

October 22, 2018

To: Stephen Day
Chairman, Gwinnett County Board of Elections
Glenn.Stephens@gwinnettcountry.com

Brian Kemp
Secretary of State
bkemp@sos.ga.gov

We at Common Cause write to express our concerns regarding recent reports of rejected mail ballots in Gwinnett County in advance of the November 2018 election. We urge the Gwinnett County Board of Registrations and Elections (“BORE”) and Secretary of State Kemp to take immediate steps to inform voters of the status of their ballots and provide clear process to cure any ballots potentially rejected due to error by eligible voters. We understand that a few organizations, including the ACLU and Coalition for Good Governance, have filed suit on this matter, and we write to urge both the Gwinnett BORE and the Secretary of State’s office to adopt what we consider to be the best practice for resolving signature-match disputes

Reports indicate that BORE is currently rejecting mail ballots cast by voters of color, particularly African-American and Asian-American voters, at disproportionate rates compared to white voters.¹ Additionally, BORE’s rejection rate is four times the rejection rate statewide, accounting for 37 percent of all rejected ballots.² Without prompt remedy, voters of color in Gwinnett County face a higher likelihood of disenfranchisement compared to other Georgians.

¹ Jordan Wilkie, *High Rate of Absentee Ballot Rejection Reeks of Voter Suppression*, WhoWhatWhy, Oct. 12, 2018, available at <https://whowhatwhy.org/2018/10/12/exclusive-high-rate-of-absentee-ballot-rejection-reeks-of-voter-suppression/> (finding rejection rates of 14.8% for Asian-American voters and 8% for African-American voters, compared to 2.5% for White voters).

² Taylor Etsep, *Voting, Civil Rights Groups Home in on Gwinnett’s Absentee Rejections*, Atlanta-Journal Constitution, Oct. 16, 2018, available at <https://www.ajc.com/news/local-govt--politics/just-group-sues-kemp-gwinnett-elections-board-over-ballot-rejections/1qMxof9sA0um6w32vmrG2I/>.

Georgia's Vote by Mail Law

Georgia law requires that voters apply for mail ballots using an application form that is available online or in county election offices.³ Under Georgia law, a mail ballot must include a signed oath of the voter containing certain identifying information and the voter's signature in order to be counted.⁴ In reviewing absentee ballot applications, the election officials must determine if the signatures on the voter's absentee ballot application and the signature on the voter's registration file match.⁵ If the the oath is not signed, the oath is signed but the signatures do not match, or the voter has failed to give the required information, then the application is rejected.⁶

Under Georgia law, voters are to be notified if their application for mail ballots are rejected.⁷ The issue is that Georgia law does not specify a time for Application Rejection Notification to be given.⁸ The law only specifies that notification must be given "promptly."⁹ So there is no assurance that applicants will have enough time to resolve discrepancies.¹⁰

If there is timely notice of the application discrepancy, the time for voters to fix their application can be too short to properly re apply. Georgia law prohibits the issuance of mail ballots on the day prior to Election Day and requires that a mail ballot must be received by 7 p.m. on Election Day to be counted.¹¹

Conclusively, while Georgia voters are required to be notified of an absentee ballot rejection, Georgia law does not ensure that they will be able to properly remedy their absentee ballot rejection. The two major problems are lack of specificity in timely notice of absentee ballot rejection for voters and lack of time for voters to fix their applications and subsequently be counted in the election. The unusually high level of ballot rejections in Gwinnett County stands to complicate the notice process to ensure all voters are informed and able to cure their ballots in time. Votes cast by these voters are less likely to be effective than votes cast by other voters.

