

## **FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS**

### **Procedures for Responding to Voter Challenges Submitted Pursuant to O.C.G.A. §21-2-229**

#### **1. General Guidelines.**

(a) Who may file a challenge. Challenges to the qualifications of a Fulton County registered voter to remain on the list of voters under O.C.G.A. § 21-2-229 may be made only by a registered voter of Fulton County, acting in his/her individual capacity. See O.C.G.A. § 21-2-229(a). Challenges may not be made by private entities, businesses, political committees, PACs, political parties, or other organizations, or by individuals who are acting in their capacity as agents or employees of those entities. Therefore, before acting upon a challenge submitted to the Fulton County Board of Registration and Elections (hereinafter, the “BRE” or “Board”), the BRE shall determine whether the challenger is registered to vote in Fulton County and is acting in their individual capacity. If not, the BRE shall reject the challenge on this basis.

(b) Standards.

(i) O.C.G.A. § 21-2-229(a) requires that a challenge “be in writing and specify distinctly the grounds of the challenge.” Challenges that are not in writing or which consist of vague, generalized, unsupported, or speculative assertions or conjecture do not satisfy this standard and shall be rejected. For example, residency-based challenges shall allege facts sufficient to specifically and distinctly identify the grounds for the challenger’s contention that a registered voter has not satisfied the residency requirements of O.C.G.A. § 21-2-217.

(ii) The BRE’s disposition of challenges shall comply with the National Voter Registration Act (“NVRA”), including its requirements that any “activity” to ensure maintenance of an accurate and current voter registration roll “shall be uniform” and “nondiscriminatory.” 52 U.S.C. § 20507(b)(1). Any challenge made under O.C.G.A. § 21-2-229 shall be supported by evidence that is individualized to the challenged voter. Challenges shall be denied when they do not address the challenged voter’s individual circumstances and are not supported.

(iii) The burden shall be on the voter making the challenge to prove that the person being challenged is not qualified to remain on the list of voters. O.C.G.A. § 21-2-229(c). Accordingly, the evidence presented in support of the challenge must be reliable and credible. Hearsay shall not be admissible. The following are examples of evidence that shall not be sufficient to sustain the challenger's burden of proof.

1. Information gathered from social media posts or from door-to-door surveys will not be deemed to be sufficiently reliable to be determinative.
2. National Change of Address registry data is not, on its own, sufficient to prove that a particular voter has changed his/her residence.
3. Attempts to connect a registered voter to a record of a person with the same name and partial date of birth does not meet the burden of proof without more, to sustain a challenge because of the risk of a false positive identification with another person possessing the same name and partial date of birth.
4. If a challenge is based on an assertion that the challenged voter did not live at the address listed on his or her initial voter registration application at the time the application was submitted, that fact alone will not be sufficient to meet the burden of proof to sustain a challenge, in the absence of other credible evidence that the voter is not currently a resident of Fulton County.

(iv) O.C.G.A. § 21-2-217(b) gives presumptive effect to the registrar's decision in determining the residence of the challenged voter at the time the registration application is considered. Challengers bringing residency-based challenges shall produce evidence sufficient to rebut this presumption in order to sustain their burden of proving that the challenged voter is not qualified to remain on the rolls. If the challenger fails to do so, the challenge shall be rejected by the BRE.

(c) Informational Requirements.

(i) To help facilitate the review of challenges, a challenger shall provide: (A) the full name of the voter being challenged; (B) the address at which the voter is currently registered; (C) the year of birth of the challenged voter; (D) the specific basis for the challenge – that is, death, mental incapacity, insufficient age, felony conviction status, or change of residence of the voter; (E) under what statute the challenge is brought (i.e., O.C.G.A. § 21-2-229); (F) clear and concise detail of the factual evidence offered to support

the challenge; and (G) the sources of information relied upon in preparing the challenge (e.g., the names of specific commercial databases used, or facts based on the challenger's personal knowledge), and the name of any program(s) or software used to prepare the challenge.

(ii) Challenges based on residency: for any challenge to a voter's eligibility based upon the allegation that the challenged voter does not reside in Fulton County or in one of its municipalities, the challenger shall, under the authority of O.C.G.A. § 21-2-229(a), specify whether the challenge is based on the challenged voter's current residency status or the voter's residency status at the time the voter initially registered. If the challenger does not specifically identify the basis of a challenge based on residency, the challenge will be rejected and the BRE shall inform the challenger of this requirement pursuant to written notice to the challenger at the address provided in the written challenge. A copy of these Procedures shall be included with the notice.

