



## BOARD OF REGISTRATION AND ELECTIONS UNAPPROVED MINUTES

### SPECIAL MEETING – March 31, 2022

The Fulton County Board of Registration and Elections met in Special Called Session on Thursday, March 31, 2022, at 9:00 a.m.

**Please join the meeting from your computer, tablet or smartphone.**

**FGTV YouTube Channel**

<https://www.youtube.com/c/FultonGovernmentTV>

**Presiding:** Dr. Kathleen Ruth, Vice Chairwoman

**Other Board Members Present:**

Mrs. Teresa Crawford

Mr. Mark Wingate

**Staff Attending:** Mr. Richard Barron, Director; Mr. Patrick Eskridge, Deputy Director; Ms. Nadine Williams, Interim Director; Ms. Shamira Marshall, Registration Chief; Mr. Thomas Johnson, Registration Supervisor; Ms. Jessica M. Robinson, Board Secretary; Ms. Krystal Haynes, Administrative Coordinator I; Ms. Regina Waller, Public Affairs Manager; Ms. Cheryl Ringer, County Attorney; Mr. David Lowman, County Attorney; Kay Bonell, County Attorney

**Guests Attending:** Natasha McCarthy, Erin Glynn, Robert Kelly, Chris Francis; David Betts

#### **#1– APPROVAL OF AGENDA**

**Vice Chairwoman Ruth entertained a motion to approve the agenda. The motion was made by Ms. Crawford, seconded by Mr. Wingate, and carried by a unanimous vote of 3-0.**

### **SPECIAL CALLED SESSION**

#### **#2– CANDIDACY CHALLENGE**

**Dr. Ruth** stated that the department received a candidacy challenge on behalf of Ms. Sandricka Bradley, dated March 25<sup>th</sup>, 2022. Ms. Bradley is a resident of Fulton

County, and the challenger is entitled to vote in the May 24th Democratic primary election and has submitted to the department and this board a challenge of the qualifications of Mr. Robert Halwell Kelly for Commissioner of District 5 in Fulton County and gave the floor to Ms. Marshall.

**Ms. Marshall** stated the challenge received in regard to the qualifications of Mr. Robert Kelly confirm via the application that he is qualified to run for Commissioner in District 5. The address that Mr. Kelly provided on his application for candidacy, he has been registered at that Fulton County address since March of 2016. Due to redistricting for the upcoming May elections, he will be eligible to run in Commission District 5.

**Dr. Ruth** extended the floor to Erin Glynn who is representing the challenger Ms. Sandricka Bradley.

**Mr. Betts** asked if the challenger was present.

**Dr. Ruth** stated that the challenger was not present but represented by her attorney and asked Mr. Betts to follow the flow of the process and to respectfully wait his opportunity to speak.

**Dr. Ruth** announced there were audio issues for the live stream due to connectivity issues because of the storm. The FGTV team were working with Xfinity to rectify the issue.

**Dr. Ruth** extended the floor to Ms. Cheryl Ringer in response to Mr. Betts' question concerning the presence of the challenger.

**Ms. Ringer** stated that the hearing process is governed by O.C.G.A. 21-2-6, and that process does not specify that the actual challenger must be present at the hearing.

**Dr. Ruth** extended the floor to Ms. Glynn.

**Ms. Glynn** stated the following:

*“Chairperson Woolard, members of the board, and Commissioner Abdul Rahman, who is present in the audience. Thank you all for your service and for your time this morning. I have no doubt that Robert Kelly is a dedicated public servant and enthusiastic young leader and a promising potential candidate for office one day. A day, however, is not today, and that office is not the Fulton County Commission. I respect and admire Mr. Kelly for putting his name in the hat to run for office, a name and a hat does not equal a name on a ballot. However, one must prove residency and character. The challenge brought forth today is focused on residency because that is what the documents show. Character, however, must be implied and interpreted from what*

