

IN THE SUPERIOR COURT OF OCONEE COUNTY
STATE OF GEORGIA


Angela Elder-Johnson, Clerk
Oconee County, Georgia

SUZANNAH HEIMEL)
)
Plaintiff,)
)
v.)
)
SHARON GREGG, Director of the Oconee)
County Board of Elections, and)
JAY HANLEY, Chair of the Oconee)
County Board of Elections)
)
Defendants)
)
v.)
)
SUSAN NOAKES)
)
Intervenor Respondent and)
Cross-Claimant)

CASE NO. SUSR024000058-LL

**SHARON GREGG AND JAY HANLEY'S MOTION TO DISMISS CROSS CLAIMS AND
RESPONSE IN OPPOSITION TO REQUEST FOR TEMPORARY RESTRAINING
ORDER AND PERMANENT INJUNCTION**

Defendants Sharon Gregg, Director of the Oconee County Board of Elections, (“Gregg”) and Jay Hanley, Chair of the Oconee County Board of Elections (“Hanley”) (collectively, “Defendants”) hereby respond to the Cross-Claims and Requests for a Temporary Restraining Order and a Permanent Injunction by Intervenor Respondent Susan Noakes (“Cross-Claimant”) that seeks to “immediately and permanently enjoin the Oconee County Board of Elections and Registrations from hearing elector challenges within 45 days of the General Election on November 5, 2024 and all subsequent elections.” Cross-Claim, ¶ 45. Cross-Claimant’s claims should be dismissed and her request for a temporary restraining order and a permanent injunction because she lacks standing and has failed to join indispensable parties. Dismissal is also mandated by the

Georgia Constitution's rules for filing claims against entities subject to sovereign immunity. *See* Ga. Const. Art. I, Section II, Paragraph V(b). Furthermore, and perhaps most importantly, Defendants have followed all applicable laws, and Defendant's interpretation and application of O.C.G.A. § 21-2-230(b)(1) is the best interpretation of the statute at issue.

INTRODUCTION

Petitioner Suzanne Heimel initiated this case alleging that Defendants were not doing enough in terms of conducting hearings on voter challenges and asking for a writ of mandamus. Cross-Claimant Susan Noakes has filed claims asserting that Defendants are doing too much in response to voter challenges. Defendants find themselves in a position where any action they take will likely lead to litigation from one side or the other, but the county is accurately applying both state and federal law that govern voter challenges.

The substantive question at issue in this case is the proper interpretation of O.C.G.A. § 21-2-130(b)(1), an amendment to a voter challenge statute which states:

Any challenge of an elector within 45 days of a primary, runoff primary, election, or runoff election shall be postponed until the certification of such primary, election, or runoff is completed; ...

O.C.G.A. § 21-2-230(b)(1). Defendants contend that "challenge of an elector" refers to the time that the challenge was filed. Therefore, if a challenge to an elector's qualifications to vote pursuant to O.C.G.A. § 21-2-230 is filed outside of 45-day period, the Oconee County Board of Elections and Registration ("BOER") will consider whether the challenge reaches probable cause, even if such consideration occurs within the 45-day period. Cross-Claimant's position is that even if a challenge is filed outside of the 45-day period prior to the election, all actions related to that challenge must be completed more than 45 days before the election, which would actually put an

incredible time crunch on county election offices or open them up to claims that they were not following the law regarding submitted challenges.

FACTUAL BACKGROUND

Cross-Claimant's claims and requests for injunctive relief are based off of voter challenges that were submitted to the BOER pursuant to O.C.G.A. § 21-2-230 by Oconee County electors Victoria Cruz and Stephen Aleshire on September 8, 10, 11, 16, 18, and 19 ("the challenges"). *See* Affidavit of Sharon Gregg, attached hereto as Exhibit 1, ¶ 1. There is no dispute that these challenges were submitted by Oconee County electors and prior to the 45-day deadline, which triggers the BOER's obligations pursuant to O.C.G.A. §21-2-230(b) to "consider such challenge and determine whether probable cause exists to sustain such challenge."

The BOER has adopted a policy on how to handle voter challenges submitted pursuant to O.C.G.A. § 21-2-230, and the BOER followed that policy in this instance. Gregg Aff., ¶ 2. That policy is attached hereto as Exhibit 1-A. That policy clearly states any challenges received in the 45-day period before the election are postponed until after certification of that election. *Id.*, at ¶ 3, *see also* Ex. 1-A, ¶ 11(f). The BOER has not considered any challenges submitted within the 45-day period before the election and would not consider any such challenges until after certification of the election pursuant to its already existing policy. *Id.*

But because these challenges were all received outside of the 45-day window, they were considered by the BOER at their October 1, 2024 meeting. Gregg Aff., ¶ 2. For approximately 65 of the challenges, the BOER found that probable cause existed to sustain the challenges. *Id.* For the BOER to find probable cause, they require more than just evidence that the voter has filed a National Change of Address. *Id.*, *see also* O.C.G.A. § 21-2-230(b). For challenges where probable

cause is sustained, the type of evidence submitted includes, for example, evidence of voter registration in another state or a property tax homestead exemption in another state. *Id.* Pursuant to O.C.G.A. §§ 21-2-217 registering to vote and voting in another state is evidence that the person is no longer a qualified elector in Georgia, and O.C.G.A. § 21-2-230 specifically states that obtaining a homestead exemption in another state is sufficient to find probable cause.

