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Dear Gwinnett election officials,

It has come to the attention of myself and other concerned Georgians that the Elias Law Group ("ELG") – an out-of-state, hyper-partisan legal outfit – has sent a letter out to Georgia election officials. In this letter, ELG misstates the law in an obvious attempt to keep "voters" on the rolls who should not be there. We believe this letter is motivated not by a desire to protect the rights of legitimate Georgia voters, but rather to facilitate widespread cheating in our state's upcoming elections. That is why I feel compelled to provide a rebuttal and inform you of what the law actually says. Below are some misrepresentations or inaccuracies in the letter. They are provided in **blue text.**

** Note: I am not an attorney, and none of this is legal advice. I am simply pointing out to you what the law says on this topic.

1. Challenges brought under Ga. Code Ann. § 21-2-229

A. Challenge Process

*"At the [voter challenge] hearing, the challenger bears the burden **"to prove"** the Challenged Voter is not qualified to remain on the registration list…The statute requires definitive proof that the voter is not qualified. If the Board does not believe the Challenger **has proved** that the Challenged Voter is not qualified to remain registered to vote, it must dismiss the challenge."*

This is a misrepresentation of OCGA 21-2-229(c). The actual language is "The burden shall be on the elector making the challenge ***to prove*** that the person being challenged is not qualified to remain on the list of electors" (emphasis added). **There are several different burdens of proof within the law, and most of them do not require "definitive" proof.** In fact, the most common burden of proof in civil litigation is "preponderance of the evidence." ELG is baselessly suggesting that something akin to proof "beyond a reasonable doubt" is required here. Of course, that is the standard used in criminal prosecution, which is not at all what is being discussed here. In short, there is nothing in the statute indicating the standard is anything close to that high.

*"**The Board is not required to engage in an independent inquiry regarding the information presented by the Challenger.** A decision should be made based solely on the evidence presented by the Challenger."*

This is directly contrary to the language of OCGA 21-2-229(c), which states "The board of registrars shall have 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." (emphasis added). While this language does not *mandate* that the Board help gather additional materials via subpoena, it explicitly provides that option. In fact, this would be the logical next step if one were to follow ELG' argument (later in the letter) that the residency intentions of out-of-state voters must be heard from the voter's own mouth. A Challenger would never be able to secure an uncooperative out-of-state voter's testimony – and, therefore, illegal out-of-state voters could almost never be removed – unless a subpoena were issued by the proper authority (county election boards). While I rebut this argument by ELG later on, it is still important to point out the nonsensical implications it would have.

One other point: notice letters are also sent out by the Board when a voter is challenged under Section 229, and the response (or lack of response) to the letter will undoubtedly provide additional evidence that will inform the final decision. Again, this is something that involves action on the part of the Board – not the Challenger -- and it is baked into the law itself.

"Challengers have presented faulty evidence of voter eligibility, including evidence that voters were deceased, despite the Challenged Voters being very much alive and in communication with the Board."

In my experience with recent voter cleaning efforts, challenges to alleged deceased voters are a very small percentage of total challenges. Most challenges are based on non-resident status or illegal non-residential addresses being used. In any event, the mere fact that ***some*** challenges brought by the citizens of Georgia turned out to false alarms **is in no way, shape, or form a reason to not consider citizen challenges.** In fact, it is absolutely expected that, on occasion, new information will come to light during the challenge process that shows the challenge to not be necessary. This is why notices are sent out, and this is why the Board has the ability to reject a challenge when new information is uncovered. This shows that the voter roll cleaning process is working as it should, with checks and balances. To expect that there will never, ever be a voter challenge that is justifiably rejected is totally unrealistic at best (and dishonest at worst).

"Challengers have also challenged unhoused voters based on allegations that the voter did not list a residential address on their voter registration record, despite the fact that these voters are permitted to register at a location without a fixed house number or street name. Ga Sec'y of State, Voter Registration Application…(instructing voters to draw a map or diagram if they live in an area without house numbers or street names)."

First of all, there is no indication that this language on Georgia's voter registration application is referring to homeless persons. In fact, it's fair to say that most homeless persons live in well-populated areas replete with house/apartment numbers and street names. If anything, this would more logically apply to persons living in a rural area or the wilderness.

Second, even if a homeless person did live on the grounds of a business or non-residential government building, they would still need to provide an address where they receive mail, per Georgia's voter registration application. As part of the voter challenge process, a notice is mailed out, which gives the homeless voter an opportunity to appear at the challenge hearing and show that they actually do make residence in the county.

