



P.O. Box 77208, Atlanta, GA 30357  
706.389.8392 | [cmay@acluga.org](mailto:cmay@acluga.org)

October 5, 2022

Cobb County Board of Elections & Registration  
995 Roswell St. NE  
Marietta, GA 30060

Via E-mail and Publication

**Re: Dismissing Mass Voter Challenges**

Dear Cobb County Board of Elections & Registration,

The ACLU of Georgia writes in response to 1,351 Cobb County voter challenges filed between September 18-30, 2022.<sup>1</sup> Sustaining any of these challenges at this juncture would violate state and federal law because:

- (1) the challengers have failed to meet their burden of proof;
- (2) systematic, non-individualized challenges cannot be sustained within 90 days of an election; and
- (3) any further investigation into the challenges by county elections workers violates the process laid out by state law.

**Accordingly, you must immediately dismiss the pending challenges to Cobb voters.**

Strict state and federal processes exist to safeguard the accuracy of our voter rolls. In recent years, third-party groups have attempted to bypass these processes by lodging mass challenges against hundreds of thousands of voters across the state at the eleventh hour.<sup>2</sup> These challenges not only attempt to disenfranchise voters at the last minute, but also attempt to shift the burden of proof from the challenger to overworked elections staff. However, federal and state law mandate that the Board promptly dismiss said challenges absent individualized evidence from the challengers supporting their allegations. Because the challengers have provided no such individualized evidence here, the challenges do not meet the probable cause standard, and the Board should immediately dismiss them for the reasons articulated below.

---

<sup>1</sup> The Cobb County Board of Elections is reviewing a set of ten challenges. The first two challenges were filed on September 18 and 28, 2022, challenging 585 and 684 voters respectively. Another four challenges were filed on September 29, 2022, and challenged a total of 82 voters. The four remaining challenges were filed on September 30, 2022, and challenged a total of 36 voters.

<sup>2</sup> See, e.g., Mark Niese, *Eligibility of 364,000 Georgia Voters Challenged Before Senate Runoff*, Atlanta Journal-Constitution (December 22, 2020), <https://www.ajc.com/politics/eligibility-of-364000-georgia-voters-challenged-before-senate-runoff/3UIMDOVRFVERXOJ3IBHYWZBWYI/>.

*First*, challenges that rely on database-matching and non-individualized evidence do not meet the high burden that the challenger must establish to sustain a voter challenge. O.C.G.A. § 21-2-230(a) requires the Board to find “probable cause” to move forward with a challenge.<sup>3</sup> Probable cause requires “a reasonable ground for belief,” which is “something more than mere suspicion.”<sup>4</sup> The Secretary of State’s Office recently weighed in on the type of evidence that indicates a challenge is systematic and lacking the requisite standard, rather than individualized. A spokesman for the office explained: “If I just show up with a spreadsheet and I say, ‘These 500 electors should be taken off their registration rolls,’ [election board members] have to make a decision: ‘Is that a systematic challenge?’” He contrasted this type of spreadsheet evidence with examples of individualized evidence that may serve as a basis to challenge a voter, such as “a three-ring notebook with handwritten notes and a change-of-address form taped to each page and a note from my neighbor, saying ‘Yep, I moved. Please forward my mail.’”<sup>5</sup> The Gwinnett County Board of Registrations & Elections recently considered challenges similar to the ones made in Cobb, which it dismissed because the Board found that a spreadsheet of challenged voters did not provide evidence sufficient to meet the probable cause standard.<sup>6</sup>

The challenges at issue fall squarely in the category called into question by the Secretary of State’s office and correctly dismissed by the Gwinnett Board as non-individualized and improper. These challenges simply allege that apartment or dorm numbers may be missing from certain addresses. The challengers do not claim to have personal knowledge whether voters actually live at these addresses, and do not describe any investigation into whether, for example, the mail carrier would still be able to deliver mail to these addresses without unit numbers. The alleged “incomplete addresses” could just as easily be a reporting error that is no fault of the voter. Without individualized evidence, the challengers have not met the probable cause standard required by state law.