On the approximately 65 challenges where the BOER found probable cause, all but seven of the voters were already in “Inactive” status, meaning that they (1) already been identified by an existing list maintenance process as someone who may no longer be in Georgia and (2) had not responded to a confirmation card that is sent to voters as part of the regular list maintenance process. Gregg Aff. ¶ 4. The voters already in “Inactive” status had been identified through regular list maintenance processes including matches with the National Change of Address List, Cross-State notices that the voter had registered to vote or obtained a driver’s license in another state through the Electronic Registration Information Center, known as ERIC, or through returned mail. *Id.* To be placed in “Inactive” status, those voters also had to fail to respond to a confirmation card that is sent to them pursuant to regular list maintenance processes. *Id.* Any activity with the BOER after being placed into “Inactive” status, such as voting or updating their voter registration, will automatically move the voter back into “Active” status. *Id.*

For those approximately 65 challenges where probable cause was sustained, the BOER then takes two actions. First, the voter’s record will be flagged as “Challenged” in the statewide voter registration system. Gregg Aff, ¶ 5, Ex. 1-A, ¶ 11(d). Second, the BOER mails the voter a letter telling the voter that the BOER was presented with a challenge regarding their qualification to vote and have determined that probable cause exists to sustain the challenge. *Id.* An example of the letter that is mailed to voters is attached hereto as Exhibit 1-B. The letter also tells the voter that they

have an opportunity to answer the challenge in person at a meeting of the BOER, which is October 24 in this case. *Id.* The letter also encloses a “Residency Affirmation Form,” attached hereto as Exhibit 1-C. For challenges based on residency issues, a challenged voter does not even have to attend the scheduled hearing to remove the challenge flag. They simply have to fill out and return the Residency Affirmation Form. *Id.*, see also Ex. 1-A, ¶ 11(e).

The October 24th “hearing” that Cross-Claimant complains about and seeks to enjoin is really the opportunity required by O.C.G.A. § 21-2-230 for the voter to answer the challenge. Enjoining it would only serve to take away an opportunity from the voter to remove the challenge flag on their record prior to voting.

But what if one of the challenged voters shows up to vote? What happens then? In that case, the voter can still vote. The BOER will have Residency Affirmation Forms available during early voting and at polling places. *Gregg. Aff.* ¶ 6. If the voter is able to fill out that form and resolve the challenge, the challenge flag can be removed from their record at that point and they can proceed to vote a regular ballot. *Id.* If they are not able to resolve the challenge at the polls, the challenged voter is able to vote a provisional ballot. *Id.*

ARGUMENT

I. Cross-Claimant is Not Entitled to a TRO or Injunctive Relief.

In order to obtain injunctive relief, Cross-Claimant must show that (1) there is a substantial threat that she will suffer irreparable injury without an injunction, (2) the threat to Cross-Claimant outweighs the threat and harm of granting an injunction, (3) there is substantial likelihood that Cross-Claimant will prevail on the merits, and (4) an injunction will not disserve the public interest. *Davis v. VCP South, LLC*, 297 Ga. 616, 621-22 (2015). Cross-claimant fails on each of those points and the Court should deny the relief requested.

A. There is No Threat of Irreparable Injury to Cross-Claimant.

Cross-Claimant seeks to enjoin the BOER from considering challenges to electors between now and the November 5, 2024 election. Cross-Claim, ¶ 21. But as made clear from Ms. Gregg's affidavit, the BOER will not be considering any challenges between now and the election. Gregg Aff., ¶ 3. The BOER has an existing policy to not consider challenges made within the 45-day window until after the election, as required by state law, and the challenges that were filed prior to the 45-day window have all been considered. *Id.*

To the extent Cross-Claimant seeks to enjoin the October 24 opportunity for the voters already placed in challenged status to answer the challenge, the only people that would even possibly be damaged by enjoining that hearing are the challenged voters. Those voters are already in challenged status. The only possible results from the hearing are: 1) the challenged voters remain in challenged status, or 2) a challenged voter takes advantage of the opportunity to answer and the challenge is removed. Taking away that opportunity from the challenged voter would only harm the voter.

Even if being placed into challenged status is a harm, and even if it is somehow a harm to Cross-Claimant, it is by definition reparable. In fact, the very hearing that Cross-Claimant seeks to enjoin is one avenue that any potential harm is reparable. The fact that any voter in challenged status can resolve the challenge at the polling place, or if unable to resolve at the polling place, by voting a provisional ballot and resolving the challenge after that, means that even any theoretical harm is reparable. Even if the Court agrees with Cross-Claimant's contention that she is somehow harmed by other voters being placed into challenged status, there is no plausible argument that the harm is irreparable.

B. Enjoining the October 24 Hearing Would Harm the Challenged Voters.

Cross-claimant states that “if the TRO is not granted, Oconee voters face the potential of being improperly placed in challenged status...” Cross-Claim, ¶ 29. But this contention shows a fundamental misunderstanding of the process. The hearing scheduled for October 24 is the statutory opportunity to answer for the voters who are already in challenged status. It is not a hearing where any new challenges are considered. Enjoining it would only harm any challenged voters who may wish to attend, answer the challenge that was previously brought against them, and show the BOER that they do in fact retain the qualifications to vote.