*is not on the page. When Mr. Kelly purchased his home in Fayetteville last year, he applied for a mortgage. When he applied for that mortgage, he had to answer questions on his loan application. The primary question that every lender asks is what is the purpose of this loan? This loan was underwritten, approved, and recorded as a primary first position residential mortgage. You can see that in paragraph 6 on Page Six of the security deed and this fact is further substantiated on the 2021 property tax bill issued to Mr. Kelly. Showing an L1 homestead exemption for primary residency now mortgages, banks, creditors, deeds do not mandate a person live in the same place forever. That would be imprisonment, right? And although I'm sure banks wish, debtors' prisons were still alive. Well, they are in fact not. Lenders can't require a person be imprisoned. At least since the 1800s. So, what happens when a person moves or when a person leaves a primary residence or gets a new job, or breaks up with their significant other and leaves the property? That was a primary residence will typically in the in the case of a first position primary mortgage, you would either sell or refinance. Neither one of those things have happened here. In the instance of a sale that would immediately allow you to apply for Homestead in another county, if you purchase that property, but more importantly, in the amount of in the instance of a refinance, if a property did convert from a primary residence to an investment residence, lender would require they refinance so that their risk is adequately protected with a different loan product. None of those things happened here. So, the Fayette County home is, according to the mortgage, Robert Kelly's primary residence. I asked this board to remove Robert Kelly name from the Fulton County ballot and additionally, I have the results of an open records request that was completed, which shows an email from Robert Kelly's. Fulton County email address to a Fayette County commissioner this email is dated August 26th, 2021. So again, I have no doubt that Mr. Kelly is a great person, is a dedicated public servant, and he may in fact vote in Fulton County. That doesn't negate the fact. That the Fayette County house is his primary residence, according to the mortgage documents and according to everything that's in the record, the 12-month residency requirement cannot be shown. So, with the county attorney's approval, I would submit a copy of this to the candidate and to the board. This was the open records request. And in closing, I greatly appreciate your time. I linked to reserve any further rebuttal remarks to a written rebuttal and request the board's excusal so that I may attend my next hearing, which is 11:00 AM in Henry County. Does the board have any questions?"*

**Ms. Crawford** asked what the purpose of the property in Fayette County was. Clarifying if it was indeed set as the primary residence.

**Ms. Glynn** stated that it is stated as such the security deed on page 6. She also clarified that the lender does not require a buyer to remain in the property indefinitely. The rules on a primary mortgage state that buyer resides in the property for 12 months or they refinance or sell it. Which neither of those has happened.

**Mr. Wingate** asked what the basis of the claim that Mr. Kelly is required to make the Fayette County address his primary residence.

**Ms. Glynn** stated that it is on Page 6 of the security deed under the paragraph labeled occupancy.

**Mr. Wingate** noted that there were two opposing addresses on the challenge and asked for the correct address.

**Ms. Glynn** stated that the correct address is 455 Forest Ave and that an amended challenge would be submitted.

**Mr. Wingate** asked how the lender could make a stipulation that Mr. Kelly had to move into the property within 60 days and then remain the residency as his primary residence for 12 months.

**Ms. Glynn** stated that the information is in the occupancy clause of the security deed.

**Dr. Ruth** clarified that the information was on page 6 of 17, page 213.

**Ms. Glynn** offered to and read the occupancy clause for the board.

**Ms. Crawford** asked if there was anything from the lender in writing.

**Ms. Glynn** stated the borrower would've had to have refinance into an investment loan product because the lender's risk is higher on an investment property, so the interest rate would be higher.

**Mr. Wingate** asked for a copy of the homeowner exemption document.

**Ms. Glynn** stated that a certified copy was provided with the paper challenge. The tax commissioner in Fayette County makes their records publicly available. The 2021 property tax bill is out. That is the bill that Mr. Kelly would have paid at the end of 2021, showing an L1 tax exemption. So at least until January 1st of this year, he was receiving L1 Homestead, which would mean that, it was a primary residence until at least January.

**Dr. Ruth** asked if Ms. Glynn had the homestead exemption document.

**Ms. Glynn** stated that the property tax bill shows the L1 exemption.

**Mr. Wingate** stated the closing happened on February 10<sup>th</sup> of 2021. Asked for clarification because it was to his understanding that the borrower would have had to wait for the following year to file for homestead exemption.

**Ms. Glynn** stated that Mr. Kelly was supposed to disclaim the exemption if it wasn't his primary residence so that he didn't receive the tax benefit. So even if Mr. Kelly states that it wasn't his primary residence, he received a tax benefit based on filing. So, in the best case he would owe a refund to the Fayette County Tax Commissioner. In the worst case, it's a misdemeanor to receive a property tax violation for a property that's not your primary residence.

