

MAY 23, 2023

**RESPONSE OF THE FULTON COUNTY BOARD
OF REGISTRATION AND ELECTIONS TO THE
PERFORMANCE REVIEW BOARD REPORT
ON FULTON COUNTY ELECTIONS**

I. INTRODUCTION

The Fulton County Board of Registration and Elections (the “Fulton County BRE”) thanks Ryan Germany, Stephen Day, and Ricky Kittles for their service on the Performance Review Board (the “PRB”) and for their engagement, commitment to the election process and insights they shared. Their work has benefitted, and will continue to benefit, the Fulton County BRE, and voters in Fulton County. The Fulton County BRE also thanks the Carter Center, Seven Hills Strategies and Carter Jones for their service observing elections in Fulton County and offering constructive insights for how to improve election processes, procedures, training, and community outreach. Likewise, their recommendations have benefitted, and will continue to benefit, the Fulton County BRE and voters in Fulton County.

For the reasons discussed in the PRB Report and further explained herein, the SEB should decline to remove the Fulton County BRE and should close this matter. There is no reason for the SEB to initiate an additional investigation or to initiate formal removal proceedings.

Specifically, the Fulton County BRE fully agrees with the PRB’s conclusion that “Fulton County has shown improvement in administering elections from 2020 to 2022 and that the BRE is “engaged and helping to drive those improvements.” *PRB Report at 2*. Most critically, we fully agree with the PRB that “[r]eplacing the board would not be helpful and would hinder the ongoing improvements to Fulton County elections.” *Id.* The findings of the PRB Report confirm that the statutory criteria initiating formal removal proceedings pursuant to O.C.G.A. § 21-2-33.2 (S.B. 202) are not satisfied. There have not been systemic violations during the last two election cycles. Importantly, the Fulton County BRE has corrected known issues and remains committed to addressing issues that may arise or become identified during future election cycles. Nor are there allegations, let alone evidence, of nonfeasance, malfeasance, or gross negligence by the Fulton County BRE members or by the Fulton County Department of Registration and Elections (the “Fulton County Department”).

II. CRITERIA FOR REMOVAL OF THE ELECTION SUPERINTENDENT UNDER GEORGIA’S ELECTION CODE, AS AMENDED BY S.B. 202

The following discusses changes to Georgia Election Law regarding removal of election officials for cause enacted as part of S.B. 202. In Fulton County, the five-member BRE serves as the “Election Superintendent” under O.C.G.A. § 21-2-2-(35) with responsibility for voter registration and election activities in Fulton County.¹ The Fulton County BRE has assigned overall management and responsibility for voter registration and elections to the Fulton County Department, which employs a full-time staff of 47 employees and also hires 3,000 temporary workers to manage early and election day polling locations and to tally ballots during primary, general and special elections, including run-off elections.

O.C.G.A. Section 21-2-33.2.2 addresses the suspension and removal of a County Election Superintendent for cause. The statute provides for an investigation into possible election law violations by a Performance Review Board, as done here, or by investigation initiated and

¹ Code of Laws of Fulton County Pt. 1, Ch. 14, Art. II. § 13-32.

overseen by the SEB. O.C.G.A. § 21-2-33.2(a). Contrary to what has been found here, if the investigations indicate systemic violations, the SEB must undertake a “preliminary investigation” to determine if sufficient cause exists to proceed to a full hearing on the request to remove and replace the superintendent. Following the preliminary investigation, the SEB conducts a “preliminary hearing” to determine whether to suspend the Superintendent. O.C.G.A. § 21-2-33.2(b).

Following the preliminary hearing, a majority of the SEB can vote to implement the “extraordinary relief” of suspending the county elections superintendent pending a final determination of its status upon finding either:

- a) By a preponderance of the evidence that the Superintendent has committed at least three violations of the election laws and rules during the last two general election cycles and the superintendent has not sufficiently remedied the violations (O.C.G.A. § 21-2-33.2(c)(1)); or
- b) By clear and convincing evidence, the Superintendent has for, at least two elections within a two-year period, demonstrated nonfeasance, malfeasance, or gross negligence in the administration of elections (O.C.G.A. § 21-2-33.2(c)(2)).

The criteria for finding conduct sufficient to support suspension under Sections 21-2-33.2(c)(1) and 21-2-33.2(c)(2) differ. The conduct under subparagraph (c)(1) covers violations of State election laws and SEB rules. The violations must have occurred during the “last two general election cycles.”² O.C.G.A. § 21-2-33.2(c)(1). The term “general election cycle” focuses review of conduct occurring during general, runoff, and special elections in the past two election cycles, but does not include conduct occurring in a primary election. Subparagraph (c)(2), in contrast, addresses “nonfeasance, malfeasance, or gross negligence in the administration of elections” during the last two elections and encompasses conduct during (a) a general, special, or runoff election, or (b) a primary election.