C. Cross-Claimant is Not Likely to Succeed on the Merits

The BOER’s interpretation and application of O.C.G.A. § 21-2-230(b)(1) is clearly the better interpretation of the statute. BOER’s interpretation is that challenges filed before the 45-day period have to be considered and that any challenges filed after that period cannot be considered until after certification of the election. That is not a position taken in response to these claims; that was the BOER’s considered position in its adopted policy for handling voter challenges. *See* Ex. 1-A, ¶11(f).

Cross-claimant’s interpretation is that any activity related to a filed challenge must be complete outside of the 45-day window. Under that interpretation, not only would the public not know when voter challenges had to be filed by, but the deadline would differ from county to county and possibly even from election to election.

When interpreting a statute, “we must view the statutory text in the context in which it appears.” *Deal v. Coleman*, 294 Ga. 170, 172 (2013). In this case, the relevant word in O.C.G.A. § 21-2-230(b)(1) is “challenge” and the relevant context is the entirety of O.C.G.A. § 21-2-230. Section 230(a) starts by stating that “[a]ny elector of the county or municipality may challenge the

right of any other elector in the county or municipality... to vote in an election.” It goes on to say that “such *challenge* shall be in writing and specify distinctly the grounds of such challenge.” O.C.G.A. § 21-2-230(a) (emphasis added). Subparagraph (b) starts with “[u]pon the filing of such *challenge*, the board of registrars shall immediately consider such challenge and determine whether probable cause exists to sustain such challenge.” O.C.G.A. § 21-2-230(b) (emphasis added).

When the statute says “challenge,” it is clearly referring to the thing that the elector submits to initiate the process, so when Subsection (b)(1) says “any challenge of an elector within 45 days...,” it is best understood to be referring to the thing that is filed by the elector. If the General Assembly meant to refer to the consideration of such challenge in that subsection, it could have said “[a]ny consideration of a challenge of an elector...,” but it did not. The best interpretation of the statute is that challenges submitted within 45 days of an election should not be heard, but challenges submitted before that should be.

Because the county’s interpretation and application of O.C.G.A. § 21-2-230(b)(1) is the best interpretation of the statute, Cross-claimant is not likely to succeed on the merits, and she is certainly not “substantially likely.”

D. Granting Injunctive Relief Would Not Serve the Public Interest

Granting Cross-claimant’s injunctive relief would not serve the public interest. In fact, enjoining the October 24 hearing would harm the very voters that Cross-claimant says she is trying to protect by taking away their opportunity to answer the challenge. And continuing with the October 24 hearing does not negatively affect the challenged voters at all. They can either have their challenged flag removed or it remains (which is how they are currently situated). Continuing as schedule best serves the interests of Oconee County voters and the public.

II. Any Injunction Would be Ineffective Due to Failure to Join the Proper Parties.

In addition to the fact that any injunction would be improper because the BOER's interpretation and application of the statute at issue is the best interpretation, injunctive relief would be improper because the party that Cross-Claimant seeks to enjoin is not part of this lawsuit. Cross-Claimant clearly seeks to enjoin the Oconee County Board of Elections and Registration. *See* Cross-Claim, ¶¶ 21, 27, 29, 43, and 45. But the BOER is not a party to this lawsuit, and neither are its members other than Chairman Jay Hanley. The only defendants to Cross-Claimants cross-claims are Jay Hanley, the Chair of the BOER, and Sharon Gregg, the Oconee County Elections Director. O.C.G.A. § 9-11-65(d) states that injunctions and TROs are:

binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.

The proper party to enjoin in this case, if an injunction were warranted, would be the Oconee County Board of Elections and Registration, who is not a party to the case.

III. The Cross-Claim Should be Dismissed Pursuant to Ga. Const. Art. I, Sec. II, Para. V(b) (Sovereign Immunity).

The Georgia Constitution provides that sovereign immunity extends to the state and all of its departments and agencies, including counties. Ga. Const., Art. I, Sec. II, Para. IX, *see also* *Gilbert v. Richardson*, 264 Ga. 744, 746-47 (1994). Suits against counties, including against county officers, must travel under a waiver to sovereign immunity. *Lovell v. Raffensperger*, 318 Ga. 48, 53 (2024).

The Georgia Constitution was amended in 2020 to clarify the State's waiver of sovereign immunity and the proper parties to sue. Pursuant to that amendment, sovereign immunity is waived for "actions in the superior court seeking declaratory relief." Ga. Const., Art. I, Sec. II, Para. V(b).

“Sovereign immunity is further waived so that a court awarding declaratory relief pursuant to this paragraph may, only after awarding declaratory relief, enjoin such acts to enforce its judgment.”

Id. That same section of the Georgia Constitution goes on to state:

Actions filed pursuant to this Paragraph against any county, consolidated government, or municipality of the state or officer or employee thereof shall be brought exclusively against such county, consolidated government, or municipality and in the name of such county, consolidated government, or municipality. **Actions filed pursuant to this Paragraph naming as a defendant any individual, officer, or entity other than as expressly authorized under this Paragraph shall be dismissed.**

Id. (emphasis added). Because this action was brought against Defendants Gregg and Hanley in their individual names rather than against Oconee County as required by the Georgia Constitution, dismissal is mandated by the Georgia Constitution.

CONCLUSION

Cross-claimant is not entitled to a TRO, injunctive relief, or any relief whatsoever. She has no irreparable harm, she is not likely to succeed on the merits, and her requested relief would result in more harm to challenged voters and to the public interest. Her claims must also be dismissed because she has not included proper parties or sued the correct parties as required by the Georgia Constitution’s waiver of sovereign immunity.

