

STATE OF GEORGIA
DEKALB COUNTY

**SETTLEMENT AGREEMENT AND
FULL AND FINAL RELEASE OF ALL CLAIMS**

This Settlement Agreement and Full and Final Release of all Claims (“Agreement”) is between Georgia State Conference of the National Association for the Advancement of Colored People and the Georgia Coalition for the People’s Agenda (together, “PLAINTIFFS”) on the one hand, and the DeKalb County Board of Registration and Elections (the “BRE”), Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel Tillman, Baoky N. Vu, each in their official capacity as members of the BRE, and Erica Hamilton in her official capacity as Director of the DeKalb County Department of Voter Registration and Elections (collectively, “DEFENDANTS”) and DeKalb County, on the other hand.

I. Recitals.

WHEREAS, on February 26, 2020, PLAINTIFFS filed a lawsuit against DEFENDANTS alleging violations of the National Voter Registration Act of 1993 (“NVRA”) and infringements of voters’ fundamental right to vote protected by the First and Fourteenth Amendments to the U.S. Constitution arising from the removal of certain individuals from DeKalb County’s list of registered voters in 2019, styled

as *Georgia State Conference of the National Association for the Advancement of Colored People, et al. v. DeKalb County Board of Registration and Elections, et al.*, Civil Action No. 1:20-cv-00879-ELR, in the U.S. District Court for the Northern District of Georgia (“the Civil Action”);

WHEREAS, after the Civil Action was filed, on May 14, 2020, the BRE voted to rescind the cancellation of registrations which occurred subsequent to January 1, 2019, where such cancellations were based on an alleged change of address, and restored the affected registrants to the official list of eligible voters in DeKalb County;

WHEREAS, on October 28, 2020, the BRE voted to rescind the cancellation of additional registrations which occurred between February 1, 2018 and December 31, 2019, where such cancellations were based on an alleged change of address, and restored the affected registrants to the official list of eligible voters in DeKalb County;

WHEREAS, on February 19, 2021, the BRE adopted written procedures for adjudicating challenges to voter registrations based on an alleged change of address, titled “Procedures for Responding to Voter Challenges Submitted Pursuant to O.C.G.A. § 21-2-229,” a true and correct copy of which procedures are attached hereto as Exhibit 2, which procedures further PLAINTIFFS’ and DEFENDANTS’

common goal of protecting citizens' voting rights in compliance with applicable laws, and which procedures DEFENDANTS agree to implement with respect to all pending voter challenges, including those challenges received by Defendants prior to the January 2021 runoff election;

WHEREAS, DEFENDANTS further agree that they will continue to utilize the procedures attached hereto as Exhibit 2 for at least two years after the effective date of this Agreement, and will not amend said procedures during that two-year period except to the extent that amendment is necessary to comply with any changes in applicable laws or regulations that are enacted in the future;

WHEREAS, the parties acknowledge that amendments to Exhibit 2 may be needed on account of S.B. 202,¹ but agree that such amendments will be limited to acknowledgment that there is no limit on the number of voters who can be challenged by another voter and acknowledgement that a notice of the challenge and of the hearing date must be served within ten days of the BRE's receipt of the challenge, with the hearing to occur within ten days following service of the notice; and

WHEREAS, PLAINTIFFS and DEFENDANTS (collectively, "the Parties")

¹2021 Georgia Laws Act 9 (S.B. 202), § 15 (codified at O.C.G.A. §§ 21-2-229, 21-2-230).

have agreed to a resolution of all claims that were or could have been litigated in the Civil Action;

NOW THEREFORE, in return for good and adequate consideration set forth in the terms of this Agreement, the Parties agree to the following:

II. Recitals Incorporated.

The above recitals are hereby incorporated in and made a part of this Agreement as fully as if set forth verbatim herein. These recitals are true and correct and the parties are bound thereby. By signing this Agreement, the Parties acknowledge reading, understanding and agreeing to all of these recitals.

III. Release of Claims.

In return for the good and valuable consideration described in this Agreement, PLAINTIFFS, on behalf of themselves and their representatives, agents and attorneys, hereby release, waive, and forever give up any and all actions, causes of action, demands, claims, potential claims, rights, damages, and claims for damages and/or other monetary and non-monetary recovery (including, but not limited to, compensatory damages, punitive damages, lost wages, lost benefits, sanctions, attorneys' fees, medical and other expenses, declaratory relief, injunctive relief, mandamus and other extraordinary remedies), of whatsoever kind and nature that they have, may have or claim to have against DEFENDANTS, DeKalb County,

and/or any of the DEFENDANTS' or DeKalb County's other present and/or former agents, employees, attorneys, officers, elected officials, departments, and/or assigns (hereinafter collectively referred to as "RELEASEES"), that arose on or before the date PLAINTIFFS sign this Agreement, relating to any of the claims, events, or circumstances described in the Civil Action.

