

From: David Worley

Sent: Monday, November 12, 2018 7:18 PM

To: 'Head, Jansen' <jhead@sos.ga.gov>; Crittenden, Robyn <rcrittenden@sos.ga.gov>; Rebecca Sullivan <Rebecca.Sullivan@doas.ga.gov>; sethharp@aol.com; Simpson, Rusty <rfs@simpsonmediation.com>

Cc: Germany, Ryan <rgermany@sos.ga.gov>; Harvey, Chris <wharvey@sos.ga.gov>; Rayburn, Kevin <krayburn@sos.ga.gov>; Cris Correia <ccorreia@law.ga.gov>; Russ Willard <rwillard@law.ga.gov>; Broce, Candice <CBroce@sos.ga.gov>; Simmons, Jessica <jsimmons@sos.ga.gov>; Smith, Lorri <lorrismith@sos.ga.gov>; 'Niese, Mark (CMG-Atlanta)' <Mark.Niese@ajc.com>; 'Johnny Kauffman' <jkauffman@wabe.org>

Subject: RE: SOS Official Election Bulletin

Dear Secretary Crittenden and Board Members,

I just reviewed the Election Bulletin (attached) issued this afternoon by Secretary Crittenden which in part deals with the issue of the proper counting of absentee ballots.

Last night the SEB voted to ask the Secretary to submit such guidance to Georgia counties.

I am deeply and profoundly disturbed that the guidance, which cites advice from the Attorney General, completely omits the Attorney General's own reference to the Voting Rights Act provisions which he has relied on in the past to support his position, and which we of course discussed as the basis for our decision last night. While the guidance cites lengthy passages of the Attorney General opinion given in the Telfair case, it completely omits the following passage from the Telfair case:

"This interpretation of OCGA 21-2-386(a)(1)(C) is also consistent with federal law which *prohibits* 'the denial of the right to vote because of an error or omission on any record or paper . . . if such error or omission is not *material* in determining if such individual is not qualified under State law to vote in such election.' 52 U.S.C. §10101 (emphasis added). Where the election official can verify the identity of the voter by comparing their signature on the absentee ballot envelope with the voter's signature on file, the omission of the additional information on residence address and/or day and month of birth would not be material to that voter's qualifications and the absent ballot should be counted."

The effect omitting this reference to the Voting Rights Act is to create the impression that state law can permit the counties to reject ballots which only omit information unnecessary to identify a voter, **when in fact federal law, as cited by the Attorney General, prohibits rejection of a ballot when the omitted information is immaterial.**

I pointed this out to SOS General Counsel Ryan Germany in a call this evening, and his only response was silence.

I understand from Ryan Germany that Secretary Crittenden and Attorney General Carr themselves participated in the negotiations over this language, with his assistance. It is clear that the omission of the language on the requirements of the Voting Rights Act is nothing but a deliberate, cheap, underhanded trick to signal to some counties that they may still ignore the Attorney General and State Election Board and reject ballots that federal law clearly requires to be counted.

This was not the intent of the State Election Board last night, and I am disappointed that Secretary Crittenden and Attorney General Carr have allowed themselves to be used by Kemp administration holdovers in this manner.

I believe it is absolutely necessary to correct this guidance and reissue it, with the Telfair case reference to the passage from the Voting Rights Act, to the counties before certification continues tomorrow. It is especially important that this omission be corrected prior to the balloting in the December runoff. Anything less is a disservice to the voters and a disservice to the counties, who deserve a full explanation of their responsibilities in counting the votes of Georgia citizens. To do otherwise only opens the counties to further litigation.

Very truly,

David Worley

David J. Worley
Evangelista Worley LLC
8100 A Roswell Road
Suite 100
Atlanta, GA 30350
(404)205-8400 office
(404)403-2990 cell
(404)205-8395 fax
david@ewlawllc.com

This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.

-----Original Message-----

From: Head, Jansen <jhead@sos.ga.gov>

Sent: Monday, November 12, 2018 5:21 PM

To: Crittenden, Robyn <rcrittenden@sos.ga.gov>; Rebecca Sullivan <Rebecca.Sullivan@doas.ga.gov>; David Worley <David@ewlawllc.com>; sethharp@aol.com; Simpson, Rusty <rfs@simpsonmediation.com>

Cc: Germany, Ryan <rgermany@sos.ga.gov>; Harvey, Chris <wharvey@sos.ga.gov>; Rayburn, Kevin <krayburn@sos.ga.gov>; Cris Correia <ccorreia@law.ga.gov>; Russ Willard <rwillard@law.ga.gov>; Broce, Candice <CBroce@sos.ga.gov>; Simmons, Jessica <jsimmons@sos.ga.gov>; Smith, Lorri <lorrismith@sos.ga.gov>

Subject: SOS Official Election Bulletin

Dear Board Members,

Attached is the Official Election Bulletin that Chris Harvey distributed to the county election officials today regarding the post-election processing of absentee ballots and provisional ballots. The same has also been posted to Firefly and on the Secretary of State website as a press release.