(iii) There are no limits to the number of voters that may be challenged, but challengers shall ensure that challenged voters are on the Fulton County list of voters as of the date of the challenge. And, as set out in Part I(b)(ii) above, the challenge shall be based on individualized evidence particular to the voter(s) being challenged.

(d) National Voter Registration Act's 90-Day Prohibition. Pursuant to Section (c)(2)(A) of the NVRA, any systematic list maintenance process shall be completed 90 days prior to the date of a primary or general election for Federal office. This 90-day rule would be applicable, for example, to a challenge against voters which was created by a data-matching process that compares non-personalized data from one database with information with another database. The NVRA's 90-day prohibition is generally not applicable, however, in situations where the challenger has personal, individualized evidence the voter is deceased, finally convicted of a felony, or adjudicated mentally incapacitated without the right to vote. 52 U.S.C. 20507(c)(2)(B). Likewise, the NVRA's 90-day prohibition is generally not applicable to voters who voluntarily cancel their voter registration in writing.

(e) Delivery Requirements.

(i) Challenges shall be submitted to the Board (i) via hand delivery to the BRE at Fulton County Election Hub and Operation Center 5600

Campbellton Fairburn Road Fairburn GA 30213; (ii) via regular mail to that same address; or (iii) via email delivery to VoterRegistration@fultoncountyga.gov ATT BRE Voter Challenges. For reasons of computer and network security, the BRE cannot accept USB drives, CDs or other storage media that must be uploaded and retrieved by the BRE Staff. Submitted documents also should not include website “links” that are intended to be accessed to provide information supporting the challenge. All information submitted for consideration by the Board shall be completely set forth within the submitted challenge documents The Board will not access website links for the purposes of tracking down information to support a challenge.

(ii) No challenge may be filed with a Poll Manager or any poll worker. Election Bulletin, Georgia Secretary of State. The BRE and Elections Office staff will not consider or act upon any third party’s request, outside the challenge process, to review the eligibility of a registered voter to remain on the list of voters or vote in a particular election – provided, however, that Elections Office staff may, when lawfully allowed, continue to receive and act upon information from those who have “verifiable knowledge of the death” of a registered voter or family members of a deceased voter. O.C.G.A. § 21-2-231(e.1). Any other third party who wishes to question a registered voter’s eligibility shall utilize the challenge procedures set out in O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2- 230.

(f) Segregation of Clerical Errors and Similar List Discrepancies. Voters may bring to the attention of the Board any alleged discrepancies and clerical errors in the list of voters – but the voter challenge procedures of Section 229 are not the appropriate avenue for identifying these potential issues. Technical and clerical errors or discrepancies will not be processed under the procedures of Sections 229, but will be reviewed and, if appropriate, acted on by the Staff. It is the responsibility of challengers to separate any alleged clerical issues from challenges related to voter eligibility under Section 229. Failure to do so will result in the challenge being rejected with a written notice to the challenger attaching a copy of these Procedures.

(g) Challenges to Inactive Voters. Once a challenge is received, the Elections Staff shall determine whether the challenged voter is currently on the list of active voters. If the voter is not located on the active rolls, the BRE shall reject the challenge and so inform the challenger. OCGA 21-2-235(b); NVRA, 52 U.S. Code § 20507(d)(1).

## 2. Procedures for Particular Challenges.

(a) Challenges based on change of residency. If a challenge is based upon grounds that the voter is not qualified to remain on the list of voters because the voter has changed residency, the BRE will proceed as follows. Pursuant to Section 8(d)(1) of the NVRA, no voter may be removed from the list of voters on the ground that the voter has changed residence unless the voter (i) confirms in writing that the voter has changed residence to a place outside Fulton County; or (ii) (A) has failed to respond to notice as required by the NVRA and (B) has not voted or appeared to vote for two general elections for Federal office after the date of the notice. Accordingly, in the event of any challenge based on a voter's alleged change of residence, the BRE may send the voter a confirmation notice as prescribed in Section 8(d)(2) of the NVRA (if such list maintenance activity would be concluded prior to the 90-day prohibition under the NVRA, *see* Part 1(d) above) but shall not remove the voter from the list of voters unless the requirements of Section 8(d)(1) of the NVRA are met.

(b) All other challenges.

(i) If the challenge (A) meets all the requirements of the General Guidelines set out in Part I above, and (B) is based upon the challenged voter's residency status at the time the challenged voter initially registered to vote or based on grounds other than the challenged voter's residency status, the challenge will be set for hearing within ten business days after serving notice of the challenge.

