



September 30, 2024

VIA EMAIL

Dear Georgia Election Administrators:

Campaign Legal Center (CLC) writes to provide you with information regarding how Georgia's county Boards of Elections, their staffs, and other election administrators can adjudicate frivolous challenges to voter eligibility under Georgia law to minimize the burden on election administrators and protect the rights of voters, including important guidance on limitations imposed by federal law.¹

CLC is a nonpartisan, nonprofit organization working to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC seeks a future in which the American political process is accessible to all citizens, resulting in representative, responsive, and accountable government. Consistent with that mission, we have worked with election officials across the nation to improve their administrative policies, protect the freedom to vote of citizens within their jurisdictions, and strengthen the democratic process.

To that end, CLC is concerned about the potential for frivolous mass eligibility challenges organized by partisan actors and submitted with insufficient evidence, which have become increasingly common throughout the country, particularly in Georgia.²

In recent election cycles, partisan actors have relied on faulty databases to bring hundreds of thousands of challenges to voter eligibility across the nation.³ These databases attempt to match voter registration records with publicly available information, but that information is almost always incomplete or out of date, making the database matches unreliable.⁴ They also often improperly flag registered voters with the same name as ineligible individuals, voters who are temporarily staying in another place but remain qualified at the address at which they are registered, and households where some but not all residents have moved.⁵ As a result, mass challenge lists almost always include significant numbers of eligible voters who should not be removed from the rolls.⁶

¹ This letter is not legal advice; it is intended to present a summary of relevant Georgia and federal law.

² See, e.g., Nick Corasaniti & Alexandra Berzon, *Trump's Allies Ramp Up Campaign Targeting Voter Rolls*, N.Y. Times (Mar. 3, 2024), <https://www.nytimes.com/2024/03/03/us/politics/trump-voter-rolls.html> (noting the recent wave of voter eligibility challenges in states such as Georgia, Michigan, and Nevada); David Gilbert, *Election Deniers are Ramping Up Efforts to Disenfranchise Voters*, Wired (Jul. 31, 2024), <https://www.wired.com/story/election-deniers-efforts-disenfranchise-voters>.

³ See Robyn Sanders & Alice Clapman, *Protections Against Mass Challenges*, Brennan Ctr. for Just. (July 17, 2024), <https://www.brennancenter.org/our-work/research-reports/protections-against-mass-challenges-voter-eligibility>. One common database is Eagle AI, which experts have criticized for its frequent identification of eligible voters as ineligible. See Alice Clapman & Andrew Garber, *A New Antidemocracy Tool*, Brennan Ctr. for Just. (Sept. 5, 2023), <https://www.brennancenter.org/our-work/analysis-opinion/new-antidemocracy-tool>.

⁴ See Sanders & Clapman, *supra* note 3.

⁵ See *id.*

⁶ See *id.*

These mass challenges risk both disenfranchising eligible voters and causing unnecessary disruption to the orderly administration of the 2024 elections.⁷ We recognize that many election offices have lost their most experienced officials because of threats and volatility in the wake of the 2020 election and that this will be the first presidential election for new staff. We hope this letter will assist you as you provide guidance to your staff and volunteers regarding the rules for voter challenges and their responsibilities in dismissing challenges lodged without cause or sufficient evidence, allowing your office to ensure a fair and orderly election, safeguard voters from intimidation and erroneous disenfranchisement, and minimize administrative disruption.

To mitigate potential harms to both voters and county boards of elections caused by baseless or otherwise improper challenges, CLC provides the following election law summary to support your development and execution of uniform processes for adjudicating voter eligibility challenges. This letter aims to highlight those areas that are of particular relevance to concerns about voter eligibility challenges or that have been affected by the recent enactment of S.B.189.⁸

I. Challenges to Voter Eligibility

As you are aware, there are two avenues for challenges to voter eligibility under Georgia law: (1) challenges to a registered voter's eligibility to remain on the rolls (“229 challenges”), and (2) challenges to a voter’s specific eligibility to vote in any given election (“230 challenges”).⁹ All challenges must be made in writing, must “specify distinctly the grounds for the challenge,” and may only be made by a registered voter from the same county or municipality.¹⁰ Both types of challenges must be filed with the board of registrars. **Poll managers and poll workers may not themselves accept any voter challenges.**¹¹

Under Georgia law, the process for adjudicating a challenge is different depending on the type of challenge being made. Any challenge must therefore state whether it is being brought under § 21-2-229, § 21-2-230, or both.¹²

If a voter is challenged utilizing data from the U.S. Postal Service National Change of Address (NCOA) data, any 230 challenges made within 45 days of a “primary, run-off primary, election, or run-off election” must be postponed “until the certification of such primary, election, or runoff is completed.”¹³ The National Voter Registration Act (NVRA) likewise limits when 229 challenges can result in the removal of voters from the rolls. Under the NVRA, states and counties may not perform any “systematic” list maintenance within 90 days of a federal election.¹⁴ Such prohibited list maintenance could include sustaining mass voter registration challenges without individualized process leading to the cancellation of numerous voter registrations.