III. THE JUNE 2020 PRIMARY ELECTIONS

While the PRB Report notes a history of issues arising in Fulton County in the administration of elections, the recent criticisms of election administration in Fulton County primarily concern the June 2020 primary election. As the PRB has noted, the June 2020 primary election presented unique circumstances that contributed to the issues encountered during that election. Many of those challenges are described in the Consent Order issued to the Fulton County BRE on October 16, 2020.

² The Election Code defines “general election” as “an election recurring at stated intervals fixed by law or by the respective municipal charters.” O.C.G.A. § 21-2-2(8). This differs from a “primary,” separately defined as any election held for the purpose of electing party officers or nominating candidates to be voted for at an election: “‘Election’ ordinarily means any general or special election and shall not include a primary or special primary unless the context in which the term is used clearly requires that a primary or special primary is included.” O.C.G.A. § 21-2-2(5).

There were two challenges unique to the June 2020 primary election. First, that election was the first-time new ballot marking devices were deployed. The deployment of new ballot marking devices created a need to train the Department's staff and poll workers and ensure sufficient tech support was available at polling locations and command centers in Fulton County and throughout the state. Another complicating factor caused by the new ballot marking devices was that several polling location sites could not accommodate the new ballot marking devices. These machines have different electricity and space requirements than the prior machines. There were several historical polling locations that could not accommodate the new machines.

The deployment of the new ballot marking devices and the training on their use became complicated by the COVID-19 pandemic. Regarding training, the Fulton County Department suffered an outbreak of COVID-19 in March 2020 causing the warehouse to close. The Chief Registrar was hospitalized, and another Department employee passed away. The outbreak set back training and planning efforts during critical months leading up to the June primary.

The COVID-19 pandemic also caused a postponement of the primary election from March 24, 2020 to June 9, 2020. In addition, the Secretary of State broadly distributed absentee ballot applications to all registered voters to address concerns about waiting in line to vote on election day or during the early voting periods. These changes, which occurred suddenly, impacted administration of the June 2020 primary elections. Some polling locations in Fulton County that would have been available for the primary election in March, as originally scheduled, were not available for the June 2020 primary date. The Secretary of State did not anticipate the large increases in voting by absentee ballot and did not provide guidance and direction to county election departments on how to manage this increase.

The COVID-19 pandemic impacted the election in other ways. Several locations that served as polling locations were not available because the facilities were closed because of the pandemic. These included churches and senior citizen facilities. Also, many people who worked as poll workers and who had been trained to work for the 2020 primary election opted to not report to work for their June 2020 primary election work shifts out of fear of the danger posed by COVID-19. The newly hired poll workers were not as well-trained on the equipment or where supplies were stored at the polling location.

Each Georgia county confronted these issues. The impacts caused by these issues were greater in Fulton County because of its population, geographic configuration, and size. Fulton County has operated more polling locations (24 early voting locations and as many as 250 election day locations), and thus more poll workers (3,000 temporary workers), which means it must use locations that are not under its control. Many other Georgia counties do not have these issues.

IV. THE FULTON COUNTY BRE, FULTON COUNTY DEPARTMENT, AND FULTON COUNTY BOARD OF COMMISSIONERS HAVE WORKED DILIGENTLY TO ADDRESS ISSUES

The SEB should decline to proceed to remove the Fulton County BRE, and should close the investigation because the BRE, the Fulton County Department, and the Fulton County Board of Commissioners have worked diligently over the election cycles during the last two years to address the issues and concerns raised during the June 2020 primary and the November 2020 general election. Everyone who has observed these efforts – the PRB, Seven Hills Strategies (Carter Jones), and the Carter Center – agree that (a) the Fulton County BRE is working diligently to address the issues, (b) the BRE and Department have made significant progress in addressing concerns, (c) no systemic violations are occurring, and (d) no fraud, gross negligence, nonfeasance, or malfeasance has occurred.

The Fulton BRE agrees with the PRB’s findings that the polling location activities were smoother during the 2021 and 2022 election cycles, as well as during the 2020 general election, including the runoff elections, and there were neither systemic violations of law nor evidence of fraud, gross negligence, nonfeasance, or malfeasance by Fulton County Department employees. *PRB Report at 7-14*. We also agree with the PRB that “Fulton County has shown improvement in administering elections from 2020 to 2022. This improvement is due to a multitude of factors.” *PRB Report at 2*. Thus, the Fulton BRE agrees with the PRB’s findings that there has been significant improvement by the Fulton BRE and Fulton Department since the June 2020 primary election. *PRB Report at 2*. This improvement is the result of hard work, diligence and dedication by the Fulton County Department and the Fulton County BRE. The following discussion highlights the key activities.