(ii) As to any challenge set for hearing, pursuant to O.C.G.A. § 21-2-229(b):

A. Within 10 business days of receiving the notice of the challenge, the BRE will send a written notice informing the challenged voter and the challenger of the date, time, and place of the hearing along with a copy of the challenge and a copy of these Procedures, and shall state that either party may, but is not required to, be represented by counsel or another representative at the hearing. The notice will be sent by first-class mail or in the manner provided in O.C.G.A. § 21-2-228(c).

The notice shall also provide the challenged voter the opportunity to provide information in response to the challenge within ten (10) business days of the date of the notice. The notice shall be mailed sufficiently in advance of the hearing to provide the person being challenged at least three days' notice of the date, time, and place of the hearing.

- B. If the voter supplied a phone number or email address on the registration form or in other writings such as an absentee ballot application received by the BRE, then in addition to the notice provided for in item (2(b)(ii)(A)) above, as soon as possible after receiving the challenge, the BRE will attempt to contact the challenged voter by phone and/or email to determine if the issue raised by the challenge can be resolved quickly, efficiently, and informally. The BRE will send at least one email to the voter (if an email address is available) and make at least two reasonable attempts to contact the voter by phone (if a phone number is available), including at least one attempt after 5:00 pm. If the BRE is unable to reach the voter by phone but is able to leave a voicemail, the BRE will leave a voicemail for the voter.
- C. If the BRE determines that the volume of voter challenges, whether from a single challenger or from multiple challenges cannot reasonably be adjudicated in the time allotted for the scheduled hearing, the BRE shall continue the challenges to an additional hearing date within a reasonable time after the time allotted for the hearing, and all challengers and challenged voters shall be notified in writing and by phone and email, in the manners as specified above.
- D. The written challenge will be posted on the BRE website within three business days of receipt of the challenge by the BRE.

(c) Voters without a permanent residential address. Where a voter is a legal resident of Fulton County and otherwise qualified to vote within the meaning of O.C.G.A. §§ 21-2-216 and 21-2-217, the BRE shall not sustain a challenge on the basis that the voter currently lives on the streets or in

shelters, vehicles, trailers, transitional housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other residents in need of housing assistance in the county. When adjudicating such challenges, the BRE shall consider the particular circumstances of the voter and the fact that the burden of proof is on the voter who brought the challenge to prove ineligibility. If a voter is registered at a non-residential address, the BRE will attempt to determine all the facts and circumstances and will, where possible, work with the voter to update their voter registration to a residential address. If the BRE determines that the voter's residence is the registered address, the challenge will be denied on that basis. If the voter is registered at a non-residential address, and the BRE is unable to determine the voter's residence, the BRE will place the voter in a "challenged" status.

**3. Subpoena Authority.** A challenged voter, or the voter making the challenge, may request that the BRE issue subpoenas for the attendance of witnesses and the production of books, papers, and other material. The voter requesting the subpoenas shall be responsible for serving the subpoenas and, if necessary, applying to the superior court to have the subpoenas enforced. Any subpoenaed witness attending the hearing shall be paid the same mileage and fees paid witnesses in civil actions in the superior court.

**4. Post-Determination Procedures.** (i) Pursuant to O.C.G.A. § 21-2-229(d), the BRE will notify challenged voters, in writing by first class, forwardable mail, and by telephone and email (if available), of any change in registration status resulting from challenge proceedings. This notification letter will specify in detail the basis for upholding the challenge.

(ii) Any notice sent to challenged voters indicating that the BRE has upheld a challenge will include a copies of this Procedure and OCGA 21-2-216 and 217, a voter registration form and shall inform the voter that they have a right to appeal the decision by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars and that such petition shall be served upon the other parties to the challenge and the registrars. The notice shall also include contact information for the other parties to the challenge and the registrars to effectuate such service.

5. **Challenges by BRE Member/Employee.** If any members of the BRE or employees or agents of the BRE challenge the eligibility of voters in their individual capacity while they remain in that position or have a personal or business interest in the challenge, they shall recuse themselves from deliberating, voting or otherwise participating in any way in the BRE's consideration of such challenges.

6. **Public Notice.** A copy of any challenge brought under O.C.G.A. § 21-2-229 will be posted on the BRE website within three business days of receipt of the challenge by the BRE.

7. **Effect of Guidelines.**

These Guidelines are intended to work in tandem with, and be consistent with, applicable law, including the NVRA and the Georgia Election Code. To the extent any part of this policy conflicts with the referenced statutes, the statutes shall control. This policy document is not intended as legal advice and does not purport to summarize all of the requirements and procedures of the relevant laws. Any person considering bringing a challenge under O.C.G.A. § 21-2-229, may consult with an attorney of their choosing.