

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

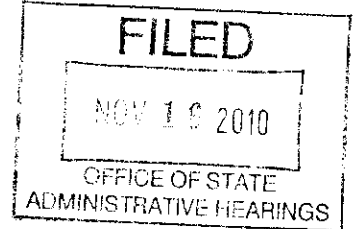
**STATE ELECTION BOARD,**  
    **Petitioner,**

v.

**DOROTHY WRIGHT,**  
    **Respondent.**

:  
:  
:  
:  
:  
:  
:

**Docket No.:**  
**OSAH-ELE-LV-1104232-66-Miller**



**INITIAL DECISION**

**I. Summary of Proceedings**

The State Election Board (“Board”), Petitioner herein, filed this matter seeking sanctions against the Respondent, Dorothy Wright. As set forth in the Statement of Matters Asserted, the Board alleges that the Respondent violated state election laws during the early voting period for the 2008 election. The hearing<sup>1</sup> was held on October 20, 2010, pursuant to O.C.G.A. §§ 21-2-33.1, 50-13-13, and 50-13-41, before the undersigned administrative law judge of the Office of State Administrative Hearings. The Board was represented by Assistant Attorney General Ann S. Brumbaugh. John M. Clark, Esq., represented the Respondent.

After consideration of the evidence and the arguments of the parties, the Board’s proposed sanctioning of the Respondent is **DENIED** for the reasons stated below.

**II. Findings of Fact**

1.

The Respondent is a resident of Greene County, Georgia, where she has been active on behalf of the Democratic party. She organizes voter registration drives and assists community members with absentee ballots during elections. As a result, she interacts regularly with

---

<sup>1</sup> This case was consolidated with State Election Board v. Marion Rhodes, Docket No. OSAH-ELE-LV-1104233, prior to the hearing. Although the cases were heard together, the factual circumstances of each are unrelated. Therefore, the Court elects to issue a separate decision in each case.

employees of the Greene County Board of Elections and Registration (“County Elections Board”), including the elections supervisor, Mike Malone, and the deputy elections supervisor, Louise Nesbit. (T. 46, 137, 168-169.)

2.

In October 2008, the Respondent received complaints from several members of the community whose absentee ballot applications had been rejected by the County Elections Board. On October 27, 2008, she visited the County Elections Board office, spoke with Ms. Nesbit, and requested a copy of the log of rejected applications. (T. 170.)

3.

On the date of the Respondent’s visit, early voting for the 2008 election was taking place at the County Elections Board office. The Respondent was wearing a pin with a photograph of Barack Obama, who was a presidential candidate in the 2008 election. Ms. Nesbit asked her to remove the pin. The Respondent refused. (T. 56-58, 137-139.)

4.

Mr. Malone then spoke to the Respondent. He repeated the instruction to remove the pin, and pointed out signs in the office stating that campaigning was prohibited. The Respondent again refused to remove the pin. After a brief exchange between Mr. Malone and the Respondent, Mr. Malone directed the Respondent to leave the office and asked Ms. Nesbit to call the police. The Respondent left the premises immediately. (T. 56-57, 138, 142, 151.)

5.

The entire episode lasted only a few minutes. The police arrived approximately fifteen minutes after the Respondent departed, and they made no arrests. (T. 59-61, 151-152, 159.)

6.

The Respondent did not threaten Mr. Malone or Ms. Nesbit or interfere with their performance of their duties. There was also no evidence that the Respondent's behavior disrupted the voting process. (T. 56-58, 137-139, 151, 166.)

7.

The Court finds the testimony of all of the witnesses to be essentially credible. This determination is based on the witnesses' demeanor and manner of testifying, as well as the corroboration of each witness' testimony by others. To the extent there were minor differences in their individual recollections, the Court finds that these differences are attributed to the fast pace at which the events unfolded, the different vantage points of the witnesses, and the length of time that has elapsed since the incidents. However, the Respondent's testimony that she removed the pin before Mr. Malone called the police, which was self-serving and uncorroborated by any other witness, was not credible. (T. 172-173.)

8.

On February 24, 2010, the Board found probable cause that the Respondent had violated O.C.G.A. § 21-2-566(2). The Board further recommended the imposition of a cease and desist order, a civil penalty of up to \$5,000.00, and a public reprimand. (Statement of Matters Asserted, ¶¶ 3, 5; T. 222; Exhibits P-1, P-2.)



### III. Conclusions of Law

1.

Because this matter involves the proposed sanctioning of the Respondent, the Board bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4). For the reasons that follow, the Court concludes that the Board did not meet its burden.

2.