Respectfully submitted this 20th day of October, 2024.

s/ C. Ryan Germany
C. Ryan Germany
Ga. Bar No. 500691
GILBERT HARRELL SUMERFORD &
MARTIN, P.C.
675 Ponce de Leon Ave. NE, Suite 8500
Atlanta, GA 30308
Telephone: 1.678.672.9230

Amber Carter
Ga. Bar No. 631649
GILBERT HARRELL SUMERFORD &
MARTIN, P.C.
777 Gloucester St., Suite 200
Brunswick, GA 31520
Telephone: 1.912.265.6700

*Counsel for Defendants Sharon Gregg and Jay
Hanley*

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CERTIFICATE OF SERVICE

I, Amber M. Carter, do hereby certify that we have this day served a true and correct copy of the foregoing MOTION TO DISMISS CROSS CLAIMS AND RESPONSE IN OPPOSITION TO REQUEST FOR TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION via statutory electronic service using the Odyssey eFileGA filing system, causing it to be served on all counsel of record.

This 20th day of October, 2024.

/s/ Amber M. Carter

Amber M. Carter

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Exhibit 1 – Affidavit of Sharon Gregg

RETRIEVED FROM DEMOCRACYDOCKET.COM

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 Intervenor Respondent and)
 Cross-Claimant)

CASE NO. SUSR024000058-LL

AFFIDAVIT OF SHARON GREGG

I, Sharon Gregg, Elections Director for the Oconee County Board of Elections and Registration, declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge.

1. Oconee County electors Victoria Cruz and Stephen Aleshire have submitted multiple voter challenges to the Oconee County Board of Elections and Registration (“BOER”), including challenges submitted on September 8, 10, 11, 16, 18, and 19 (the “challenges”). The challenges were submitted more than 45 days before the upcoming November 5, 2024 General Election.

2. The BOER has adopted a Policy for Voter Challenges (“Policy”), attached hereto as Exhibit 1-A. The BOER followed that Policy in handling the challenges. The challenges were

presented to the BOER at a BOER meeting on October 1, 2024. At that meeting, the BOER found probable cause to sustain the challenge on approximately 65 of the challenges. For the BOER to find probable cause, they require more than just evidence that the voter has filed a National Change of Address. For challenges where probable cause is sustained, the type of evidence submitted includes, for example, evidence of voter registration in another state or property tax homestead exemption in another state.

3. The BOER's Policy is clear that challenges submitted within 45 days of an election shall be automatically postponed until after certification of the election. *See* Ex. 1-A, BOER Policy on Voter Challenges, ¶ 11(f). The BOER has not considered any challenges submitted within the 45-day period before the election and would not consider any such challenges until after certification of the election pursuant to its already existing policy. All the challenges that were submitted prior to the 45-day deadline have already been considered by the BOER.

4. On the approximately 65 challenges where the BOER found probable cause, all but seven of the voters were already in "Inactive" status, meaning that they (1) already been identified by an existing list maintenance process as someone who may no longer be in Georgia, and (2) had not responded to a confirmation card that is sent to voters as part of the regular list maintenance process. The voters already in "Inactive" status had been identified through regular list maintenance processes including matches with the National Change of Address List, Cross-State notices that the voter had registered to vote or obtained a driver's license in another state through the Electronic Registration Information Center, known as ERIC, or through returned mail. Those voters were previously sent a confirmation card as required by law. When they did not respond to that confirmation card after 30 days, they were placed into "Inactive" status. Any activity with the

BOER after being placed into “Inactive” status, such as voting or updating their voter registration, will automatically move the voter back into “Active” status.

5. For the approximately 65 challenges where probable cause was sustained, the BOER has taken two actions. First, the voter’s record is flagged as “Challenged” in the statewide voter registration system. Second, the BOER has mailed the voter a letter telling the voter that the BOER was presented with a challenge regarding their qualification to vote and have determined that probable cause exists to sustain the challenge. An example of the letter that is mailed to voters is attached hereto as Exhibit 1-B. The letter also tells the voter that they have an opportunity to answer the challenge in person at a meeting of the BOER, which is October 24, 2024 in this case. The letter also encloses a “Residency Affirmation Form,” attached hereto as Exhibit 1-C. For challenges based on residency issues, a challenged voter does not even have to attend the scheduled hearing to remove the challenge flag. They simply have to fill out and return the Residency Affirmation Form.

6. The BOER will have Residency Affirmation Forms available during early voting and at polling places. If the voter is able to fill out that form and resolve the challenge, the challenge flag can be removed from their record at that point and they can proceed to vote a regular ballot. If they are not able to resolve the challenge at the polls, the challenged voter is able to vote a provisional ballot.

SIGNATURE ON FOLLOWING PAGE

Under penalty of perjury, I declare that the foregoing statements are true and correct to the best of my knowledge.

Sharon Gregg

Signed in my presence this _____ day of October 2024:

Notary Public:
My Commission Expires:
(NOTARY SEAL)

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* Affiant has confirmed the accuracy of this affidavit, and we will have and executed and notarized version available at the hearing.

