

FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS

Procedures for Addressing Voter Challenges Submitted Pursuant to O.C.G.A. § 21-2-230

1. General Guidelines.

(a) Who may file a challenge. Challenges submitted against a Fulton County registered voter (or “voter”) under O.C.G.A. § 21-2-230 may be made only by a registered voter of Fulton County, acting in their individual capacity. See O.C.G.A. § 21-2-230(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 Elections (hereinafter, the “BRE” or “Board”), the BRE shall determine whether the challenger is registered to vote in Fulton County and, if not, the BRE shall reject the challenge on this basis.

(b) Standards.

(i) O.C.G.A. § 21-2-230(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).¹ Any challenge made under O.C.G.A. § 21-2-230 shall be supported by evidence that is individualized to the challenged voter. Challenges will be denied when supported by generic evidence, such as a data-matching process that compares data from one database with information with another database, or other evidence that does not provide information about each challenged voter’s individual circumstances.²

¹ See *Majority Forward v. Ben Hill County Board of Elections*, 512 F.Supp.3d 1354, 1368 (M.D. Ga. 2021) (applying NVRA to challenges brought under O.C.G.A. § 21-2-230).

² See *Majority Forward*, 512 F.Supp.3d at 1369-70 (national change of address registry data is insufficient to meet the probable case standard of O.C.G.A. § 21-2-230); see also *North Carolina State Conference of NAACP v. Bipartisan Bd. of Elec. and Ethics Enforcement*, No. 16-cv-1274 2018 WL 3748172 at *7 (M.D.N.C. Aug. 7, 2018) (mail returned as undeliverable from a mass mailing campaign was “generic

(iii) In order for a challenge to proceed to a hearing, there shall be a showing of probable cause. O.C.G.A. § 21-2-230(b). To meet the probable cause standard, the evidence presented in support of a challenge must be reliable and credible non-hearsay evidence that substantiates the claims made in the challenge. The following shall not be sufficient to sustain the challenger's burden of proof:

- A. Information gathered from social media posts or from door-to-door surveys will not be deemed to be sufficiently reliable to be probative.
- B. National Change of Address registry data is not, on its own, sufficient to meet the probable cause standard to show that a particular voter has changed their residence. O.C.G.A. § 21-2-230(b)
- C. Attempts to connect a registered voter to a record of a person with the same name and partial date of birth will not, without more, meet the probable cause standard because of the substantial risk of a false positive identification with another person possessing the same name and partial date of birth.
- D. 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 provide probable cause to sustain a challenge, in the absence of other credible evidence that the voter is not currently a resident of Fulton County.
- E. Pursuant to the amendments to Section 230 enacted in SB 189 (2024), "probable cause" is defined to include "a voter who is deceased; a voter voting or registering to vote in a different jurisdiction; an voter obtaining a homestead exemption in a different jurisdiction; or a voter being registered at a nonresidential address as confirmed or listed by or in a government office, data base, website, or publicly available sources derived solely from such governmental sources." The challenger shall still, however, put forward reliable and probative evidence to support a claim that the challenged voter falls within these enumerated "probable cause" categories in the statute. In addition, the BRE's disposition of the challenge shall comply with all other provisions of applicable law, including the provisions of law cited in these Guidelines.
- F. Challenges based upon residence shall be deemed insufficient where they are premised solely upon (1) an voter having gained or lost a residence by reason of such person's presence or absence while enrolled

evidence" that "conveyed no information about each challenged voter's specific circumstances").

as a student at any college, university, or other institution of learning in the State of Georgia; (2) a voter serving as a member of the armed forces of the United States and being stationed on duty at a location different than their stated residence; or (3) a voter moving to the District of Columbia or another federal territory, state, or foreign country to engage in government service during the period while the voter is engaging in the government service. In such circumstances, the voter's residence will be deemed their residence immediately prior to the occurrence of any of the aforementioned events. O.C.G.A. § 21-2-230(b)(2) (citing O.C.G.A. § 21-2-217(a)(8), (10), and (11)).

(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 show probable cause 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 challenge 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. § 21-2-230); (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. § 21-2-230(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) Challengers shall ensure that challenged voters are on the Fulton County list of voters as of the date of the challenge.

(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.³ 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) SB 189's 45-Day Prohibition. Any challenge of an voter within 45 days of a primary, run-off primary, election, or run-off election shall be postponed until the certification of such primary, election, or runoff is completed.

(f) Delivery Requirements.

(i) Challenges shall be submitted to the Board (1) via hand delivery to the BRE at Fulton County Election Hub and Operation Center 5600 Campbellton Fairburn Road Fairburn GA 30213 ; (2) via regular mail to that same address; or (3) via email delivery to the at Elections.VoterRegistration@fultoncountyga.gov Subject: BRE Voter_Challenges. For reasons of computer and network security, the BRE cannot accept USB drives, CDs or other storage media that shall 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 (Oct. 13, 2022). 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.

³ See, e.g., *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014) (removal of voters was "systematic" when it "used a mass computerized data-matching process to compare the voter rolls with other state and federal databases").

(g) Segregation of Clerical Errors and Similar List Discrepancies. Working with the Secretary of State's Staff, the BRE and its Staff constantly strive to ensure the accuracy of voter information on the list of voters. 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 230 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 230, 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 230. Failure to do so will result in the challenge being rejected with a written notice to the challenger attaching a copy of these Procedures.

(h) 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) Other challenges. If a challenge (1) meets all the requirements of the General Guidelines set out in Part I above, and (2) is not based upon the grounds in Part (2)(a) above, the BRE will follow the following procedures:

- (i) The BRE will determine whether probable cause exists. O.C.G.A. § 21-2-230(b).
- (ii) If the BRE determines that probable cause does not exist, it will deny the challenge. O.C.G.A. § 21-2-230(b).
- (iii) If the BRE finds probable cause exists, then the following procedures will apply:

- (1) The BRE will notify the challenged voter and afford the challenged voter an opportunity to answer. O.C.G.A. § 21-2-230(b).
 - a) 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. The notice shall also provide the challenged voter the opportunity to provide information in response to the challenge.
 - 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 (i) 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.
- (2) The BRE will hold a hearing to consider the challenge and follow the procedures set forth in O.C.G.A. § 21-2-230, including subsections (c), (d), (e), and (f); provided, however, in the event that subsection (f) is triggered (because the voter does not cast an absentee ballot and does not appear at the polling place to vote), the BRE will hear the challenge pursuant to O.C.G.A. § 21-2-229 and will follow the process set forth in Part 2 of its “Procedures for Responding to Voter Challenges Submitted Pursuant to O.C.G.A. § 21-2-229.” See O.C.G.A. § 21-2-230(f).

3. 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.

4. Challenges by BRE Member/Employee Challenges. 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.

5. Public Notice. A copy of any challenge brought under O.C.G.A. § 21-2-230 will be posted on the BRE website within three business days of receipt of the challenge by the BOE.

6. Effect of Guidelines. This policy document is intended to work in tandem with, and be consistent with, applicable law, including the NVRA and O.C.G.A. §§ 21-2-230. 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. § 21-2-230, should consult with an attorney of their choosing.