The claims and potential claims that are waived and released by PLAINTIFFS herein include, but are not limited to: (1) all claims alleged in the Civil Action; and (2) any other possible claims that PLAINTIFFS have, may have, or claim to have under 42 U.S.C. § 1983; the United States Constitution; the Georgia Constitution; tort laws; and/or any other federal, state, and/or local laws (whether constitutional, statutory, or common law) that PLAINTIFFS have asserted or could have asserted against the RELEASEES or any of them on or before the date this Agreement is signed by PLAINTIFFS, that in any way relate to or arise from the facts, circumstances, and/or events identified in the Civil Action.

This Agreement shall not be construed to limit or waive the sovereign, official, or qualified immunity of DEFENDANTS, DeKalb County, or the employees or agents thereof; this Agreement is not made to pay any claims that are barred by sovereign immunity.

This Agreement is intended to and does completely bar and foreclose any and

all claims that PLAINTIFFS have or ever had against the RELEASEES, or any of them, relating to or arising in any way from the facts, circumstances, and/or events identified in the Civil Action. This Agreement shall not be interpreted to waive or release any claims that occur or arise after the date PLAINTIFFS execute this Agreement or any claims or rights that cannot, by law, be waived or released.

IV. Affirmations and Covenant Not to Sue

PLAINTIFFS affirm that they currently have no lawsuits, charges or other legal claims pending against any of the RELEASEES other than the Civil Action. PLAINTIFFS agree that their Counsel will file in the U.S. District Court for the Northern District of Georgia a stipulation of dismissal with prejudice of the Civil Action in the form attached as Exhibit 1 hereto within five business days after the date counsel receives the check provided for in paragraph V below. PLAINTIFFS agree that they will not assert, pursue, or attempt to assert or pursue any lawsuit or claim that they released and waived in paragraph III above, and will not authorize anyone else to do so on their behalf.

V. Payment.

Counsel for DEFENDANTS will deliver to Counsel for PLAINTIFFS checks payable to Carlton Fields, PA, 1201 W. Peachtree Street NW, Suite 3000, Atlanta Georgia 30309-3455, Attention: Gail Podolosky, in the total amount of \$82,500.00

(Eighty-Two Thousand, Five Hundred and 00/100 Dollars) no later than fifteen (15) business days after the Effective Date of this Agreement, as defined below. DEKALB COUNTY will issue appropriate 1099 forms to the recipients of this payment for tax reporting purposes.

VI. Denial of Liability.

PLAINTIFFS understand that this Agreement is in compromise of claims and potential claims that are disputed, both as to liability and as to the amount of attorneys' fees. DEFENDANTS deny that they are liable for a violation of PLAINTIFFS' legal rights in any respect. This Agreement will in no way be construed to indicate or to imply any admission of wrongdoing or liability on the part of the Releasees.

VII. Tax Responsibility.

PLAINTIFFS and their counsel understand that they, and not DEFENDANTS or DeKalb County, will be responsible for paying any federal, state, and/or local taxes owed (if any) on the payments disbursed to them as provided for in this Agreement.

VIII. Additional Affirmations.

The Effective Date of this Agreement shall be the latest of the following three dates: 1) the date that Counsel for PLAINTIFFS provides DEFENDANTS' Counsel

with an original of this Agreement that has been fully executed by the PLAINTIFFS and signed by their Counsel, along with completed W-9 forms for each firm and/or entity who will be listed as a payee on a check provided for herein; and 2) the date that the BRE approves the terms of this settlement; and 3) the date that the DeKalb County Chief Executive Officer's time to veto the DeKalb County Board of Commissioners' approval of the monetary term of this settlement expires, if no timely veto occurs. PLAINTIFFS understand that this settlement may be presented to the BRE and the DeKalb County Board of Commissioners for proposed approval after PLAINTIFFS sign this Agreement, and that nothing in this Agreement requires either the BRE or the DeKalb County Board of Commissioners to approve this settlement or prevents the DeKalb County Chief Executive Officer from returning a veto of the Board of Commissioners' approval of the monetary term of this settlement within ten business days after such approval. This Agreement will not become effective or enforceable absent approval of this settlement by the BRE and approval of the monetary term of this settlement by the DeKalb County Board of Commissioners that is not timely vetoed by DeKalb County's Chief Executive Officer.