**Mr. Wingate** stated that he wanted to clarify what Ms. Glynn meant by reported as there is no report.

**Ms. Glynn** stated that the homestead exemption application is not public record, but it is annotated on the tax bill.

**Dr. Ruth** asked Ms. Glynn who David and Cornelia Kennedy were (names appeared on Exhibit D of the challenge).

**Ms. Glynn** stated that they may have been the seller that Mr. Kelly purchased from. The issue is that they had homestead exemption and Mr. Kelly inherited the benefit.

**Ms. Crawford** asked if it was possible to inherit homestead exemption.

**Ms. Glynn** stated that it isn't supposed to occur but can if there is a clerical error in the tax commissioner's office which was the case for Mr. Kelly. The tax commissioner's office is inundated with thousands of transactions every month. It is the homeowner's responsibility to communicate to the Tax Commissioner.

**Mr. Wingate** asked if the Kennedy's were related to Mr. Kelly.

**Ms. Glynn** stated that the transaction was an arm's length transaction.

**Dr. Ruth** asked what the date of the purchase of the home was.

**Ms. Glynn** replied February 10<sup>th</sup>, 2021.

**Mr. Betts** stated the following:

*"This document has not been identified by anyone that wrote the document or is offered into evidence for purposes of. Well, I guess then impeachment to my client, but my difficulty at this point is understanding what the rules of evidence are before this board,*

*because counsel has made all these statements about thieves and tax. Issues about homestead exemption, but there's been nothing offered into evidence is admissible. It's all counsel saying what she found, for example, what she is told you is the lender doesn't application. I've not seen a document dealing with the application. I'm not seeing a document saying that. No permission was given. The portion is being read to this. This board leaves out the portion of it says, except a under circumstances that my client can testify this board, if that's what's needed to explain about this House and how they intended to move there, but then decided not to move there. When is Mama? Gave him the house said he had been living in since he was 17 years old. So, I'm trying to understand what this is about. I'm trying to understand this suggestion that my client somehow did a homestead exemption illegally when there's he never filed a homestead exemption for the property in Fayette County; his wife has moved to the property in Fayette County but not him because he's continued to live where he has always lived since he was 17 years old and I believe all this and that's the reason why I wanted to know if a challenge was here because I need the right to examine the challenger, about what basis this is about. Because this is, in my view, character assassination because, this Council has stated that my client is guilty of a misdemeanor of filing a false homestead exemption, which the facts do not support. That and second, my client is guilty of mortgage fraud, which the facts do not support that. And to make those skin scurrilous statements in a public setting and in a filing without evidence, without any due process, to be able to challenge these things, but just allow the lawyer to tell them to this board without me want, you know, has this document been certified is it? Is this a true and correct copy of the deed? Has this been anyway modified? You know, I don't know the answer. Any of those things. And it's really impossible for me to examine the challenger if she's not here. The lawyer only knows what she is arguing, not her own facts. I assume that the lawyer's not even a member, not even a voter in this district, so it wouldn't have standing to challenge this."*

**Dr. Ruth** asked if there were any additional question for Ms. Glynn and emphasized that the challenge was not a trial and that the [Board of Registration and Elections] was not present to discuss mortgage fraud. The basis of the challenge is to determine if Mr. Kelly was eligible to qualify as a candidate for Commissioner, District 5 seat.

**Dr. Ruth** extended the floor to Mr. Kelly

**Ms. Ringer** stated that the board needed to make a ruling of whether they would accept the document results from the challenger. The document is the email

information that was presented to the board from Ms. Glynn. Ms. Ringer also informed that Ms. Betts objected the authentication of said document.

**Mr. Wingate** asked if the motion was for the entire challenge packet.

**Dr. Ruth** stated that the motion was just for the email that was presented by Ms. Glynn and challenged by Mr. Betts.

**Vice Chairwoman Ruth entertained a motion to deny the document. The motion was made by Ms. Crawford. The motion failed.**

**Dr. Ruth** extended the floor to Mr. Kelly and his attorney.

**Mr. Betts** stated that he would be putting Mr. Kelly under oath because the board deserves testimony as opposed to “lawyer talk”. Asked if that was permissible.