Exhibit 1-A

BOER Policy

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**OCONEE COUNTY BOARD OF ELECTIONS AND REGISTRATION POLICY FOR VOTER
CHALLENGES SUBMITTED PURSUANT TO O.C.G.A. § 21-2-229 AND O.C.G.A. § 21-2-230
Adopted September ____, 2024.**

Purpose:

The Oconee County Board of Elections and Registration (“BER”) adopts this policy¹ so that Oconee County electors wishing to challenge electors under either O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2-230 better understand the requirements for submission of such challenges. Under this policy, any reference to *challenges* shall mean challenges under either O.C.G.A. § 21-2-229 (herein “229”) or O.C.G.A. § 21-2-230 (herein “230”), unless the policy makes express that it is only referring to one or the other.

Segregation of clerical errors and similar list discrepancies: Working with the Secretary of State’s Staff, the BER and its staff constantly strive to ensure the accuracy of voter information on the list of electors. Voters may bring to the attention of the BER any alleged discrepancies and clerical errors in the list of electors, but the voter challenge process in 229 and 230 is not the appropriate avenue for identifying these potential issues. Technical and clerical errors or discrepancies shall not be processed pursuant to the election code relating to voter challenges, but shall be reviewed and, if appropriate, acted on by the Staff. It is the responsibility of the challengers to separate any alleged clerical issue from challenges related to voter eligibility.

1. Challenges may only be filed by an Oconee County elector. An Oconee County elector is any person possessing all necessary qualifications for voting now or otherwise prescribed by Georgia law, including applicable charter provisions, and shall have registered to vote in Oconee County in accordance with all legal requirements. Challenges may not be made by voters who are not registered in the same county or municipality as the challenged voter or by private entities, businesses, political action committees, political parties, or other organizations.
2. Challenges must be in writing and shall specify the grounds of the challenge. There are no limits to the number of electors that may be challenged but challenged electors must be on the Oconee County list of electors as of the date of the challenge. Any challenge must contain all grounds and accompanying documents regardless of whether those grounds and documents were provided previously to the BER for an earlier challenge.
3. To help facilitate the review of challenges and ensure that the information presented relates to the correct voter, a challenge shall provide: a) the full name of the voter being challenged; b) the address at which the voter is currently registered; c) minimally, the year of birth of the challenged voter (full date of birth is preferred); d) the specific basis for the challenge- that is, death, mental incapacity, felony conviction status, or change of residence of the voter; e) under what statute the challenge is brought (i.e., O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2-230).

¹ This policy document is intended to work in tandem with, and be fully consistent with, 229 and 230. To the extent any part of this policy conflicts with either of the referenced statutes, the statutes shall control. This policy document is not intended as providing legal advice. Any person considering bringing a challenge under 229 or 230 should consult with an attorney of their choosing.

4. Any challenge must be submitted to the Oconee County BER (1) via hand delivery to the BER, 7635 Macon Highway, Watkinsville, GA 30677; (2) via regular mail to that same address; or (3) via email delivery to the attention of the Department Director at sgregg@oconee.ga.us.
5. The submitted documents supporting a challenge should contain detail regarding why the challenger is (1) challenging the elector's right to appear on the elector list (for a challenge under O.C.G.A. § 21-2- 229) or (2) the elector's right to vote in the next upcoming election (for a challenge under O.C.G.A. § 21- 2-230). Documentation or information supporting a challenge that is vague, generalized, speculative, or the product of conjecture will not satisfy the standards of the pertinent Code sections or the requirements of the BER.
6. For reasons of computer and network security, the Elections Department cannot accept USB drives, CDs or other storage media that must be uploaded and retrieved by Elections Department staff. Submitted documents also should not include website "links" that are intended to be accessed to provide information supporting the challenge. All information submitted to the BER for consideration must be completely set forth within the submitted challenge documents. While challengers are strongly encouraged to provide references to source information, the pertinent data that the BER is expected to review must be made available within the tendered documents. The BER will not access website links for the purposes of tracking down information to support a challenge.
7. Examples of documents that may be submitted for review and consideration by the BER are listed below. This list is not exhaustive and the mere submission of evidence is not the determining factor for the BER. The BER will evaluate all submissions and hear from the challenger and challenged voter, if present.
 - Documents indicating the sale of Oconee County property;
 - Documents showing the purchase of property in another county, state or country;
 - Evidence of property homestead exemption at a different Oconee County address than the voter's current address as registered or in another county or state;
 - Voter registration outside of Oconee County after the Oconee County date of voter registration;
 - Records demonstrating voting in another county, state or country after the date of voter registration in Oconee County;
 - Notice of voter's death or obituary; or
 - First-hand knowledge of the voter who is being challenged.
8. The BER will also consider the factors listed below in weighing the evidence submitted by the challenger. This list is not exhaustive and the BER reserves the right to inquire into the methodology and procedures used by the voter challenger in preparing the submitted challenge.
 - Whether the person bringing the challenge conducted, gathered, compiled, or performed the research themselves and, if not, the source of the research and evidence submitted;
 - Whether the individual conducting the research, if separate from the person

- bringing the challenge, is present for questioning by the BER;
- The methodology used to conduct the research and documentation submitted as evidence;
- The reliability of the underlying sources of the research and documents submitted as evidence;
- The age of the underlying research and documents submitted as evidence; or
- Whether the submissions are certified as accurate.