PLAINTIFFS further affirm that their respective authorized representatives have read and understand each of the provisions of this Agreement; they have been

given a reasonable amount of time to review and consider this Agreement before signing it; and they are entering into this Agreement of their own free will.

IX. Severability.

This Agreement is severable. If a Court of competent jurisdiction determines that any portion of this Agreement is unenforceable for any reason, that determination will not affect the enforceability of any other paragraph or provision of this Agreement.

X. Entire Understanding.

The Parties understand and agree that this Agreement constitutes the entire understanding between PLAINTIFFS and DEFENDANTS and DeKalb County concerning the subject matter covered herein, and supersedes any and all verbal or written discussions, proposals, and/or offers of compromise or settlement regarding this matter. This Agreement cannot be changed except in a writing signed by PLAINTIFFS, an authorized representative of DEFENDANTS, and an authorized representative of DeKalb County.

BY MY SIGNATURE BELOW, I AFFIRM THAT: I HAVE READ THE FOREGOING AGREEMENT; I UNDERSTAND IT FULLY; AND I SIGN IT KNOWINGLY AND VOLUNTARILY. [Signature appears on next page]

Georgia State Conference of the NAACP

James Woodall

Date: 08 July 2021

Name (printed): Rev. James Woodall

Title: State President

Teresa Ann Hardy
Witness (Notary)



Georgia Coalition for the People's Agenda, Inc.

Date: _____

Name (printed): _____

Title: _____

Witness (Notary)

Approved by:

Counsel for Plaintiffs

Date: _____

Georgia State Conference of the NAACP

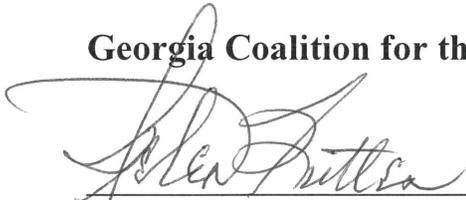
Date: _____

Name (printed): _____

Title: _____

Witness (Notary)

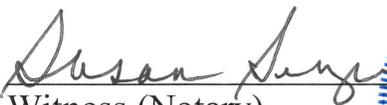
Georgia Coalition for the People's Agenda, Inc.



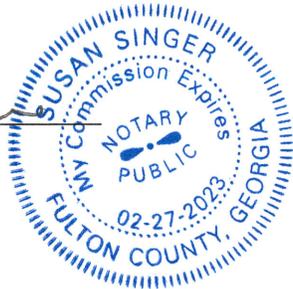
Date: July 9, 2021

Name (printed): Helen Butler

Title: Executive Director



Witness (Notary)



Approved by:

Counsel for Plaintiffs

Date: _____

Georgia State Conference of the NAACP

Date: _____

Name (printed): _____

Title: _____

Witness (Notary)

Georgia Coalition for the People's Agenda, Inc.

Date: _____

Name (printed): _____

Title: _____

Witness (Notary)

Approved by:



Counsel for Plaintiffs

Date: 07/08/2021

DeKalb County Board of Registration and Elections (“BRE”); Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel Tillman, Baoky N. Vu, each in their official capacity as members of the BRE, and Erica Hamilton in her official capacity as Director of the DeKalb County Department of Voter Registration and Elections

Date: _____

Name (printed): _____

Title: _____

DeKalb County Board of Registration and Elections (“BRE”); Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel Tillman, Baoky N. Vu, each in their official capacity as members of the BRE, and Erica Hamilton in her official capacity as Director of the DeKalb County Department of Voter Registration and Elections

Irene B. Vander Els

Date: 7/13/21

Name (printed): Irene B. Vander Els

Title: Counsel for Defendants

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE, et al.,

Plaintiffs,

v.

DEKALB COUNTY BOARD OF
REGISTRATION AND ELECTIONS,
et al.,

Defendants.