⁷ See Grant Blankenship, *A data tool being used to challenge voter registrations is raising many concerns*, NPR (June 20, 2024), <https://www.npr.org/2024/06/04/nx-s1-4991945/voter-registration-mass-challenges-georgia>.

⁸ Sam Sachs, “New law removes Secretary of State from Elections Board, adds voter challenge options,” WSB-TV Atlanta 2 (May 8, 2024), <https://www.wsbtv.com/news/local/atlanta/new-law-removes-secretary-state-elections-board-adds-voter-challenge-options/2QLHAKO4K5ENHFJV6T7VPL7ISY>.

⁹ O.C.G.A. §§ 21-2-229 (registration challenges), 21-2-230 (voter eligibility challenges).

¹⁰ O.C.G.A. §§ 21-2-229(a), 21-2-230(a).

¹¹ See *Poll Worker Manual*, Georgia Sec’y of State (May 2021), <https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Manual%202021.pdf>.

¹² A 230 challenge is only treated like a 229 challenge if the challenge is based on grounds that the voter is not qualified to remain on the list of electors and does not vote in the particular election (either in-person or absentee). But because the board of registrars will not be able to know if an elector plans to vote in a particular election, a single challenge must specify whether it is a challenge to registration, qualifications, or ability to vote in a particular election.

¹³ O.C.G.A. § 21-2-230(b)(1).

¹⁴ 52 U.S.C. § 20507(c)(2).

A. Challenges to voter registration and voter roll eligibility (“229 challenges”)

229 challenges to the eligibility of a registered voter¹⁵ can be made on an ongoing basis by any registered elector, including a county registrar.¹⁶ However, there are limits under both state and federal law as to how voters can be removed from the rolls, which can only occur under specific circumstances.

When considering a 229 challenge, the board of registrars for the county in which the challenged voter is registered must notify the voter of the challenge to their vote within 10 business days of receiving the challenge.¹⁷ That notice must include the date, time, place of the hearing, and a copy of the challenge, and should also be given to the challenger.¹⁸ The notice should be sent either via first class mail to the voter’s registered address or by the sheriff, deputy sheriff, or peace officer of the municipality if the challenge is made by the registrar.¹⁹ The voter must be given at least three days’ notice of the date, time, and place of the hearing.²⁰

The burden is on the challenger to prove why the voter is not qualified to remain on the list of electors.²¹ The board of registrars has the power to issue subpoenas for witnesses and require the production of any materials as requested by the challenged voter.²² After the hearing, the registrars must notify both parties of the decision to approve or reject the challenge.²³ Either party has the right to appeal the decision to superior court by filing a petition.²⁴ Unless the decision is reversed by the superior court, the final decision of the registrars stands.²⁵

Importantly, **while S.B. 189 made changes to the rules for determining a voter’s residence, those changes do not become effective until January 2025.** Therefore the pre-S.B. 189 residency rules remain applicable for the duration of the November 2024 election.²⁶ Under these rules, a voter’s registration remains valid even if they temporarily reside in a different county or municipality within Georgia, as long as they intend to remain domiciled where they are registered, without any caveats.²⁷ For example, unhoused voters are not required to have their mailing address be their county’s registrar’s office.²⁸

B. Challenges to a voter’s eligibility to vote in a specific election (“230 challenges”)

The second form of voter challenge permitted under Georgia law is a 230 challenge to a voter’s eligibility to vote in a specific upcoming election.²⁹ Like 229 challenges, 230 challenges must be in writing and “specify distinctly the grounds of such challenge.”³⁰ **Such challenges must be delivered to the board of registrars before the challenged voter votes in person or, for absentee voters, before the challenged voter casts their ballot and not after 5:00pm the day before absentee ballots are to be counted.**³¹

¹⁵ O.C.G.A. § 21-2-228.

¹⁶ O.C.G.A. §§ 21-2-229, 21-2-230. *See also* 52 U.S.C. § 20501.