Indeed, "A business address, in and of itself, does not fulfill the residency requirements of the Election Code, and an otherwise qualified elector may vote in the election district (now precinct) containing the business address only when such district (now precinct) also contains the elector's residence as defined by the Election Code." 1968 Op. Att'y Gen. No. 68-293.

If homeless voters were allowed to list non-residential addresses and then not respond to mailings, there would effectively never be any way to verify they were still residents or that they were the one actually voting from this address. The only possible alternative would be for elections officials to canvass the address and try to find the voter there (and properly verify their identity). Outside of this alternative – with no adequate vetting possible – it would be incredibly easy for bad actors to steal a homeless person's identity by voting on their behalf year after year, well after the registered voter had moved out of the state or county. We all know that is not a workable solution and would be devastating for election integrity in Georgia.

No one wants to disenfranchise someone who is "down and out", but we also have to be diligent to protect the integrity of our voter rolls.

"These incidents demonstrate that the information presented by Challengers should not be taken at face value."

None of the voter roll cleaning efforts I know of are asking for anything to be taken at face value. County elections offices can access National Change of Address databases – and verify non-residential addresses – themselves. They are also able to check publicly available property records, social media posts, and even canvass challenged residences themselves. Furthermore, signed affidavits are not simply offered at "face value". They are backed by a willingness on the part of volunteers to face criminal charges if they are lying.

B. Responding to Challenges based on Residency

ELG cites U.S.C.A 20507(d), which states: "A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant…has failed to respond to a notice described in paragraph (2); and…has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice."

It is true that Section 8(d)(1) of the National Voter Registration Act (incorporated into the law above) provides that a voter cannot be removed from the rolls **by a State** due to changed residency unless he or she fails to respond to the notice sent (and also does not appear to vote for two federal general elections). Let us assume that even individualized, citizen-initiated challenges fall under this statute. Regardless, it is still crystal clear that **only challenges based on *change* of residence** – for a voter who was initially properly registered – would need to comply with the notice requirements of Section 8(d)(1). These notice requirements would ***not*** apply to voters who **improperly registered from the beginning** at a non-existent or non-residential address) *(See: Bell v. Marinko 367 F.3d 591-92, holding that "In creating a list of justifications for removal, Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place.").* Likewise, voters on the rolls who were never eligible to begin with (duplicate registration, non-citizen, not Georgia resident, false identity, etc.) are clearly not covered by Section 8(d)(1) at all.

So, what is the proper Board procedure for successful change-of-residence challenges (which do fall under NVRA Section 8(d)(1))? How can the Board comply with the NVRA notice requirements? The simplest solution seems to be placing the voter immediately on the ***inactive*** list described in O.C.G.A 21-2-235. The Board would also ***send an NVRA-compliant notice*** -- described in U.S.C.A. 20507(d)(2) -- to the voter and ***wait two federal general election cycles.*** **If** the voter 1) fails to respond to the notice and 2) "has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice" – then the voter may be totally removed from the voter rolls, in full compliance with the NVRA. Per O.C.G.A. 21-2-235, a final notice must be sent to the inactive elector prior to this removal: "Not less than 30 nor more than 60 days prior to the date on which the elector is to be removed from the inactive list of electors, the board of registrars shall mail a notice to the address on the elector's registration record."

O.C.G.A. 21-2-235 also provides guidance on how these electors can either a) get themselves restored to the "official" list, or b) come vote ***in person*** by affirming their proper address at the polling station.

"Even if the Challenger presents evidence that a Challenged Voter has moved, absent any evidence that the Challenged Voter has the requisite intent of making a different state or county their residence, or of remaining there indefinitely, the Challenger cannot meet their burden of proof to show that the Challenged Voter has relinquished their residency…Challenges based merely on the fact that a voter sold their home, received mail at a different address, or that someone with the voter's name appears to be residing elsewhere based on a social media website is not sufficient."

O.C.G.A. 21-2-217(a)(15) states that: "For voter registration purposes, the board of registrars…***may consider evidence of where the person receives significant mail such as***

personal bills and any other evidence that indicates where the person resides." (emphasis added)

Part (b) of this Georgia Code section states: "In determining a voter's qualification to register and vote, the registrars to whom such application is made ***shall consider, in addition to the applicant's expressed intent, any relevant circumstances determining the applicant's residence. The registrars taking such registration may consider the applicant's financial independence, business pursuits, employment, income sources, residence for income tax purposes, age, marital status, residence of parents, spouse, and children, if any, leaseholds, sites of personal and real property owned by the applicant, motor vehicle and other personal property registration, and other such factors that the registrars may reasonably deem necessary to determine the qualification of an applicant to vote in a primary or election.***"

Clearly and explicitly, Georgia law allows for other factors to be used to determine residency intent, such as business pursuits, employment, leaseholds, location of real property (deeds and property tax records), and "any other such factors that the registrars may reasonably deem necessary". ELG's matter-of-fact assertions on this issue are directly contradicted by our state statutes.

