be completed, the Department would have to know where the applicant lived in order to place them in a precinct.

Mr. Lewis argued that the burden of proof that Ms. Lee needed to meet involved demonstrating that the registrants had not supplied the proper information upon registering. He agreed that she had met that burden.

Mr. Lewis asked Director Smith if any of the challenged voters had responded to the notifications they had been sent. The Director responded that one notice from each set of challenges had been returned undeliverable. There had been no other response.

Mr. Lewis questioned whether DDS was supplying the proper information to support a registration to vote.

Referring to the set of challenged voters not registered at Agnes Scott, Chair Lowman Smith asked how many registered through DDS. The Director responded that the majority registered through DDS, but three had registered through the Department of Public Health.

Ms. Swift noted that each voter in that group had registered through a government body. The challenger had the burden of proof to demonstrate that those offices had not verified the registrants' information.

Chair Lowman Smith asked whether the Agnes Scott address provided was that of a residential hall. The Director responded that it was. The Chair also stated that by law, the President of the college was considered a Registrar in regard to students at the college.

Vice-Chair Jester stated that the address was also a generic address for the college as a whole. Ms. Hart responded that students who have a box number at that address are resident on campus. The only challenges that staff had placed on the agenda were to voters who had not provided a box number.

Ms. Swift commented that, due to the burden of proof, questions about students' box numbers should be directed at the challenger. She described it as unconscionable to consider taking away students' ability to vote.

Ms. Motter agreed and asked why students who could live off campus should be treated differently from those who live on campus.

Mr. Lewis commented that challengers were not investigators or attorneys. He asked the Board and the staff to assist them in their investigations.

Ms. Motter responded that the burden of proof was not set by the Board, but by state law.

Chair Lowman Smith asked Ms. Lee if she had taken steps to determine if the Agnes Scott students were appropriately registered. Ms. Lee responded that she had presented challenges against all students who had not provided box numbers. However, the staff had found box numbers for some that she was not aware of.

Motion by Ms. Swift to reject the non-individualized challenges to voters that were based on a nonresidential address at the time of registration. The motion was seconded by Ms. Motter.

Mr. Lewis asked to name the voters explicitly who were covered. Ms. Swift responded for the record that the claims were not brought individually. Vice-Chair Jester argued that although the voters shared an address, they were unique people and named individually. Ms. Swift agreed to amend the motion to call for rejection of the challenges for claims based on nonresidential addresses. She read the names of each voter. Ms. Motter seconded the motion.

Mr. Lewis restated that he did not believe that a post office box or Walgreens met the standard for a residential address.

Chair Lowman Smith stated her understanding that the Board was not tasked with determining whether the addresses were residential, but rather whether the challenger had met the burden of proof to demonstrate that the registrants were not eligible to vote at the time that they registered. Ms. Vander Els confirmed her interpretation.

The motion carried 3-2. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted aye. Vice-Chair Jester and Mr. Lewis voted nay.

Motion by Vice-Chair Jester to remove voters thirteen through fifty-six, registered at Agnes Scott, from the voting rolls. The motion was seconded by Mr. Lewis.

The Vice-Chair stated that in her opinion, the burden of proof was met by the demonstration that the challenged voters had not provided a box number. Mr. Lewis agreed and pointed out that Ms. Lee had provided evidence from the college that students who live on campus have box numbers.

Ms. Swift disagreed that the burden of proof had been met.

The motion failed 2-3. Vice-Chair Jester and Mr. Lewis voted aye. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted nay.

Motion by Ms. Swift and seconded by Ms. Motter to reject the challenges to the same voters. The motion carried 3-2. Chair Lowman Smith, Ms. Motter, and Ms. Swift voted aye. Vice-Chair Jester and Mr. Lewis voted nay.

B) Gresham Road Polling Place Change

Director Smith announced that no challenges had been received to the polling place change.

Motion by Vice-Chair Jester and seconded by Ms. Swift to approve the change.

Ms. Swift asked a series of questions. Director Smith explained that the original location had not responded with confirmation of their availability and therefore a new location had been sought out. The new location was close by. The affected voters would be notified.

Chair Lowman Smith asked if the change was temporary. The Director responded that it was, and that the election would return to the church in November.

The motion carried unanimously.

**ITEMS FOR DISCUSSION**

A) Advance Voting Updates

Director Smith discussed that the Department had been able to compensate for statewide technical issues and continue uninterrupted with advance voting.

Meanwhile, voters affected by the redistricting issue had been notified. Absentee ballots that had already been mailed had been cancelled and reissued.

She reminded the public that voting would be open every weekend day during the advance voting period, including Mother's Day.

She asked voters to plan for heavy traffic near Emory on May 9 due to graduation.

Vice-Chair Jester requested for the turnout totals could be reported by party. She also noted that the notice of Logic and Accuracy testing had only been posted recently. She asked if it had been posted on time through other channels. The Director responded that the legal requirement had been met, although it had not been posted on the website at first.

Mr. Lewis asked about the procedure for emptying drop boxes. Ms. Gilbert responded that a team of two people would unlock the box, count the ballots in front of the poll manager, sign the chain of custody form, and then return with the ballots. There would also be a log posted on the drop box for the public to see.

The ballots would be brought back to the absentee department, who would sign the chain of custody, count the ballots again, timestamp them, and then securely store them.

Chair Lowman Smith noted that the rules for drop boxes were new and that the State had provided additional instructions after advance voting had already begun. She lamented the lack of clarity in its guidance.

## **BOARD COMMENTS**

Ms. Motter thanked Ms. Lee and the rest of the Board. She believed the discussion could help refine registration procedures. She also thanked the staff for dealing with the many comments and questions received from the public during an election.

Vice-Chair Jester agreed. She regretted the lack of clarity from the State on the issue of voter challenges. She suggested improving GIS's database of streets.

Ms. Swift complimented the Director, the staff, and the poll workers. She spoke about the importance of the vote and criticized the trend of non-individualized claims.

Mr. Lewis thanked the staff for the tremendous amount of work they do during an election and for their positive attitude. He thanked Ms. Lee for bringing her challenges. He agreed with Vice-Chair Jester on the need for guidance from the state.

Chair Lowman Smith thanked the Director, the staff, the poll workers, and managers for being responsive, proactive, thoughtful, and attentive to the needs of voters. She noted that she had been unsettled in 2019 by how easily the Board removed voters from the rolls. She felt honored to advocate for voters and ensure that their right to vote is protected. She thanked Ms. Lee for being willing to bring her challenges. She noted that lawyers were available to help citizens bring issues like this to the Board. She commented that, although counties handled these issues differently, in each county there was uncertainty about what the proper procedures should be and a desire for guidance from the State. She suggested an examination of the Department's registration procedures.

## **ADJOURNMENT**

Motion by Ms. Motter and seconded Vice-Chair Jester by to adjourn the meeting. The motion carried by a unanimous vote. The meeting was adjourned at 4:04 p.m.