Recommendations

Georgia officials are not without examples on how to best process vote-by-mail ballots to ensure that Georgians have an opportunity to cast a ballot that counts. The Election Assistance Commission's ("EAC") Election Management Guidelines recommend several options that may be offered to voters to

³ Martin v. Kemp Filed Complaint

⁴ O.C.G.A. § 21-2-386(a)(1)(C)

⁵ O.C.G.A. § 21-2-381(b)(1)

⁶ O.C.G.A. § 21-2-386(a)(1)(C)

⁷ O.C.G.A. § 21-2-381(b)(3)

⁸ Martin v. Kemp Filed Complaint

⁹ O.C.G.A. § 21-2-381(b)(3)

¹⁰ Martin v. Kemp Filed Complaint

¹¹ O.C.G.A. § 21-2-386(a)(1)(F)

cure an unsigned ballot¹² which could also apply to those who have trouble with the ballot envelope instructions. These options include providing voters an opportunity to request a replacement ballot, returning the ballot envelope to the voter for curing, or allowing voters to cure the ballot in person at the election's office. Reports do not indicate that similar options have been provided to voters in Gwinnett.

Additionally, the EAC recommends a three step signature review process if signature verification is required by state law to ensure that ballots are not unduly rejected. The process for signature review escalates from regular staff to the canvassing board and includes notifying the voter if a signature does not match. Georgia law does not currently specify a deadline for making such notice to a voter, which may render their ballot incurable before Election Day.

The state of Colorado serves as the best example for vote-by-mail practices.¹³ Specifically, Denver, Colorado has become a national leader in election management and innovation with 10 years of experience with Permanent Mail in Voting.¹⁴ In Colorado, the process used to verify signatures for voter eligibility is more thorough than Georgia's method of signature verification¹⁵ The signature verification of mail ballot envelopes can be a subjective process that requires well-considered rules.¹⁶ The notification of signature discrepancies to voters is specified and the time allowed for the voter to cure discrepancies is more flexible.

In Denver, a mail-in ballot undergoes multiple levels of review before being set aside for curing by the voter.¹⁷ The signature verification process in Denver requires bipartisan teams of trained officials to review multiple electronic files of voters' signatures; it also includes a number of escalation and adjudication rules for instances when teams do identify discrepant signatures that require curing by the voter.¹⁸ If, following a number of reviews, there is a confirmed discrepancy between the voter's signature on file with that on the ballot, election officials have three days to notify the voter of the discrepancy in their signatures and opportunity to cure.¹⁹ The notification cannot be given later than two days after election day.²⁰ Officials must then send a letter to the voter explaining the discrepancy in signatures and include an affidavit for the voter to confirm that he or she returned a ballot to the county clerk and recorder.²¹ Lastly, Colorado permits eight days of time after Election Day for voters to cure

¹² U.S. Election Assistance Commission, Election Management Guidelines 53, *available at* https://www.eac.gov/assets/1/6/Chapter_7_Absentee_Voting_and_Vote_by_Mail.pdf.

¹³ Curling et al v. Kemp et al Reply Brief in Support of Motion for Preliminary Injunction

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Colo. Rev. Stat. § 1-7.5-107

²⁰ Colo. Rev. Stat. § 1-7.5-107

²¹ Colo. Rev. Stat. § 1-7.5-107

signatures and return a ballot to election officials.²² We believe this amount of time - eight days - provides voters with a sufficient amount of time to cure the problem without compromising the efficiency of elections administration. We strongly urge both Gwinnett County, and the state of Georgia, to adopt this procedure.

The right to vote is a hollow promise without the ability to cast a ballot that counts. Voters of color in Gwinnett County are facing disproportionate rejection of their ballots without proper notice of how to ensure their ballot is counted, calling their fundamental rights into question. Due to the urgent nature of approaching deadlines, we urge Gwinnett County to adopt the measures recommended by the EAC and utilized by Denver, Colorado to minimize absentee ballot rejections and ensure that all Georgians in Gwinnett County have an equal opportunity to vote a ballot that counts.

Sincerely,



Sara Henderson
Executive Director
Common Cause Georgia

²² Colo. Rev. Stat. § 1-7.5-107