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Via E-mail and Publication

Re: Guidance on Voter Challenges

Dear Georgia Elections Officials,

The undersigned organizations have observed a significant increase in voter challenges across the state in recent years. These challenges can be difficult to navigate, especially on tight timelines and as your offices prepare for the important elections occurring this year. We have prepared the attached guidance to help Georgia elections officials better understand the state and federal laws governing the challenge process. We encourage elections officials and the attorneys representing them to consult the guidance and cited authorities, including recent changes to the election code, and welcome any questions you may have.

We appreciate all of the hard work that elections officials have already put into this cycle, and we hope that our guidance will help ensure a smooth election year.

Sincerely,

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Addressing Voter Challenges:

- 1. Role of Poll Workers.** All voter challenges must be considered and decided by the Board of Registrars (“the Board”) alone.¹ Poll workers, assistant managers, and clerks should never decide that a voter who has been challenged but would otherwise cast a regular ballot should instead cast a challenged or provisional ballot.
- 2. Challenge Status.** No actor other than the Board, including an elections director or poll manager, should make a determination on sufficiency of a challenge. All challenges provided to an election official should be immediately forwarded to the Board for evaluation. Unless and until the Board makes a probable cause determination, a voter who has been named in a challenge is entitled to cast a regular ballot.² A voter should not be placed in “challenged status” and is not a “challenged elector” until the Board of Registrars finds probable cause to move forward with a challenge pursuant to O.C.G.A. § 21-2-230(b).³ Simply filing a challenge does not call for the placement of any voter into “challenged status.” If a challenge has been filed, but probable cause has not been found by the Board, a voter must be allowed to cast a regular ballot.
- 3. Who Can Challenge.** The challenger must be an individual, registered voter in the county.⁴ Before considering the merits of any challenge, Boards of Registrars must verify that the challenger is a registered voter in the county and on the county voter rolls. Boards must immediately reject anonymous, out-of-state, or out-of-county challenges.
- 4. What Probable Cause Means.** Probable cause requires “a probability—less than a certainty but more than a mere suspicion or possibility.”⁵ Probable cause is most commonly used in the criminal law context, where Georgia courts have further defined probable cause to be “the existence of such facts and circumstances as would excite the belief in a reasonable mind, that the person charged was guilty of the crime for which he was prosecuted.”⁶ After July 1, 2024, S.B. 189 specifies that probable cause for a 230 challenge includes sufficient evidence that the challenged voter is deceased, voting or registered to vote in another jurisdiction, obtaining a homestead exemption in another state, or registered at a nonresidential address. To prove that the voter is registered at a nonresidential address, the Board must find that the challenger presented sufficiently convincing evidence based on “a government office, data base, website, or publicly available sources derived solely from such government sources.” S.B. 189 also specifically lists the National Change of Address registry alone as “insufficient cause to sustain the voter challenge.”⁷ Importantly, the National Voter Registration Act (“NVRA”) prohibits removals from the list of eligible voters due to a change of address unless the voter confirms the change in writing or the state follows a two-election cycle notice-and-waiting requirement.⁸

¹ See O.C.G.A. § 21-2-230(b-j); October 13, 2022 Official Election Bulletin: “Clarification: Managing Challenged Voters at In-Person Voting Locations.”

² O.C.G.A. § 21-2-230(b).

³ A 230 challenge challenges the right of an elector to vote in an election. A challenge under O.C.G.A. 21-2-229, on the other hand, challenges a right of an elector to remain on the voter rolls. A 229 challenge requires at least 3 days’ notice to the voter being challenged, and the challenger retains the burden of proving their allegation in both types of challenges. O.C.G.A. § 21-2-229; O.C.G.A. § 21-2-230.

⁴ *Id.*

⁵ *State v. Burke*, 298 Ga. App. 621 (2009).

⁶ *McKissick v. S.O.A., Inc.*, 299 Ga. App. 772, 684 S.E.2d 24 (2009).

⁷ S.B. 189 § 5.

⁸ The NVRA provides: A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant - (A) confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered; or (B)(i) has failed to respond to a notice described in [a nearby paragraph]; and (ii) has not voted or appeared to vote (and, if necessary, correct the registrar’s record of the registrant’s address) in an election during the period

5. **Mass Challenges.** The NVRA prohibits systematic removals within 90 days of an election, which includes challenges based on “[m]ass computerized data matching processes,” without additional individualized evidence.⁹ These and any other systematic challenges filed within 90 days of an election must be rejected by Boards at the probable cause stage.
6. **Discriminatory Challenges.** The NVRA mandates that efforts to ensure accurate voter lists must be uniform and non-discriminatory, and the Civil Rights Act of 1964 (“CRA”) similarly prohibits discrimination against voters.¹⁰ Thus, federal law prohibits sustaining a voter challenge that targets or disproportionately impacts voters based upon, for example, their race or ethnicity, limited English proficiency, physical disability, or national origin. Federal law also prohibits rejecting or limiting a voter’s ability to vote based on information, or lack of information, that is immaterial to determining their qualification. For example, if an otherwise eligible voter lacks housing or provides a residence address deemed “nonresidential,” disqualifying them on that basis would be prohibited because a “residential” address is not a qualification to vote under the Georgia Constitution or the Georgia Election Code.
7. **Timing of Challenges.** As of July 1, 2024, any 230 challenge filed less than 45 days before an election cannot be considered until after that election.¹¹
8. **Reject Post-Election Challenges.** Georgia law does not permit post-election day challenges.¹² As such, any and all post-election day challenges must be rejected immediately.¹³
9. **Challenge Format.** Challenges must be in writing to the Board of Registrars.¹⁴ Challenges that are made verbally must be rejected.
10. **Challenge Justifications.** A challenge must “specify distinctly” the grounds of the challenge with respect to every voter being challenged.¹⁵ Challenges unsupported by specific evidence of voter ineligibility should be rejected. Challenges based on general knowledge without specific, individual evidence for each voter being challenged should be rejected.

beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice. 52 U.S.C. § 20507(d).

⁹ See *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014). 52 U.S.C. § 20507(8).

¹⁰ 52 U.S.C. § 20507(b); 52 U.S.C. § 10101.

¹¹ S.B. 189 § 5.

¹² See O.C.G.A. § 21-2-230(a).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*