



Georgia

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October 14, 2022

Via E-mail and Publication

**Re: Guidance on Voter Challenges**

Dear Georgia Elections Officials,

The ACLU of Georgia has noticed a significant increase in voter challenges across the state. These challenges can be difficult to navigate, especially as your offices prepare for the November general election. We drafted the attached guidance to help Georgia elections officials better understand the state and federal laws that govern the challenge process. We encourage elections officials and attorneys representing elections officials to consult the guidance and the supporting authorities.

We sincerely appreciate all the hard work that elections officials have already put in this cycle. We hope that our guidance will help ensure a smooth election. Please do not hesitate to reach out to us if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Rahul Garabadu".

Rahul Garabadu  
Senior Voting Rights Staff Attorney

A handwritten signature in black ink that reads "Caitlin May".

Caitlin May  
Voting Rights Staff Attorney

A handwritten signature in blue ink that reads "Cory Isaacson".

Cory Isaacson  
Legal Director

Attachment: How to Address Voter Challenges

## **How to Address Voter Challenges:**

- 1. Role of Poll Workers.** All voter challenges must be considered and decided by the Board of Registrars.<sup>1</sup> Poll workers (including poll managers, assistant managers, and clerks) should never decide that a voter who would otherwise cast a regular ballot should instead cast a challenged ballot.
- 2. Challenged Status.** A voter should not be placed in “challenged status” until the Board of Registrars finds probable cause to move forward with a challenge pursuant to O.C.G.A. § 21-2-230(b). Simply filing a challenge does not automatically place any voter into “challenged status.” 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.
- 3. Use of Challenged Ballots.** Similarly, a voter should not cast a challenged ballot unless the Board of Registrars has found probable cause pursuant to O.C.G.A. § 21-2-230(b). 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.
- 4. What Probable Cause Means.** Probable cause requires “a reasonable ground for belief” which is “something more than mere suspicion.”<sup>2</sup> Georgia courts have 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.”<sup>3</sup>
- 5. Mass Challenges.** Challenges based on “[m]ass computerized data matching processes,” without additional individualized evidence, must be rejected by Boards at the probable cause stage because they constitute systematic challenges, which federal law prohibits within 90 days of an election.<sup>4</sup>
- 6. Timing of Challenges.** Challenges to in-person voters (including in-person early voters) must be filed before the in-person voter casts a ballot.<sup>5</sup> Challenges to absentee voters must be filed before 5:00 p.m. on the day before absentee ballots begin to get scanned.<sup>6</sup>

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<sup>1</sup> 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.”

<sup>2</sup> *United States v. Cleckler*, 270 F.3d 1331, 1334 (11th Cir. 2001).

<sup>3</sup> *McKissick v. S.O.A., Inc.*, 299 Ga. App. 772, 684 S.E.2d 24 (2009).

<sup>4</sup> See *Arcia v. Florida Sec’y of State*, 772 F.3d 1335, 1344 (11th Cir. 2014).

<sup>5</sup> O.C.G.A. § 21-2-230(a).

<sup>6</sup> *Id.*

7. **Reject Post-Election Challenges.** Any and all post-Election Day challenges must be rejected immediately.<sup>7</sup>
8. **Challenge Format.** Challenges must be in writing to the Board of Registrars.<sup>8</sup> Thus, challenges that are made verbally must be rejected.
9. **Who Can Challenge.** The challenger must be an individual, registered voter in the county.<sup>9</sup> 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.
10. **Challenge Justifications.** A challenge must “specify distinctly” the grounds of the challenge with respect to every voter being challenged.<sup>10</sup> Challenges unsupported by specific evidence of voter ineligibility must immediately be rejected. For example, the following kinds of challenges<sup>11</sup> should be rejected:
  - “I heard these voters speaking Spanish.”
  - “I heard this voter doesn’t live here.”
  - “I’ve lived in this small town for 20 years, and I’ve never seen these people before.”
  - “These people don’t look like they are from around here.”
  - “I saw these voters attend a political rally.”
  - “They don’t look like U.S. citizens.”

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<sup>7</sup> See O.C.G.A. § 21-2-230(a).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Several of these examples are based on actual reports the ACLU of Georgia has received in the past.