This point is further supported by an official 1990 Georgia Attorney General opinion: "A registrar must acquire and examine the available evidence in order to ascertain the intent of each individual, on a case by case basis, to determine the domicile of that individual." 1990 Op. Att'y Gen. No. 90-1.

"Even evidence that the voter – or someone with the same name as the voter – is registered to vote in another state is not necessarily sufficient. See League of Women Voters of Indiana v. Sullivan, 5 F.4th 714 (7th Cir. 2021) (holding that a law that required removal of a voter based on confirmation that the voter was registered in another state violated the NVRA)."

ELG is clearly trying to attack Georgia statute 21-2-217(a)(2), which says:

""A person shall not be considered to have lost such person's residence who leaves such person's home and goes into another state or county or municipality in this state, for temporary purposes only, with the intention of returning, ***unless such person shall register to vote or perform other acts indicating a desire to change such person's citizenship and residence".*** (emphasis added)

However, in appealing to the *League of Women Voters* case to attack Georgia's law, ELG is again confusing the issue. That case involved a State-run, automatic process of immediately removing voters who had registered to vote in another state. No notice was given at all to voters that they were at risk of removal, and no challenge hearing was held where other facts could be considered. In Georgia, by contrast, we are dealing with citizen-initiated challenges that allow a Challenged Voter to make counter-arguments in front of an elections board prior to a decision.

But there's an even bigger distinction between *League of Women Voters* and our situation here in Georgia. In *League of Women Voters*, the Court ruled against the state of Indiana primarily

because **Indiana was equating an out-of-state registration with an actual authorization/request from the voter to cancel their Indiana registration** (which would satisfy the NVRA notice requirement that applies to change-of-residence challenges). This is not at all applicable to O.C.G.A. 21-2-217(a)(2), which merely says out-of-state registration is an indicator of intent **to change residence** to another state (whether you ***intended*** to cancel your Georgia voter registration or not).

For all the reasons above, O.G.G.A 21-2-217(a)(2) is not impacted by the *League of Women Voters* case. Especially when combined with other evidence of a change of residency, voter registration out-of-state clearly serves as a basis for a citizen challenge in Georgia.

"The only permissible response to challenges based on [change of residency] grounds without hearing directly from the voter is to dismiss the challenge."

For all the reasons above, this assertion by ELG is flat-out wrong. Georgia law explicitly allows for a multitude of factors to be considered in deciding whether a voter now intends to reside out of state, whether the voter has directly contacted election officials or not. And the NVRA itself does **not** require hearing directly from the voter so long as the proper notice and waiting period is followed.

C. Responding to Challenges based on Registration Defects

*"In some instances, Challengers have presented evidence that the address listed on a voter's registration record is not a valid address, is a business address, or is the address of an abandoned property. Removing voters based on these allegations alone also violates the NVRA, which provides 'that the name of a registrant **may not be removed from the official list of eligible voters except**—' (A) at the request of the registrant; (B) because of a criminal conviction or mental incapacity that disqualifies the voter under state law; or (C) pursuant to a general program conducted to remove voters who are deceased or have changed residence."*

ELG is again ignoring that the NVRA was intended only to protect **eligible** voters from improper removal. *(See: Bell v. Marinko 367 F.3d at 591-92, holding that "In creating a list of justifications for removal, Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place.").* The protections of this act would ***not*** apply to voters who **improperly registered from the beginning** at a non-existent or non-residential address. Thus, if it can be shown (for example) that John Doe improperly registered to vote using a vacant lot as a residential address – and that it was vacant at the time of registration – then he would not be protected from removal by the NVRA.

D. Responding to Challenges within 90 Days of an Election

"The NVRA provides an additional, independent prohibition on purging voters in response to a mass challenge within 90 days of an election. Section 8(c) requires that '[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.'…For example, a North Carolina federal court recently reviewed voter challenges across four counties and found that, where a county's removal of voters 'lack[s] individualized inquiry,' rests on 'generic evidence' such as mass mailings, and occurs within 90 days of a federal election, it constitutes a systematic removal of names that violates Section 8(c) of the NVRA. NC State Conf. of NAACP v. Bipartisan Bd. Of Elections & Ethics Enf't."