¹⁷ O.C.G.A. § 21-2-229(b).

¹⁸ *Id.*

¹⁹ *Id.* *See also* (c).

²⁰ *Id.* § 21-2-229(b).

²¹ *Id.* § 21-2-229(c).

²² *Id.*

²³ *Id.* § 21-2-229(d).

²⁴ *Id.* § 21-2-229(e).

²⁵ *Id.*

²⁶ *Id.* § 21-2-217 (noting that the 2024 amendment becomes effective January 1, 2025).

²⁷ *Id.* § 21-2-217(a)(2) (current version).

²⁸ *Id.* § 21-2-217 (a)(1) (current version).

²⁹ *Id.* § 21-2-230.

³⁰ *Id.* § 21-2-230(a).

³¹ *Id.*

Once the challenge is filed, the board of registrars must immediately determine whether “probable cause” for the challenge exists. If no probable cause exists, the registrars must reject the challenge.³²

Under Georgia law, probable causes include:

- The voter is deceased.³³
- The voter is voting or registered to vote in a different jurisdiction.³⁴
- The voter has a homestead exemption in a different jurisdiction.³⁵
- the voter is registered at a nonresidential address confirmed by a publicly available government source.³⁶

If the challenger produces evidence of the voter’s ineligibility based on NCOA data, that data alone is insufficient to challenge a voter unless made with additional evidence proving a voter is no longer a resident of the jurisdiction.³⁷ Moreover, any challenge relying even in part on NCOA data and made within 45 days of an election must be postponed until after the election’s certification.³⁸

If the registrars find probable cause exists, they must notify the poll workers at the challenged voter’s precinct or notify the poll worker at the absentee ballot precinct if the challenged elector voted absentee, and “if practical,” notify the challenged voter so they can answer.³⁹

No further action is required of the registrars if the challenged voter does not vote absentee or does not appear in person, and the grounds for the challenge are made on grounds other than the qualifications to remain on the list of electors—for example, if the challenge is based on the voter allegedly having already voted in that election.⁴⁰ However, if the challenged voter does not appear to vote in person or absentee, but the challenge is based on their qualifications, the board of registrars should conduct a hearing following the procedure for 229 challenges.⁴¹

1. Challenges to in-person voters

If a voter subject to a 230 challenge appears in person at their polling place, they must be “given an opportunity to appear before the registrars and answer the grounds of the challenge.”⁴² Again, challenges to voters must be made **before** the challenged voter casts a ballot.⁴³

If the challenged voter appears at the polls and it is practical to conduct a hearing prior to the close of the polls, the registrars shall conduct a hearing to determine the validity of the challenge.⁴⁴ If the challenge is successful, the elector cannot vote, and if they are determined not to be qualified to remain on the rolls, their name will be removed from the list of electors unless the challenge is based on residency.⁴⁵ However, if the challenge is denied, the elector should be permitted to vote immediately after the decision of the registrars.⁴⁶ A challenged voter deemed eligible by the registrars shall be entitled to vote, regardless of whether polls have closed by the time the challenge is adjudicated.⁴⁷

³² *Id.* § 21-2-230(b).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* § 21-2-230(b); *see also id.* § 21-2-217 (current version) (detailing criteria for determining voting residence).

³⁸ *Id.* § 21-2-230(b)(1).

³⁹ *Id.* § 21-2-230(b).

⁴⁰ *Id.* § 21-2-230(d).

⁴¹ *Id.* § 21-2-230(f).

⁴² *Id.* § 21-2-230(c).

⁴³ *Id.* § 21-2-230(a).

⁴⁴ *Id.* § 21-2-230(h).

⁴⁵ *Id.* Section 8(d) of the National Voter Registration Act (NVRA) provides the exclusive method to remove voters from the voter rolls based on change in residency. 52 U.S.C. § 20507(d).

⁴⁶ O.C.G.A. § 21-2-230(h).