9. The BER shall not remove any voters from the Oconee voter registration list based on a challenge alleging that they were properly registered to vote in Oconee at the time of initial registration but may have moved from the address listed in their voter registration file. The sole procedure to be followed in this circumstance is an administrative dismissal of the challenge and to send the voter a confirmation notice and wait two federal election cycles for the voter to either vote or update their information before removing them from the rolls as outlined under Section 8(d) of the National Voter Registration Act of 1993 ("NVRA"). If the challenger fails to affirmatively state in writing that the challenge is based upon the challenged voter's residency status at the time the voter initially registered to vote, the BOE shall follow the following protocols:

- If such written notice to the challenged voter is returned marked "undeliverable" by the United States Postal Service, the BOE shall send the challenged voter a confirmation notice pursuant to O.C.G.A. § 21-2-234(b).
- If no response to the BOE's written notice of challenge is received from the challenged voter, the BOE shall inform the challenger that the challenge does not present grounds to contest the eligibility of the voter to remain on the Oconee voter list and no further action shall be taken on the challenge.
- If the challenged voter responds to the written notice with a written confirmation of a change of address, the BOE shall update the voter's record to reflect such change, including the removal of such voter from the active voter list if such written confirmation from the challenged voter reflects that such voter is no longer qualified to vote in Oconee.
- The Elections Department staff will inform the members of the BOE of the submitted challenge and its dismissal.
- The Elections Department staff will notify the challenger of the reason for the dismissal.

10. For any challenge under 229 or 230, if the voter supplied a phone number or email address on the registration form or in other writings such as an absentee ballot application received by the BOE, then in addition to any other notice provided for herein, as soon as possible after receiving the challenge, the BOE will make at least three reasonable attempts, including at

least one attempt during non- traditional working hours, to call or email the challenged voter to determine if the issue raised by the challenge can be resolved quickly, efficiently, and informally.

11. Challenges filed under 230.

- a. Pursuant to 230, the BER will *immediately* consider whether there is probable cause to sustain the challenge.
- b. Probable cause to uphold the challenge will exist when the facts and circumstances before the BER would lead a reasonable person to believe that the challenged elector should not vote in the next upcoming election².
- c. If the BER finds no probable cause, the challenge will be dismissed.
- d. If the BER finds probable cause to uphold the challenge, the voter's record will be marked in a challenged status in the statewide voter registration system. The challenged status designation will be removed from the voter's record in the statewide voter registration system after the conclusion of the election (or as designated by Georgia Election Code).
- e. Upon a finding of probable cause, the BER shall afford the challenged voter an opportunity to answer the challenge at its next regular meeting. Where the challenge is based on residency, the challenged voter may elect to file a BER residency affirmation form rather than attend the meeting. Staff may contact the challenger to ascertain whether the challenger anticipates attending. If the challenger submits a list of names to both a 230 challenge and a 229 challenge, the BER may opt to postpone the answer to the 230 challenge until after the hearing for the 229 challenge.
- f. If received within 45 days of a primary, election or runoff, the challenge shall be automatically postponed until following the certification of the primary, election or runoff.
- g. The challenger is encouraged to be present at the meeting when their challenge is considered, but it is not required.
- h. While the BER desires staff to review the list of challenged voters for registration status, date of last contact, and other pertinent information that may assist the BER, the ability for staff to do so may be hindered by volume of the list of challenged voters, the timeframe to any upcoming elections, staffing issues, or other factors.

² See Adams v. Carlisle, 278 Ga. App. 777, 782 (2006)

- i. Each voter challenge and any supporting documentation submitted shall be submitted independent of any prior challenge submitted for the same voter. Each voter challenge shall be considered by the BER independent of any prior challenge submitted for the same voter. It is the challenger's responsibility to review the elector's list to ensure the voter's name remains on the list of electors prior to submitting the challenge. It is the challenger's responsibility to submit supporting documentation with each voter challenge.

12. Challenges filed under 229.

- a. Pursuant to the Code, the BER will set a date, time, and place for a hearing and notify the challenged electors in writing at their registered address. Staff may additionally send a notice to the voter's mailing address if it differs from the address as registered. If the challenge is received more than ten (10) business days prior to the next scheduled BER meeting, the hearing will be set for that meeting and the BER will provide the challenged elector(s) at least three (3) days' notice of the challenge hearing. If the challenge is received less than ten (10) business days before the next scheduled BER meeting, the BER will set a future date to hear the challenges. That hearing date will occur before the next regularly scheduled meeting and the BER will provide the challenged elector(s) at least three (3) days' notice of the challenge hearing. When a voter challenge is submitted within 90 days of an election, the logistics and procedures necessary for the BER to consider such a challenge may dictate that the challenge hearing be set after the date of the election.
- b. When providing notice of the challenge hearing to an elector, staff may also provide a residency affirmation form, a voter cancellation form, and a form to change an address.
- c. The burden of proof to support the challenge shall rest on the elector making the challenge. The challenger must provide sufficient information to the BER to prove that the person being challenged is not qualified to remain on the list of electors. Given that the challenger has the burden of proof, the challenger is strongly encouraged to attend the hearing where their challenge is considered to present his or her evidence to the BER. The BER may elect to dismiss the challenge if the challenger is not present. Nonexclusive examples of challenges that would fail to meet the minimum standards required by Section 21-2-229(a) include: Non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address); assertions that a challenged voter's name is not affiliated with the address of registration in any governmental database. For instance, challenges based on the allegation that the voter's name is not associated with the utility bill for an address as the sole basis for challenge are insufficient because there could be many residents at a particular address who do not pay the utility company; "Voter caging" challenges -- blanket challenges to large numbers of people living in certain neighborhoods -- shall be rejected if they fail to specify distinctly the basis for the challenge to each voter's qualifications.