Role of the Fulton County BRE

Two members of the five-member BRE were appointed **after** the 2020 election cycle. Cathy Woolard was appointed the Chair in October 2021 by the Fulton County Commission; Theresa Crawford was appointed for a two-year term effective in July 2021 as an appointee of the Fulton County Democratic Party. Neither Ms. Woolard nor Ms. Crawford were BRE members during the 2020 election cycle. Ms. Woolard’s term is scheduled to end June 30, 2023. The Fulton County Commission has confirmed Patrise Perkins-Hooker to serve as the new Chair. Ms. Perkins-Hooker has served as the County Attorney for Fulton County and has served as special counsel to the BRE.

With two new members including a new Chair (Cathy Woolard), the PRB found that the Fulton County BRE “is engaged and helping to drive those improvements. Replacing the board would not be helpful and would in fact hinder the ongoing improvements to Fulton County elections.” *PRB Report at 2*. Specifically, Ms. Woolard in her role as Chairwoman has worked to forge consensus on the BRE to ensure clear and consistent decisions, and it is anticipated that Ms. Perkins-Hooker will do the same.

Moreover, the Fulton County BRE has taken the lead to ensure that the Fulton County Department improves its performance. This includes authorizing new management positions and

approving a reorganization of responsibilities consistent with the additional staff. It has supported the Fulton County Department's review of standard operating procedures and training manuals, and the subsequent implementation of better practices regarding ballot handling, equipment tracking, and training of poll workers.

The Fulton County Department

The Fulton County Department administers voter registration and voting activities in Fulton County. For calendar year 2023, the Department has a staff of 47 full-time employees, an operating budget of \$4.9 million and a total elections budget of \$9.1 million. In addition, Fulton County trained and hired 379 temporary employees for the 2023 local elections who staff polling locations and help tally votes.

The increased staff and budget allow the Fulton County Department to address the new mandates from the General Assembly and to provide the service and voting experience that Fulton County voters deserve.

New Staff and New Organization at the Fulton County Department

As noted above and in the PRB Report, the Fulton County BRE has addressed staffing in two broad ways. First, key staff who were criticized for what occurred during the 2020 primary election have been replaced. Second, the Fulton County BRE has added, and staffed, new manager positions and approved a reorganization of Department responsibilities consistent with the new staffing that has directly contributed to improved performance during the 2021 and 2022 election cycles.

The PRB noted these developments and their positive impacts: "Prior staff that oversaw elections, voter registration, redistricting, and absentee ballots are no longer with the office and new staff can bring new energy and renewed commitment." *PRB Report at 2*. Two key positions that have been replaced are the Executive Director and Elections Division Manager.

Specifically, on February 16, 2023, Nadine Williams was appointed Executive Director. Ms. Williams served as interim Executive Director during the 2021 and 2022 election cycles where improvement occurred. Second, John Ross is the new Elections Chief, and he oversees polling locations and training poll workers.

The Fulton County BRE also agrees with the PRB's observation that new positions have contributed to the improvement in performance: "One area that contributed to the improvement in operations was staffing. Fulton County created and filled several key and new management positions. These new positions include a Deputy Director, an Absentee Ballot Manager, and a Manager for the Ballot Marking Equipment. The additional managers had staff focused on their areas which addressed concerns that one manager had too many responsibilities and was spread too thin."

The new managers and staffing reorganization have paid dividends in improved performance in elections held after the 2020 primary election and the 2020 general election. The

Deputy Director provides additional senior leadership. The Deputy Director is responsible for the day-to-day operations of the Fulton County Department including personnel, budget, financials, procurement, and general administration. The division managers are reporting to the Deputy Director. The Deputy Director oversaw the review of the standard operating procedures and the training manuals that occurred in 2021 and 2022.

We agree with the PRB's observations regarding the impacts of the additional managers. For example, we agree that the absentee ballot process is much improved: "Our observation was that the processes put in place by the Absentee Ballot Manager were effective and compliant with Georgia law. The location where absentee ballot processing occurred was set up to ensure a good flow of the process while ensuring ballot security and allowing required transparency to [the] monitors." *PRB Report* at 11. We also agree with the PRB's note about the emphasis the Absentee Ballot Manager has placed on training: "The Absentee Ballot Manager stated that part of the training conducted for staff executing those processes is making sure they are aware of how important the task is to the success of the overall election and focuses on quality control."