Under O.C.G.A. § 21-2-414(a), “No person shall solicit votes in any manner or by any means or method, nor shall any person distribute or display any campaign literature, newspaper, booklet, pamphlet, card, sign, paraphernalia, or any other written or printed matter of any kind . . . on any day in which ballots are being cast . . . [w]ithin any polling place . . . .”<sup>2</sup> The statute further provides that “[r]ooms under the control or supervision of the board of registrars or absentee ballot clerk in which absentee ballots are being cast shall be considered polling places.” O.C.G.A. § 21-2-414(b). Thus, Mr. Malone properly directed the Respondent to remove her Barack Obama pin while she was present at the County Elections Board office, which was a polling place during early voting for the 2008 election.

3.

Pursuant to O.C.G.A. § 21-2-566(2), “Any person who . . . [u]ses or threatens violence in a manner that would prevent a reasonable poll officer or actually prevents a poll officer from the execution of his or her duties or materially interrupts or improperly and materially interferes with the execution of a poll officer’s duties . . . shall be guilty of a felony . . . .”

---

<sup>2</sup> The Board did not seek to sanction the Respondent for a violation of O.C.G.A. § 21-2-414(a). See Statement of Matters Asserted.

4.

Because O.C.G.A. § 21-2-566(2) contains no punctuation to separate the many clauses, it can be interpreted in two ways. Under the first interpretation, the statute may be read as follows:

Any person who . . . [u]ses or threatens violence in a manner that

- (a) would prevent a reasonable poll officer or actually prevents a poll officer from the execution of his or her duties or
- (b) materially interrupts or improperly and materially interferes with the execution of a poll officer's duties . . .

shall be guilty of a felony . . . .

Under this interpretation, "uses or threatens violence" is an essential element that must be proven in any case alleging a violation of O.C.G.A. § 21-2-566(2). However, the statute may also be construed to mean:

Any person who . . .

- (a) [u]ses or threatens violence in a manner that would prevent a reasonable poll officer or actually prevents a poll officer from the execution of his or her duties or
- (b) materially interrupts or improperly and materially interferes with the execution of a poll officer's duties . . .

shall be guilty of a felony . . . .

Under this second interpretation, a person may violate the statute by materially interrupting or interfering with the execution of a poll officer's duties, without the use or threat of violence.

5.

Because the meaning of O.C.G.A. § 21-2-566(2) is unclear, the Court looks to the prior version of the statute for guidance as to the legislature's intent. See O.C.G.A. § 1-3-1. Prior to July 1, 2008, the statute provided, "Any person who . . . [u]ses or threatens violence to any poll officer or interrupts or improperly interferes with the execution of his or her duty" has committed

a felony. O.C.G.A. § 21-2-566(2). Clearly, under the prior statute, it would be a violation to interrupt or interfere with the execution of a poll officer's duties, whether or not violence was used or threatened.<sup>3</sup>

6.

A comparison of the current and prior versions of O.C.G.A. § 21-2-566(2) reveals that the 2008 amendments added language to the statute, but did not delete or substantially revise the prior language. Therefore, because it appears that the legislature intended to maintain the essential elements of the statute as they existed previously, the Court adopts the second interpretation of the statute.

7.

The Board failed to prove, by a preponderance of the evidence, that the Respondent violated O.C.G.A. § 21-2-566(2) by “us[ing] or threaten[ing] violence in a manner that would prevent a reasonable poll officer or actually prevent[ed] a poll officer from the execution of his or her duties.” As set forth in detail in the Findings of Fact, above, the Respondent did not use or threaten violence against either Mr. Malone or Ms. Nesbit. Further, she did not prevent them from executing their duties as poll officers, nor would her actions have prevented a reasonable poll officer from performing his or her duties.

---

<sup>3</sup> The phrase “uses or threatens violence” cannot modify the second clause. Such an interpretation would be neither reasonable nor grammatically correct, as follows:

Any person who . . . [u]ses or threatens violence  
(a) to any poll officer or  
(b) interrupts or improperly interferes with the execution of his or her duty . . .  
shall be guilty of a felony . . . .

O.C.G.A. § 21-2-566(2) (amended July 1, 2008).


8.

The Board failed to prove, by a preponderance of the evidence, that the Respondent violated O.C.G.A. § 21-2-566(2) by “materially interrupt[ing] or improperly and materially interfer[ing] with the execution of a poll officer’s duties.” To the extent the Respondent’s actions could be interpreted as an interruption or interference of any poll worker’s duties, such interruption or interference was *de minimis* and not material, especially given the short duration of her conversation with Ms. Nesbit and Mr. Malone.

#### IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Board’s proposed sanctioning of the Respondent is hereby **DENIED**.

SO ORDERED, this 16<sup>th</sup> day of November, 2010.

  
\_\_\_\_\_  
KRISTIN L. MILLER  
Administrative Law Judge