**Dr. Ruth** deferred to Ms. Ringer.

**Ms. Ringer** stated it was.

**Mr. Betts** placed Mr. Kelly under oath and proceeded with the following question and answer session:

*Mr. Betts: Raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so helps you God?*

*Mr. Kelly: Yes*

*Mr. Betts: State your name*

*Mr. Kelly: My name is Robert Kelly*

*Mr. Betts: Mr. Kelly are you running for a position of County Commissioner right not and for Fulton County*

*Mr. Kelly: Yes*

*Mr. Betts: Are you aware that a challenge has been made concerning your residence.*

*Mr. Kelly: Yes*

*Mr. Betts: Please inform the court what the address in that you’ve lived since you were 17 years old, except when you went to college.*

*Mr. Kelly: 3509 Stable Glen Lane.*

*Mr. Betts: Did you go to college from that address?*

*Mr. Kelly: That's correct*

*Mr. Betts: That's your mom's house?*

*Mr. Kelly: That was my mother's house.*

*Mr. Betts: However, now, did your momma end up conveying this property to you in March of 2021?*

*Mr. Kelly: That's correct*

*Mr. Betts: And this was after you purchased the property in Fayetteville?*

*Mr. Kelly: That's correct*

*Mr. Betts: Now, did that change your view about where you were gonna be your residency?*

*Mr. Kelly: That's correct*

*Mr. Betts: So, you were thinking about moving to Fayetteville but when your mama conveyed the property to you, you decided to stay in Atlanta. Is that correct?*

*Mr. Kelly: That's correct*

*Mr. Betts: And the property in Fayetteville is now being used as a bed and breakfast, is that correct?*

*Mr. Kelly: It is preparing to be used as a bed and breakfast*

*Mr. Betts: You have applied for the business license or what is needed?*

*Mr. Kelly: That's correct*

*Mr. Betts: The deed provides that it [Fayetteville property] was going to be your primary residence, right?*

*Mr. Kelly: That's what the deed says.*

*Mr. Betts: But when your mother decided to convey the property to you that you've basically been in since you were 17 years old. Of which you and your wife had moved into to have your first child, that changed your view about where you going live, right?*

*Mr. Kelly: That's correct*

*Mr. Betts: And that happened even a little month after your bought this other house. Right?*

*Mr. Kelly: Correct*

*Mr. Betts: And did you ever move to that house?*

*Mr. Kelly: I did not*

*Mr. Betts: Did you wife move down there?*

*Mr. Kelly: My wife did move there*

*Mr. Betts: Have you been living in this location in South Fulton for the entire time since 2016? Has been your address?*

*Mr. Kelly: That's correct*

*Mr. Betts: Now, where were you living before 2016? Were you in an apartment?*

*Mr. Kelly: That's correct.*

*Mr. Betts: Where was the apartment?*

*Mr. Kelly: We lived in Athens, in Athens, GA*

*Mr. Betts: That's when you were in law school?*

*Mr. Kelly: Correct*

*Mr. Betts: Did you ask the tax commissioner of Fayette county to look into this Homestead issue that you are accused of?*

*Mr. Kelly: Correct*

*Mr. Betts: Did he give you a letter?*

*Mr. Kelly: He did*

**Mr. Betts offered to the board a letter from the Fulton County commissioner.**

*Mr. Betts: What did the tax commissioner tell you?*

*Mr. Kelly: That there was no homestead applied for. That there may have been a benefit from the previous homeowner because of the tax cutoff date. But I never applied for homestead. The document that the petitioner gave to the board says that I waived the homestead. That's the document that [the board] actually have from the young lady, the attorney. If you look on, I believe it's page 10; if you look on page, I'm*

*sorry 13, it's at the very end of the security page 1324. It says waiver of homestead; buyer waives all rights of homestead exemption in the property. So, at the time that I actually purchased the house, I did waive the homestead.*

**Mr. Wingate** asked if Mr. Kelly had applied for homestead exemption in the current tax year.

**Mr. Kelly** stated that he did not.

**Mr. Betts** asked Mr. Kelly if he had not applied because it was not his primary residence.

**Mr. Kelly** stated that was correct.

**Mr. Wingate** asked if Mr. Kelly still owned the property

**Mr. Kelly** stated that he did.

**Mr. Wingate** asked what the current use of the property was.

**Mr. Kelly** stated that he and his wife are in the process of transforming it into a bed and breakfast. Mr. Kelly started the process in November [2021].