The June 2020 primary election was the first time Dominion ballot marking devices were used throughout Georgia, including Fulton County. Based on that experience, the Fulton County BRE authorized more staff to be dedicated to the deployment and servicing of the ballot marking devices. This included hiring a ballot marking device manager and assigning a ballot marking device technician to each polling location to address equipment issues that may arise. These initiatives have improved the reliability and availability of the ballot marking devices during the 2021 and 2022 election cycles.

The Fulton County Department also hired new elections officers to oversee recruitment and training of poll workers. The Department also reviewed and updated its training manual. The Department also has reviewed its practices concerning recruitment and hiring of the temporary workers assigned to early and election day polling locations. The Department has tried to rely on employees of the polling location (e.g., the library or church staff) who are familiar with the building and layout and can address many logistics-related issues that may arise when the polling location is open for voting.

Election Central

One of the criticisms of how the 2020 election cycle was conducted was the lack of coordination in deploying equipment, collecting ballots from drop boxes and the handling of absentee applications, and returned absentee ballots.

The Fulton County Department has completed build-out of a new central location that will house all aspects of the election process in one location. (Given the geography of Fulton County, there will continue to be auxiliary facilities located in north Fulton County). Fulton County is awaiting approval from the Secretary of State to relocate the ballot marking devices to the new location, and delivery of furniture. By July 2023, the new Election Central facility is expected to be fully functioning. The Department will benefit from having equipment storage, registration, programming, and tabulation in one location. This will facilitate planning, problem-

solving, and will allow the Department to identify and correct issues before ballots are printed and votes are cast.

Inventory Tracking System

The Fulton County Department has implemented an equipment tracking system that allows real-time tracking of equipment location and helps with the delivery and return of equipment. The tracking system improves organization and preparation activities. *PRB Report at 14.*

Election Command Center

The Fulton County Department operates an Election Command Center when polling locations are open. Issues and problems are reported to the Command Center and electronic tickets are generated that are recorded and used to allocate resources to resolve the issues and allow progress to be monitored in real time. The Department has improved training poll workers and Command Center staff on opening and closing tickets promptly. The ability to track issues through the electronic tickets improves performance on election day and ensures that unnecessary delays are occurring at any polling location.

Increased Polling Locations and Poll Workers

One of the Consent Order obligations was to increase the number of polling locations. The Fulton County BRE and the Fulton County Department satisfied the number of polling locations and exceeded the number of poll workers required under the Consent Decree for the 2020 general election and 2021 runoff election, as confirmed by Seven Hills Strategies. *PRB Report, Ex. B.* In subsequent elections, Fulton County has maintained the increased polling locations and poll workers.

Redistricting

The redistricting effort illustrates the commitment to make improvements undertaken by both the Fulton County BRE and the Fulton County Department. As the PRB noted, the Fulton County Department staff “worked diligently to resolve any issues” caused by redistricting. *PRB Report at 13.* An expert at the Secretary of State’s office has praised the Department’s efforts and has concluded that “Fulton’s voter database was in better shape than it has been in a long time” because of the “dedicated effort by Fulton County elections staff, support from others in Fulton County (including the County Manager) to ensure that elections had the resources they needed, and assistance from the Secretary of State’s office.” *PRB Report at 13.*

V. CONCLUSION

The SEB should accept the PRB Report today and close this matter.

The key findings by the PRB are that the Fulton County BRE “is engaged and helping to drive those improvements” and “[r]placing the board would not be helpful and would in fact hinder the ongoing improvements to Fulton County elections.” *PRB Report at 2 and 18.* Based

on these uncontroverted findings, there are no grounds for removing the Fulton County BRE. .The Fulton County BRE, like other counties in Georgia, faced unprecedented challenges during the 2020 Primary Election, many of which continued during the 2020 General Election. Those challenges were more difficult in Fulton County because of its population and geography as compared to other Georgia counties.

In response, the Fulton County BRE and the Fulton County Department staff worked diligently to address the concerns that arose in 2020. The 2021 and 2022 election cycles showed substantial improvement. Senior staff have been replaced. Additional managers and staff have been added. The new team has worked diligently to deliver successful elections during the 2021 and 2022 election cycles. The Fulton County Department has additional physical resources. The Department will move into a consolidated central facility that will house staff and manage registration, absentee ballots, ballot marking device equipment in one primary location. The Department has added tracking technology to track equipment and ballots, and to better allocate resources. The Fulton County Department has reviewed and updated its standard operating procedures and training manual. The PRB has confirmed these procedures reflect best practices.

The Fulton County BRE and the Fulton County Department are committed to administering fair elections, promoting voter participation, and providing timely and accurate results. The significant improvements notwithstanding, we are open to receiving input to improve our processes and procedures, and to better allocate resources to improve election administration for the 2024 Presidential election and all other future elections.