*Second*, any systematic removal of voters within 90 days of a federal election violates the National Voter Registration Act (“NVRA”). This applies to any removal resulting from a process that is non-individualized, whether it is pursuant to O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2-230.<sup>7</sup> Mass challenges like these, without any personal knowledge of the

---

<sup>3</sup> Although one of the challengers uses requirements from O.C.G.A. § 21-2-417 as a basis for the challenge, that statute is about requirements to receive a state-issued voter identification card. The purpose of address requirements to receive identification are different than what is needed to establish voter eligibility. The challenger’s imputation of the standard here is without reason.

<sup>4</sup> *U.S. v. Clecker*, 270 F.3d 1331, 1334 (11th Cir. 2001).

<sup>5</sup> Fredreka Schouten, *Conservative activists in Georgia wage campaign to purge voter rolls ahead of November’s election*, CNN (Sep. 29, 2022), <https://amp.cnn.com/cnn/2022/09/29/politics/georgia-voter-challenges/index.html>.

<sup>6</sup> Mark Niese, *Mass Georgia voter challenges thrown out in Gwinnett*, Atlanta Journal Constitution (Oct. 4, 2022), <https://www.ajc.com/politics/gwinnett-election-board-votes-to-dismiss-voter-challenges/3JY2QZ6VBVCYBFEQLI6VTIRRMA/>.

<sup>7</sup> *Majority Forward v. Ben Hill Cnty. Bd. of Elections*, 512 F. Supp. 3d 1354, 1369 (M.D. Ga. 2021) (“Reading the NVRA and § 21-2-230 together, Plaintiffs have demonstrated a substantial likelihood of success on the merits of establishing that Defendants violated the NVRA by failing to conduct the

challenged voters or addresses listed, is a systematic challenge, as case law has clearly established<sup>8</sup> and the Secretary of State's Office's recent statements confirm.<sup>9</sup> Sustaining these systematic challenges at this point in the election cycle is prohibited by federal law.<sup>10</sup>

*Third*, the Board should refrain from expending staff resources to investigate these challenges any further and instead follow the process required by state law. O.C.G.A. § 21-2-230(b) lays out a simple two-step framework in evaluating a challenge.

- Step 1: “the board of registrars shall *immediately* consider such challenge and determine whether probable cause exists to sustain such challenge” (emphasis added).<sup>11</sup>
- Step 2: if the Board does not find that probable cause exists after immediate consideration, “the challenge shall be denied,”<sup>12</sup> or if the Board does find that probable cause exists, it must initiate certain notice and hearing processes.<sup>13</sup>

Because the challengers here have provided no evidence sufficient to establish probable cause, the Board must deny the challenge after Step 1, which only requires considering the challenges on their face. Any removals resulting from these challenges at this point in the electoral cycle would be strictly prohibited by federal law, and continuing to investigate the challenges though no probable cause exists would violate the processes laid out by state law. It is improper for the Board to insert an additional step into the statutory process by conducting research on behalf of the challengers, rather than following O.C.G.A. § 21-2-230's direction to deny the challenges upon determining a lack of probable cause.

In other words: Not only is the Board not required to conduct the supplemental, individualized research that the challengers themselves failed to provide, Georgia law provides a *de facto* prohibition against the Board's further investigation by directing elections officials to dismiss all challenges made without probable cause. There is a distinct possibility that other challenges, in addition to the over 1,300 filed in the last two weeks alone, will continue to be filed between now and Election Day. Elections staff cannot possibly conduct individualized research to make the challengers' cases while simultaneously administering a general election and likely runoff. Such a requirement would be unsustainable and is unsupported by any rational interpretation of existing law. In fact, state law makes sure to avoid this practical impossibility by directing elections

---

requisite rigorous, individualized inquiry required for challenges made within 90 days of a federal election.”)

<sup>8</sup> The Eleventh Circuit has held that a removal is “systematic” if it does “not rely upon individualized information or investigation to determine which names from the voter registry to remove.” *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1348 (11th Cir. 2014).

<sup>9</sup> Schouten (Sep. 29, 2022).

<sup>10</sup> 52 U.S.C. § 20507(c)(2)(A).

<sup>11</sup> O.C.G.A. § 21-2-230(b).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

officials to deny—not investigate—all challenges made without the requisite probable cause.

For these reasons, we urge you to dismiss the pending challenges lodged between September 18-30, 2022. Any other course will blatantly violate state and federal law.

Sincerely,



Caitlin May  
Voting Rights Staff Attorney



Rahul Garabadu  
Senior Voting Rights Staff Attorney



Cory Isaacson  
Legal Director

cc: Daniel White, County Attorney