- d. The BER has the authority to issue subpoenas for the attendance of witnesses and the production of books, papers, and other material upon application by the person whose qualifications are being challenged or the elector making the challenge. The party requesting subpoenas shall be responsible to serve such subpoenas and, if necessary, to enforce the subpoenas by application to the superior court. Any subpoenaed witness, after attending, shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court.
- e. The BER will determine whether the challenger has demonstrated by a preponderance of the evidence, that a reasonable and impartial mind would find that the challenged elector should no longer appear on the list of electors³.
- f. If the BER finds that the challenger has not demonstrated by a preponderance of the evidence that the challenged elector should not be on the list of electors, the challenge will be dismissed.
- g. Each voter challenge and any supporting documentation submitted shall be submitted independent of any prior challenge submitted for the same voter. Each voter challenge shall be considered by the BER independent of any prior challenge submitted for the same voter. It is the challenger's responsibility to review the elector's list to ensure the voter's name remains on the list of electors prior to submitting the challenge. It is the challenger's responsibility to submit supporting documentation with each voter challenge.

13. Meeting Procedure for Voter Challenges

- a. If a voter's name appears both on a challenge list submitted pursuant to O.C.G.A. §§ 21-2-229 and 21-2-230, then, if practical and feasible, the BER shall first hear the challenge submitted under O.C.G.A. § 21-2-229. If the BER determines that the voter should no longer be on the list of electors, the challenge filed pursuant to O.C.G.A. § 21-2-230 shall be moot.
- b. Staff will announce each name on the challenged voter list. Staff may provide additional information to the BER regarding current registration status of a challenged voter, current address, contact with the voter, and voting history.
- c. The challenger shall then have no more than five minutes to present any other relevant information on the challenge. The challenged voter shall then have no more than five minutes to respond to the challenge. The BOE shall then have five minutes to ask any questions it may find relevant and, upon motion and vote may extend such time as it determines necessary for its questions.

³ See O.C.G.A. §24-14-3; *Zwiren v. Thompson*, 276 Ga. 498 (2003)

- d. The ability to provide additional information may be limited by available staff time and resources prior to the meeting. Staff may organize the list in a manner different from the submitted list to present efficient data to the BER.
- e. The BER will evaluate the evidence as submitted by the challenger.
- f. If a challenged voter submits a residency affirmation form, it shall be *prima facie* evidence of the voter's residence.
- g. Motions of the BER shall be either to uphold the challenge or dismiss the challenge. For a motion to succeed, a majority of a quorum of the BER must vote in favor.
- h. When the initial letter notifying the voter of the challenge is returned to the Elections Office undeliverable with a legible possible forwarding address, staff may re-send the letter to the address provided by the U.S Postal Service and will inform the BER of the date the notice was re-sent.
- i. A copy of each written challenge upon which the BOE acts will be appended to the Minutes of the BOE meeting at which the action was taken.
- j. The procedures set forth herein shall also apply to challenges to voter qualifications initiated pursuant to O.C.G.A. §21-2-228.
- k. If any members of the BOE or employees or agents of the BOE challenge the eligibility of voters in their individual capacity while they remain in that position or have a personal or business interest in the mounting of such a challenge, they must recuse themselves from deliberating, voting, or otherwise participating in any way in the BOE's consideration of such challenges.
- l. The BOE will process all voter challenges expeditiously and objectively, while erring in all instances on the side of preserving the voter's right to remain on the registration lists, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.

Prior to filing a challenge under 229 or 230, Oconee County electors are encouraged, but not required, to provide the BER with a list of voters with suspected voting eligibility issues, with supporting documentation, so that the Elections Department Staff may review in advance and determine if there are electors whose eligibility to vote in Oconee County has changed. In cases where the Staff finds that there are such issues it shall proceed either administratively or under O.C.G.A. §21-2-228 to have such electors removed from the list of registered voters and notify the submitting elector of such action. Should the Staff determine that there is no such issue, it shall notify the submitting elector of its determination who may then chose to file a challenge under either 229 or 230.

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Exhibit 1-B

Example Letter

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Oconee County
Board of Elections and Registration
Sharon Gregg, Director

Board Members:
Jay Hauley, Chair
Kirk Shook, Vice Chair
Ken Davis
Douglas Hammond
Shami Jones

Date: October 04, 2024

Jill Marie Hennenberg
1810 McNeese Mill Rd
Watkinsville, GA 30677

Dear Jill Marie Hennenberg,

The Oconee County Board of Elections office has been presented with a challenge regarding your address listed on your voter registration. The Board determined that probable cause exists to uphold the challenge at our Board of Elections meeting held October 01, 2024. Your registration will be placed in a challenged status. A hearing date has been scheduled for Thursday, October 24, 2024. You may provide proof of your residency to resolve the issue or complete and submit the enclosed residency affirmation form. You are not required to attend the board meeting, however if you do not provide documentation or complete the residency affirmation form, then your voter registration will remain in a challenged status going forward. You can also choose to cancel your registration or update your address whatever the case may be.

A residency affirmation form is enclosed. Complete this to affirm your current residency. Also enclosed is a voter cancellation form in the instance that you have moved out of state. You may complete this form, or you may submit this information online at: <https://cancelmyregistration.sos.ga.gov/s/>. Additionally, we have enclosed a voter registration form if you need to update your address within our county or if you have moved to another county within the state.