⁴⁷ *Id.*

If it is not practical to conduct a hearing on the merits of the challenge prior to the polls closing or the registrars begin a hearing and find that “a decision on the challenge cannot be rendered within a reasonable time,” the voter must be allowed to cast a challenged ballot similar to a provisional ballot.⁴⁸

The “challenged” ballot should be marked as such, and if the grounds of the challenge are based on the voter’s qualifications, the hearing on the merits of the challenge to the voter’s eligibility must be held “prior to the certification of the consolidated returns of the election by the election superintendent,” which this year is November 12, 2024 at 5:00pm.⁴⁹ If the challenge is on other grounds, no further action is required, but the election superintendent cannot certify returns until the hearing is complete and a decision is rendered.⁵⁰ The final decision can be appealed by either the voter or the challenger.⁵¹

2. *Challenges to voters who cast an absentee ballot*

If a voter attempts to cast their absentee ballot, the voter is challenged on grounds other than their qualifications, and it is not practical to conduct a hearing prior to polls closing, the absentee ballot should be treated as a challenged ballot.⁵²

If a voter attempts to cast their absentee ballot and the voter is challenged on qualification grounds, the board of registrars must conduct an expedited hearing prior to the certification of the superintendent’s consolidated returns.⁵³ The superintendent cannot certify those returns without the result of the hearing.⁵⁴ If the challenge is upheld, the elector will be removed from the rolls,⁵⁵ and if not, their vote should be counted and processed along with the consolidated returns.⁵⁶

II. Other Legal Requirements

As you know, both federal and Georgia law provide robust protection against voter intimidation and other forms of infringement on the fundamental right to vote. The process for responding to early ballot challenges—especially those conducted in bulk—must therefore comply with all such federal and state laws, as well as the U.S. Constitution. As detailed above, the NVRA prohibits the systematic removal of voters within 90 days of an election, and sustained mass challenges likely violate this provision.⁵⁷ As such, we suggest that you reiterate to your staff and volunteers their responsibility to protect Georgia voters from baseless and discriminatory challenges, as well as alert them to the ways in which the adjudication of early ballot challenges can implicate both state and federal law.

A. Racially Discriminatory Challenges

Organized challengers frequently target voters from historically disenfranchised communities in an attempt to intimidate or deter members of those communities from voting.⁵⁸ Sustaining such discriminatory challenges could violate the U.S. Constitution and federal law. Taken together, the Equal Protection Clause of the Fourteenth Amendment⁵⁹ and Section 2 of the Voting Rights Act⁶⁰ prohibit the use of voting practices that result in citizens being denied equal access to the democratic

⁴⁸ *Id.* § 21-2-230(i).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* § 21-2-230(e).

⁵³ *Id.* § 21-2-230(g).

⁵⁴ *Id.*

⁵⁵ With the exception of a challenge based on change in residency. *See supra* note 50.

⁵⁶ *Id.*

⁵⁷ *Forward v. Ben Hill Cnty. Bd. of Elections*, 509 F. Supp. 3d 1348, 1355 (M.D. Ga. 2020); *Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1346 (11th Cir. 2014).

⁵⁸ *See, e.g.,* Nicolas Riley, *Voter Challenges*, Brennan Ctr. for Just. at 11-12 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

⁵⁹ U.S. Const. amend XIV, § 1.

⁶⁰ 52 U.S.C. § 10301.

process on account of “race, color, or membership in a language minority group.”⁶¹ Because these are often the exact groups targeted by mass challenges, local elections officials should consider carefully whether granting mass challenges brought before them would have the effect of unlawfully disadvantaging voters because of their race.

B. Voter Intimidation

Baseless mass challenges to voter eligibility could constitute voter intimidation, because such challenges are often made in bad faith to deter eligible citizens—including members of historically disenfranchised groups—from voting. Such voter intimidation is illegal under both federal and Georgia law.⁶²

Federal law provides that anyone who “intimidates, threatens, coerces, or attempts to intimidate, threaten, or coerce, any other person for the purpose of interfering with the right of such other person to vote” in a federal election has committed a federal crime.⁶³ Additionally, several federal statutes impose civil liability for voter intimidation. Section 11(b) of the Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or attempt to vote.”⁶⁴ And the Ku Klux Klan Act of 1871 makes it unlawful for “two or more persons to conspire to prevent by force, intimidation, or threat,” any voter from casting a ballot for the candidate of their choice.⁶⁵

Similarly, Georgia law criminalizes the use of “force and violence, or acts in any manner to intimidate any other person” from voting or refraining from voting in an election, or registering or refraining from registering to vote.⁶⁶ Accordingly, election officials should be aware that frivolous challenges to voter eligibility may be considered voter intimidation in violation of federal and Georgia law.