Civil Action File No.
1:20-CV-00879-ELR

VOLUNTARY STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiffs Georgia State Conference of the National Association for the Advancement of Colored People and the Georgia Coalition for the People's Agenda and Defendants the DeKalb County Board of Registration and Elections (the "BRE"), Anthony Lewis, Susan Motter, Dele Lowman Smith, Samuel Tillman, Baoky N. Vu, each in their official capacity as members of the BRE, and Erica Hamilton in her official capacity as Director of the DeKalb County Board of Registrations and Elections hereby agree and stipulate that the above-captioned action is hereby voluntarily dismissed with

prejudice, with each party to bear his/her/its own attorneys' fees and litigation expenses. This stipulation follows the parties' agreement to resolve this matter in connection with the implementation by the DeKalb County Board of Registration and Elections of procedures, attached to this stipulation as Exhibit A, to document the protection of certain rights of DeKalb voters under current law in connection with changes of address and related challenges to voter registrations.

Respectfully submitted this ____th day of _____, 2021.

s/ Irene B. Vander Els

Laura K. Johnson

Deputy County Attorney

Georgia Bar No. 392090

Irene B. Vander Els

Assistant County Attorney

Georgia Bar No. 033663

Shelley D. Momo

Assistant County Attorney

Georgia Bar No. 239608

DeKalb County Law Department

1300 Commerce Drive, 5th Floor

Decatur, Georgia 30030

Telephone: (404) 371-3011

Facsimile: (404) 371-3024

Counsel for Defendants

s/ John Powers

Ezra Rosenberg*

Julie Houk*

John Powers*

The Lawyers' Committee for Civil Rights Under Law

1500 K Street NW, Suite 900

Washington, DC 20005

Gail Podolsky
Georgia Bar No. 142021
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Atlanta, Georgia 30309-3455

Sean J. Young
Georgia Bar No. 790399
ACLU of Georgia
1100 Spring Street, N.W.
Atlanta, Georgia 30309

Sophia Lin Larkin*
Ihaab Syed*
Dale E. Ho*
125 Broad Street, 18th Floor
New York, New York 10004

*Admitted pro hac vice

Counsel for Plaintiffs

**CERTIFICATE OF SERVICE AND CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 5.1**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system (which document was prepared in Times New Roman font, 14-point type, one of the font and point selections approved by the Court in N.D. Ga. L.R. 5.1(C)), which will automatically send e-mail notification of such filing to the counsel of record.

This __th day of _____, 2021.

s/ _____

One of the Attorneys for Plaintiffs

EXHIBIT 2

DeKalb County Board of Registrations and Elections

Procedures for Responding to Voter Challenges Submitted Pursuant to O.C.G.A. § 21-2-229

1. Challenges to the qualifications of a DeKalb County registered voter to remain on the voter registration list under O.C.G.A. § 21-2-229 may be made only by a registered voter of DeKalb County. 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 committees, PAC, political parties, or other organizations. Therefore, before acting upon a challenge submitted to the BRE, the BRE must determine whether the challenger is registered to vote in DeKalb County and, if not, the BRE must reject the challenge on this basis.

2. Upon receiving a written challenge to a voter's eligibility based upon the allegation that he or she does not reside in DeKalb County or in one of its municipalities, the BRE shall require the challenger, under the authority of O.C.G.A. §21-2-229(a), to specify whether the challenge is based on the challenged voter's current residency status or the voter's residency status at the time the voter initially registered. The BRE shall inform the challenger of this requirement pursuant to written notice to the challenger at the address provided in the written challenge. A copy of these procedures shall be included with the notice.

3. The BRE shall not remove any voters from the DeKalb County voter registration list based on a challenge alleging that they were properly registered to vote in DeKalb County 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 to send the voter a confirmation notice and wait two federal election cycles for the voter to either vote or update his or her information before removing him or her from the rolls as outlined under Section 8(d) of the 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 BRE shall follow the following protocols:

- (a) If such written notice to the challenged voter is returned marked "undeliverable" by the United States Postal Service, the BRE shall send the challenged voter a confirmation notice pursuant to O.C.G.A. § 21-2-234(b).
- (b) If no response to the BRE's written notice of challenge is received from the challenged voter, the BRE shall inform the challenger that the challenge does not present grounds to contest the eligibility of the voter to remain on the DeKalb County voter list and no further action shall be taken on the challenge.
- (c) If the challenged voter responds to the written notice with a written confirmation of a change of address, the BRE 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 DeKalb County.

4. If the challenger affirmatively states that the challenge is based upon the challenged voter's residency status at the time the challenged voter initially registered to vote, or that the challenge is based on grounds other than the challenged voter's residency status, the BRE shall send written notice via certified mail, return receipt requested, to the challenged voter of the challenge at the registered address of the challenged voter, and provide the challenged voter with a copy of the challenge, a copy of these procedures, and the opportunity to provide information in response to the challenge within ten (10) business days of the date of the notice.