It is true that the NVRA prohibits **"*systematically*"** removing voters from the rolls within 90 days of an election. However, even according to the *NC State Conf. of NAACP* case cited by ELG, this does not apply to ***"individualized"*** challenges. The court in that case stated that "individualized removals do not present the same risks as systematic removals because they are 'based on individual correspondence or ***rigorous individualized inquiry,*** leading to a small chance for mistakes'" (quoting *Arcia v. Fla. Sec'y of State,* 772 F3d. at 1346 (11th Cir. 2014) (emphasis added). "The court in *Arcia* recognized that Congress decided to allow systematic removal programs 'at any time *except* for the 90 days before an election because that is when the risk of disfranchising eligible voters is the greatest'" *Id*.

What constitutes a prohibited "systematic" challenge? Well, in *NC State Conf of NAACP,* the citizen challenges were based solely on one piece of data (mail returned as undeliverable). In Georgia, many of our citizens challenges have involved one data set (NCOA, out-of-state registration, etc.), combined with more individualized information (social media posts, property records, etc.). Clearly, this would go far beyond the inquiries involved in the case cited by ELG.

ELG also cites a Middle District of Georgia case to argue the same point (Majority Forward v. Benn Hill Cnty. Bd. Of Elections). However, this case dealt with challenges within the 90-day window that were based ***solely*** on NCOA data. Just like with *NC State Conf. of NAACP,* this in no way, shape, or form restricts citizen challenges that are sufficiently individualized.

II. Challenges brought under Ga. Code Ann. 21-2-230

ELG cites the case Majority Forward v Ben Hill Cnty. Bd. Of Elections to argue that it would unduly burden challenged voters to make them defend their eligibility ***"based on insufficient***

evidence" *in a Section 230 hearing (emphasis added). ELG argues that this would violate the First and Fourteenth Amendments to the U.S. Constitution.*

To begin, it's important to note that the *Majority Forward* case involved challenges that were submitted less than a month before the upcoming election. Thus, it does not necessarily apply to challenges submitted farther in advance.

In addition, the *Majority Forward* voter challenges were based ***solely*** on NCOA data, and the court decided that "the challenges did not include the individualized inquiries necessary to sustain challenges made within 90 days of a federal election." *Id. at 1356.* In contrast, most change-of-residence challenges I'm aware of in Georgia involve NCOA data ***in addition to*** other evidence such as deed or property records, social media evidence, out-of-state registration, etc. Thus, the holding in *Majority Forward* would only impact a narrow subset of 230 challenges in Georgia.

"For section 230 challenges that may result in the removal of the voter from the voter registration rolls, the same NVRA restrictions discussed above apply to these challenges. *If the challenge is based on a change in the voter's residency, federal law prohibits the voter's removal from the rolls absent written confirmation from the voter, until the voter has both failed to respond to a notice and has not voted for two federal election cycles thereafter. If the challenge is within 90 days of an election, the NVRA prohibits the voter's removal unless the challenge is based on individualized evidence. Because the NVRA prohibits removal of voters under these circumstances, the Board should* ***not*** *find probable cause exists to support Section 230 challenges that are based on alleged changes in residence, or that are brought within 90 days of an election and are not based on individualized evidence."*

While it's true that challenges brought within 90 days should be based on individualized evidence, it is **not** true that change of residence is an improper basis for Section 230 challenges. Even if a change-of-residence Section 230 challenge is upheld, the voter can simply be placed in "inactive" status for two federal general election cycles prior to complete removal from the Georgia rolls. In this way, the removal process would fully comply with the notice requirements found within Section 8(d) of the NVRA.

**** A final word on Section 230 challenges**

In some situations, a county elections board is **fairly** confident that a voter is ineligible, but they don't feel comfortable removing them from the rolls immediately. They would rather give the voter a bit more leeway. We have seen elections boards convert traditional 229 challenges to 230 challenges, so that the challenged voter can be placed in "challenged status", rather than immediately removed. Indeed, it is understandable that a board might want to give a borderline case some extra time to defend their eligibility.

However, I do want to make sure election boards understand how these “challenged status” voters should be handled per Georgia law. Under Section 230, if the voter appears to vote in person (or casts an absentee ballot), there will be a Section 230 challenge hearing. If the voter does **not** appear to vote (or cast an absentee ballot), then the challenge will be heard under Section 229.

In both of these scenarios, if the challenge is upheld, the voter should be removed from the official list of electors. However, when these are change-of-residence challenges, it is true that the NVRA notice requirements should be complied with. Therefore, placing these voters in “inactive” status after their removal from the official rolls makes the most sense. Once the proper notice and waiting requirements are met, the voter should be completely removed from the Georgia rolls.

**** Note: Again, I am not an attorney, and none of this is legal advice. I am simply pointing out to you what the law says on this topic.**