Enclosed is a copy of the Board's standard operating procedures regarding voter challenges.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,

Sharon Gregg, Director
Oconee County Board of Elections and Registration

Enclosures

cc: Members of the Oconee County Board of Elections and Registration
Daniel Haygood, Attorney at Law

7635 MACON HIGHWAY, SUITE 200
WATKINSVILLE, GA 30677
PHONE: 706-769-3958 FAX: 706-310-3486
sgregg@oconee.ga.us



Oconee County
Board of Elections and Registration
Sharon Gregg, Director

Board Members:
Jay Hanley, Chair
Kirk Shook, Vice Chair
Ken Davis
Douglas Hammond
Shami Jones

Date: October 04, 2024

Jill Marie Henneberg
1810 McRees Mill Rd
Watkinsville, GA 30677

Dear Jill Marie Henneberg,

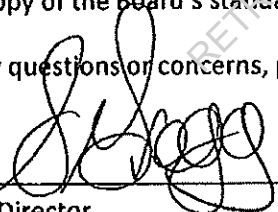
The Oconee County Board of Elections office has been presented with a challenge regarding your address listed on your voter registration. The Board determined that probable cause exists to uphold the challenge at our Board of Elections meeting held October 01, 2024. Your registration will be placed in a challenged status. A hearing date has been scheduled for Thursday, October 24, 2024. You may provide proof of your residency to resolve the issue or complete and submit the enclosed residency affirmation form. You are not required to attend the board meeting, however if you do not provide documentation or complete the residency affirmation form, then your voter registration will remain in a challenged status going forward. You can also choose to cancel your registration or update your address whatever the case may be.

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Enclosed is a copy of the Board's standard operating procedures regarding voter challenges.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,



Sharon Gregg, Director
Oconee County Board of Elections and Registration

Enclosures

cc: Members of the Oconee County Board of Elections and Registration
Daniel Haygood, Attorney at Law

7635 MACON HIGHWAY, SUITE 200
WATKINSVILLE, GA 30677
PHONE: 706-769-3958 FAX: 706-310-3486
sgregg@oconee.ga.us



Oconee County
Board of Elections and Registration
Sharon Gregg, Director

Board Members:

Jay Hanley, Chair
Kirk Shook, Vice Chair
Ken Davis
Douglas Hammond
Shami Jones

Date: October 04, 2024

Scott Allan Morris
1153 Wild Flower Trl
Statham, GA 30666

Dear Scott Allan Morris,

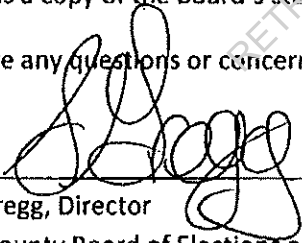
The Oconee County Board of Elections office has been presented with a challenge regarding your address listed on your voter registration. The Board determined that probable cause exists to uphold the challenge at our Board of Elections meeting held October 01, 2024. Your registration will be placed in a challenged status. A hearing date has been scheduled for Thursday, October 24, 2024. You may provide proof of your residency to resolve the issue or complete and submit the enclosed residency affirmation form. You are not required to attend the board meeting, however if you do not provide documentation or complete the residency affirmation form, then your voter registration will remain in a challenged status going forward. You can also choose to cancel your registration or update your address whatever the case may be.

A residency affirmation form is enclosed. Complete this to affirm your current residency. Also enclosed is a voter cancellation form in the instance that you have moved out of state. You may complete this form, or you may submit this information online at: <https://cancelmyregistration.sos.ga.gov/s/>. Additionally, we have enclosed a voter registration form if you need to update your address within our county or if you have moved to another county within the state.

Enclosed is a copy of the Board's standard operating procedures regarding voter challenges.

If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,


Sharon Gregg, Director
Oconee County Board of Elections and Registration

Enclosures

cc: Members of the Oconee County Board of Elections and Registration
Daniel Haygood, Attorney at Law

7635 MACON HIGHWAY, SUITE 200
WATKINSVILLE, GA 30677
PHONE: 706-769-3958 FAX: 706-310-3486
sgregg@oconee.ga.us

Exhibit 1-C

Residency Affirmation Form

RETRIEVED FROM DEMOCRACYDOCKET.COM



Oconee County
Board of Elections and Registration
Sharon Gregg, Director

Board Members:
 Jay Hanley, Chair
 Kirk Shook, Vice Chair
 Ken Davis
 Douglas Hammond
 Shami Jones

Residency Affirmation

I, _____ (Elector), do hereby swear or affirm that the address on the Oconee County Registration voter list, at:

(Address) _____ GA _____

is my correct voter registration residential address, pursuant to OCGA § 21-2-217.

I submit this to answer and respond to my challenged voter status.

So affirmed, this _____ day of _____, 20_____.

Printed Name

Signature

Notary Public

Date

O.C.G.A. § 21-2-571. Voting by Unqualified Elector or Giving False Information "Any person who votes or attempts to vote at any primary or election, knowing that such person does not possess all the qualifications of an elector at such primary or election, as required by law, or who votes or attempts to vote at any primary in violation of Code Section 21-2-223 or who knowingly gives false information to poll officers in an attempt to vote in any primary or election shall be guilty of a felony and, upon conviction thereof, shall be sentenced to imprisonment for not less than one nor more than ten years or to pay a fine not to exceed \$100,000.00, or both."

Oconee County Board of Elections and Registrations will review Residency Affirmations and will submit them to the State Election Board, as the Board deems necessary.

Office Use Only

ID provided: _____

Election Official's initials: _____