

ROBBINS

LITIGATION AND REGULATORY LAW

VINCENT R. RUSSO
DIRECT LINE: 678-701-9381
Email: vrusso@robbinsfirm.com

December 21, 2017

VIA ELECTRONIC MAIL

Ms. Rhonda Dauphin-Johnson
City Clerk of Atlanta
Atlanta City Hall
55 Trinity Ave, S.W., Suite 2700
Atlanta, Georgia 30303
municipalclerk@atlantaga.gov

Mr. Richard Barron
Superintendent of Elections and Registration
Fulton County
130 Peachtree Street, S.W., Suite 2186
Atlanta, Georgia 30303
richard.barron@fultoncountygov

RE: Issues Arising from the City of Atlanta Municipal Runoff Election

Dear Ms. Dauphin-Johnson and Mr. Barron:

As you know, our firm represents Mary Norwood. After analyzing data and numerous voter complaints from the December 5, 2017 City of Atlanta Runoff Election (“Runoff Election”) for the past two weeks, we have been left with more questions than answers. It is evident that there are substantial inconsistencies with the administration of elections in Fulton County. Below we have provided some of our findings. It is our hope that by sharing these findings, the Fulton County Board of Registration and Elections (the “Board”) can address these issues and be better prepared for future elections.

Our analysis focused on two groups of voters. The first group were those voters who illegally cast a ballot in the Runoff Election. The second group of voters were those legally registered voters who were denied the opportunity to vote due to administrative irregularities.

Looking at the first group, we discovered hundreds of votes cast in the Runoff Election by voters that do not reside in the City of Atlanta. This includes individuals who reside in areas of Fulton County that were not validly annexed into the City of Atlanta; individuals using a private mailbox, similar to a P.O. Box, or virtual mailbox address to claim residency in the City and vote; and individuals who no longer reside in the City but continue to vote in City elections. Additionally, we identified voters that used a business address or abandoned property address to claim residency in the City of Atlanta for voting.

A glaring oversight by the Board was the failure to have contingencies in place for areas which were subject to ongoing litigation regarding their status as part of the City of Atlanta. The Georgia Supreme Court determined that Loch Lomond was not a part of the City of Atlanta on

Election Day.¹ Because no contingencies were in place for those voters, we located at least 354 votes by residents of Loch Lomond, Martin's Park, and Regency Pointe that should not have counted in the Runoff Election. This error could have easily been avoided by having voters who live in those areas use provisional ballots as is similarly required under O.C.G.A. § 21-2-418(d).

Further, it is evident that the voter rolls in Fulton County are in disarray. In analyzing the residences of registered voters in the City of Atlanta, we discovered at least 175 ballots cast by voters who registered using a private mailbox address or a virtual mailbox address.² We believe further investigation, without the time constraints that we were under, would reveal many more voters registered at private or virtual mailbox addresses. Voters are required to register at their residence.³ Even a cursory review of these voter registrations by Fulton County would have revealed that these addresses do not comply with state law. Failure to catch these blatant violations is concerning and allowing these types of addresses to continue being used for voter registration makes Fulton County ripe for voter fraud.

The Board also counted the ballots of 316 voters who have notified the U.S. Postal Service that their address is no longer in the City of Atlanta through the National Change of Address ("NCOA") database. Congress has noted the reliability of NCOA records by employing them in the National Voter Registration Act as a guide for election officials to determine if voters may no longer be eligible in a certain jurisdiction.⁴ Georgia law also requires the use of addresses from the NCOA list to help keep the rolls clean.⁵ Therefore, it is very concerning that 316 voters were able to cast their ballots in the Runoff Election despite having indicated their address is outside the City.

In addition to voters who may have cast their ballot illegally, there was also a population of voters who were prevented from casting their ballot legally. Numerous voters contacted the Norwood campaign stating they never received an absentee ballot after requesting one. Despite ballots being sent out as early as November 22, some voters, including voters who should have been on the automatic absentee list pursuant to O.C.G.A. § 21-2-381(a)(1)(G), did not have their ballots mailed until December 2. The rate in which absentee ballots were returned in the Runoff Election was significantly lower than the rate of return in the General Election. We understand that Fulton County has cited chronic problems with Atlanta's post office, which could have caused delays in

¹ In *Johnson v. City of Atlanta*, Case No. S17A1624 (Ga. Dec. 5, 2017), the Georgia Supreme Court held that *City of Atlanta v. Mays*, 301 Ga. 367 (2017), controlled on the Constitutional question of whether Loch Lomond was properly annexed into the City of Atlanta. In the City of Atlanta's June 12, 2017 brief to the Georgia Supreme Court, the City admitted that Loch Lomond is not part of the City of Atlanta due to the invalid annexation. In light of the *Mays* decision, the implication is that Loch Lomond as well as Martins Park and Regency Pointe were not a part of the City and therefore the residents were ineligible to vote and have their votes counted in the Atlanta Mayor's race.

² A virtual mailbox is an address that appears as a street address. However, mail is collected, opened, and scanned to the recipient and is not physically delivered.

³ O.C.G.A. §§ 21-2-216(a)(4); 21-2-217.

⁴ See 52 U.S.C.A. § 20507.

⁵ See O.C.G.A. § 21-2-233.

Ms. Rhonda Dauphin-Johnson
Mr. Richard Barron
December 21, 2017
Page | 3

receiving absentee ballots. Ultimately, it appears that approximately 168 ballots were rejected for being returned late and that nearly 700 ballots in the City of Atlanta remain outstanding.

Unfortunately, with the compressed timeframe for filing an election challenge and our limited access to information, many areas of concern with this election remain. Fulton County and the City of Atlanta thwarted our firm's efforts to gain access to files that would shed additional light on the irregularities in the Runoff Election. For example, when we requested to review the voter certificates from the Runoff Election, Fulton County demanded \$10,483.04. Further, staff did not respond to emails for election information, despite being directed to do so by their supervisor. Likewise, when we requested the vacant property list from the Atlanta Police Department, we were told the request would have to be redacted for "date of birth" and "social security numbers" when no such information exists on the list. It was not until days later when contact was made with senior officers in the department that the list was made available to us.

These are just some of the serious irregularities that we identified in our review of this election over the past two weeks. We have also received accounts of voters being denied the opportunity to vote at their precinct. These are all serious issues that should be further investigated. Please let us know if you would like to discuss any of these issues further or have any questions.

Sincerely,



Vincent R. Russo

Cc: Mary Norwood
David B. Dove, Esq.
Russell Lewis
Chris Harvey