5. 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 BRE, then in addition to the notice provided for in Paragraph 4 above, as soon as possible after receiving the challenge, the BRE 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.

6. If the BRE determines that a hearing on the challenge is necessary, the BRE shall attempt to find a mutually convenient time to hold any hearing.

7. Pursuant to O.C.G.A. § 21-2-229, and in addition to the above efforts, the BRE will send a written notice informing the challenged voter and the challenger of the date, time, and place of the hearing along with a copy of the challenge, and shall state that either party may, but is not required to, be represented by counsel or another representative at the hearing. The notice will be sent by first-class mail and e-mail (if available) or in the manner provided in O.C.G.A. § 21-2-228(c). The notice must be mailed sufficiently in advance of the hearing to provide the person being challenged at least three days' notice of the date, time, and place of the hearing.

8. The challenged voter will have the right to at least one continuance of the hearing date upon request and may be granted additional continuances for good cause shown.

9. The written challenge will be posted on the BRE website within three business days of receipt of the challenge by the BRE.

10. O.C.G.A. § 21-2-229(a) requires that a challenge "be in writing and specify distinctly the grounds of the challenge." Challenges that are not in writing or which consist of vague, generalized, speculative assertions or conjecture do not satisfy this standard and must be rejected. In particular, residency-based challenges must allege facts sufficient to specifically and distinctly identify the grounds for the challenger's contention that a registered voter has not satisfied the residency requirements of O.C.G.A. § 21-2-217.

11. Under O.C.G.A. § 21-2-229(c), the challenger bears the burden of proving the challenged voter is not qualified to remain on the registration list. Because O.C.G.A. § 21-2-217(b) gives presumptive effect to the registrar's decision in determining the residence of the challenged voter at the time the registration application is considered, challengers bringing residency-based challenges must produce evidence sufficient to rebut this presumption in order to sustain their burden of proving that the challenged voter is not qualified to remain on the rolls. If the challenger fails to do so, the challenge fails and it must be rejected by the BRE pursuant to O.C.G.A. § 21-2-229(c) and 21-2-217(b).

12. Nonexclusive examples of challenges that would fail to meet the minimum standards required by Section 21-2-229(a) include:

- (a) Non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address);
- (b) 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;
- (c) "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.

13. In considering the evidence presented in support of or in opposition to a challenge based upon a change of residence, the BRE shall not rely exclusively upon address data on file with the Georgia Department of Driver Services ("DDS") or other government databases, because voters often fail to immediately notify all government entities about address changes and, even if they do, there are often lag times before the government entity updates its files.

14. Where a voter is a legal resident of DeKalb County and otherwise qualified to vote within the meaning of O.C.G.A. §§ 21-2-216 and 21-2-217, the BRE shall not remove such individual from the voter roll on the basis that the voter faces challenges causing them to live on the streets or in shelters, vehicles, trailers, transitional housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other DeKalb County residents in need of housing assistance in the county.² When adjudicating such challenges, the BRE shall consider the particular circumstances of the voter and the fact that the burden of proof is on the elector who brought the challenge to prove ineligibility.

² Note that this is a non-exclusive list of possible alternative locations where DeKalb County's eligible voters may be living in the county.

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

16. Any notice sent to challenged voters indicating that the BRE has upheld a challenge will include a voter registration form and shall inform the voter that they have a right to appeal the decision by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars and that such petition must be served upon the other parties to the challenge and the registrars. The notice shall also include contact information for the other parties to the challenge and the registrars to effectuate such service.

17. A copy of each written challenge upon which the BRE acts will be appended to the Minutes of the BRE meeting at which the action was taken.

18. The BRE shall not take any action on a challenge received between the fifth Monday prior to a primary or election and the date of such primary or election, including any runoffs. Any challenges received during this period shall be processed as set forth above following the certification of the primary or election results by the BRE.

19. The procedures set forth herein shall apply to challenges to voter qualifications initiated pursuant to O.C.G.A. §§ 21-2-228 and 21-2-229.

20. The BRE will not remove any voter from the registration lists based on residency issues raised by rejected challenges. No state law will be construed to permit removals based on rejected challenges or residency issues raised by rejected challenges.

21. If any members of the BRE or employees or agents of the DeKalb County Department of Voter Registration and Elections 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 BRE's consideration of such challenges.

22. The BRE 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.