C. Uniform and Nondiscriminatory Standards

The U.S. Constitution and federal law require that each state and political subdivision use uniform, nondiscriminatory standards and processes for evaluating voter eligibility challenges.⁶⁷ Under the U.S. Constitution, counties in the same state are prohibited from “us[ing] varying standards to determine what [i]s a legal vote” when processing ballots in presidential elections.⁶⁸ Similarly, the NVRA mandates that any voter registration list maintenance activity be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act[.]”⁶⁹ including “any list maintenance activity based on third party submissions.”⁷⁰ The U.S. Department of Justice has advised that numerous list maintenance methods commonly used in mass voter eligibility challenges might violate the NVRA, including “comparing voter files to outdated or inaccurate records or databases, taking action that erroneously affects a particular class of voters (such as newly naturalized citizens), or matching records based solely on first name, last name, and date of birth.”⁷¹

The NVRA further mandates that election officials may not “systematically remove” ineligible voters from voter registration rolls within 90 days preceding an election for federal office.⁷² According to the U.S. Department of Justice, this restriction “applies

⁶¹ See *Guidance Under Section 2 of the Voting Rights Act*, 52 U.S.C. § 10301, for *Redistricting and Methods of Electing Government Bodies*, U.S. Dept. of Justice (Sept. 1, 2021), <https://www.justice.gov/opa/press-release/file/1429486/download>.

⁶² GA. CODE ANN. § 21-2-567; see e.g., 52 U.S.C. § 10307(b); 42 U.S.C. § 1985(3); 52 U.S.C. § 10101(b)

⁶³ 18 U.S.C. § 594.

⁶⁴ 52 U.S.C. § 10307(b).

⁶⁵ 42 U.S.C. § 1985(3).

⁶⁶ O.C.G.A. § 21-2-567.

⁶⁷ See *Bush v. Gore*, 531 U.S. 98, 104 (2000) (finding that the lack of uniform standards across counties for when to count a ballot violates the Constitution’s Equal Protection Clause).

⁶⁸ *Id.* at 107.

⁶⁹ 52 U.S.C. § 20507(b).

⁷⁰ DOJ Guidance at 3.

⁷¹ *Id.*

⁷² 52 U.S.C. § 20507(b)(1).

to list maintenance programs based on third-party challenges derived from any large, computerized data-matching process.”⁷³

Local election officials should work to eliminate any meaningful divergence among the standards and processes used to evaluate voter challenges in different municipalities and replace them with uniform standards and processes. By doing so, Georgia voter challenge processes can avoid the “arbitrary and disparate treatment” of challenged ballots that violates the U.S. Constitution.⁷⁴

D. Removals Based on Change of Address

The NVRA strictly regulates the process for removing a registered voter from the voter registration rolls based on suspected change of address, including when removals are triggered by mass eligibility voter challenges.⁷⁵ Election officials may only remove a voter from the list of registered voters based on change in residence when: (1) the voter confirms in writing that they have moved outside of the jurisdiction; or (2) election officials have satisfied the process outlined in Section 8(d)(2) of the NVRA.⁷⁶ The United States Department of Justice has cautioned that “[a] third-party submission—such as a submission of another individual’s information via an online portal or a challenge based solely on public database information—is not confirmation by the registrant of a change of address.”⁷⁷ Consequently, **removing individuals from the list of registered voters due to suspected change of address on the basis of mass voter eligibility challenges alone likely violates the NVRA.**⁷⁸

* * *

By ensuring compliance with the processes, requirements, and limitations of Georgia’s voter challenge laws, you can mitigate the potential harm and disruption caused by frivolous voter eligibility challenges. Our hope is that this summary of the relevant law will help you to prepare proactively to develop written procedures and policies for adjudicating such challenges and train your staff, volunteers, and election inspectors on the requirements of Georgia and federal law applicable to voter eligibility challenges.

Please do not hesitate to reach out with any questions. We stand ready to assist you in upholding federal and state law and protecting Georgians’ freedom to vote.

Sincerely,

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⁷³ DOJ Guidance at 4.

⁷⁴ *Bush*, 531 U.S. at 104-05.

⁷⁵ See 52 U.S.C. § 20507(b); DOJ Guidance at 4-6.

⁷⁶ See 52 U.S.C. § 20507(b)-(d); DOJ Guidance at 4. The DOJ Guidance also provides detailed information on the requirements of Section 8(d)(2). Election officials may only remove a voter under Section 8(d)(2) of the NVRA if that voter: (1) does not vote in any election between the date the notice was sent and the second general election following the notice; and (2) does not respond to the notice. 52 U.S.C. § 20507(d)(2).

⁷⁷ DOJ Guidance at 4.

⁷⁸ *Id.* at 4-5.