**Dr. Ruth** asked if Mr. Kelly had the documentation; asked Ms. Ringer if that was permissible.

**Mr. Kelly** stated that he was not allowed to put a business license on the property until February 2022 because of the 12-month rule.

**Mr. Wingate** asked if Mr. Kelly had ever physically lived at the property.

**Mr. Kelly** stated that he did not but his wife did.

**Dr. Ruth** asked how long Mr. Kelly's wife lived at the property or if she was still living there.

**Mr. Kelly** stated that during that time his family dynamics had changed and it was decide that he would remain domiciled in Atlanta and that his wife would live at the Fayetteville property because she has business interests in Fayetteville. She still currently works from the Fayetteville property.

**Mr. Wingate** asked for clarification concerning the discrepancy of Mr. Kelly's home address and his post office address listed on his candidacy applications.

**Mr. Kelly** stated that the post office address listed in the post office location.

**Mr. Wingate** asked if that's where he received mail.

**Mr. Kelly** stated that he was under the impression that the question was asking which post office serviced his address.

**Mr. Wingate** asked if this was his post office box

**Mr. Kelly** stated that he misread the question. The address listed is the physical address of the actual post office.

**Dr. Ruth** asked if the current residence address is the 3509 Sable Glen Lane as what is reflected on his voter registration page maintained by the Secretary of State.

**Mr. Kelly** stated that was correct. He also stated that he just recently renewed his driver's license, and presented documentation to the board, that also shows his current address is 3509 Sable Glen Lane.

**Mr. Wingate** asked if Mr. Kelly had ever attempted to register to vote in Fayette county.

**Mr. Kelly** stated that he had not.

**Mr. Betts** presented Mr. Kelly's voter registration to the board.

**Dr. Ruth** asked if there were any questions about the documents that has been submitted.

**Mr. Kelly** stated that his neighbor was present to testify to his residency to the board if needed.

**Mr. Wingate** asked if Mr. Kelly committed to the primary residency requirement when securing the loan.

**Mr. Kelly** stated at the time he did not because there were a lot of pages. When learning of the challenge, Mr. Kelly reached out to the lender and the lender provided a response that states the extenuating circumstances to be excused from the requirement.

**Dr. Ruth** asked Mr. Kelly if he was the only name listed on the deed.

**Mr. Kelly** stated that he believes his wife is also listed.

**Mr. Kelly** offered witness testimony if the board was willing.

**Dr. Ruth** stated it wasn't necessary.

**Mr. Betts** apologized to the board for not understanding the procedure.

**Dr. Ruth** stated that it was okay, that this forum was not a court of law.

**Dr. Ruth** deferred to the attorneys in reference to any statutes that would assist the board with deciding.

**Ms. Ringer** stated the question [for the challenge] was of residency. The statute that covers the question is O.C.G.A 21-2-217 and provided to the board.

**Dr. Ruth** asked Ms. Ringer to read the statute.

**Ms. Ringer** read the statute from O.C.G.A 21-2-217.

**Dr. Ruth** asked for a recommendation from Ms. Marshall.

**Ms. Marshall** recommended that Mr. Kelly is qualified to run for the District 5 commissioner seat based on his voter registration record.

**Vice Chairwoman Ruth entertained a motion to accept the registrar's recommendation that Mr. Kelly is qualified to run for office in Fulton County. The motion was made by Mr. Wingate, seconded by Ms. Crawford. Board members Ruth, Crawford, and Wingate provided a verbal Yes to the motion. The motion carries.**

## EXECUTIVE SESSION

**Vice Chairwoman Ruth entertained a motion to go into executive session. The motion was made by Ms. Crawford, seconded by Mr. Wingate, and carried a vote of 3-0.**

**Vice Chairwoman Ruth entertained a motion to exit executive session and return to regular session. The motion was made by Mr. Wingate, seconded by Ms. Crawford, and carried a vote of 3-0.**

## ADJOURNMENT

**Dr. Ruth** stated that the board had put forth a recommendation for a new director of elections to the BOC for the April 13<sup>th</sup> meeting. Derrick Bowens has since withdrawn his candidacy for consideration. The board will continue the search process.

**Vice Chairwoman Ruth entertained a motion to adjourn. Mr. Wingate moved to adjourn the meeting. Ms. Crawford seconded the motion.** Collectively, the Board agreed to adjourn at 10:45am.

The meeting adjourned.

Prepared by,

Jessica M. Robinson, Board Secretary