

## Top 6 Issues with SB 202

### First tier:

1. Allows the state legislature to take over county elections through control of the State Election Board (“SEB”) and the Secretary of State’s office (**state takeover of county elections**).
2. Dramatically restricts absentee by mail voting (**attack on absentee voting**).
3. Makes runoff elections virtually impossible to administer by moving them to 28 days after the general election (**28-day runoff**).

### Second tier:

4. Criminalizes Georgians providing refreshments to their neighbors who are waiting in line to vote (**line-warming ban**).
5. Disenfranchises most eligible voters on Election Day who cast provisional ballots inside their own counties but outside their one assigned polling location (**disenfranchises out-of-precinct voters**).
6. Creates county budget shortfalls through cuts and unfunded mandates (**overwhelms county budgets**).

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### **1. State takeover of county elections:**

- **Takeover of State Election Board (“SEB”).** The bill removes the Secretary of State as State Election Board chair and member, replacing them with a direct legislative appointment and **giving the state legislature control over 3 out of 5 seats**, a supermajority.<sup>1</sup>
  - The legislature would control the State’s top elections rulemaking and enforcement body.
- **Takeover of Secretary of State’s office (“SOS”).** After kicking the Secretary of State off of the board, the bill requires that the Secretary of State provide limitless resources to the SEB at the SEB’s “sole discretion”.
  - Who will the employees of the Secretary of State’s office answer to, the Secretary of State or the State Election Board?
  - The State Election Board can demand that SOS employees -- like Chief Investigator Frances Watson or Chief Counsel Ryan Germany or Chief Operating Officer Gabriel Sterling -- do work for them over and above work and priorities set by the SOS.
  - **Effectively, the state legislature-controlled SEB commandeers the entire SOS office after kicking the SOS off the board.**
- **Takeover of county elections offices.** The bill sets an extremely low bar for SEB control of county elections. Any county governing authority, pair of members from a county legislative delegation,<sup>2</sup> **or the legislature-controlled SEB, on its own motion**, can petition for a temporary takeover--the county can’t even pay for a lawyer to defend itself in front of the SEB.

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<sup>1</sup> Currently, the SEB is composed of an elector chosen by a majority of the Senate, an elector chosen by a majority of the House of Representatives, nominees from each of the two major political parties, and the Secretary of State. O.C.G.A. § 21-2-30.

<sup>2</sup> One member of the House and one member of the Senate delegation in the county can petition to start this process. If a county is represented by at least four members in both the Georgia House and Senate, then two members in each body are required.

- Authorizes the SEB to make hiring and firing decisions during the takeover period.
- Per Chairman Barry Fleming, **this process is modeled on the extremely unpopular, failed school board takeover process.**<sup>3</sup>
- **This authority allows the legislature to commandeer its own elections.**
  - It can be used in a politically motivated way to disrupt any county’s election activities due to the low bar for the SEB to exercise this authority.
  - **Election results are certified by counties.**<sup>4</sup> If the legislature is convinced by The Big Lie<sup>5</sup>, they could use this process to prevent a county from certifying results they don’t like.
  - An incumbent member of the legislature could use this process to meddle in the certification of an election where they might be defeated, or to pressure election officials beforehand.

## 2. Attack on absentee voting:

- **Requires photo ID and sensitive personal info for applications and ballots.** Disenfranchises voters without a DL/ID# or access to a copier and creates opportunities for identity theft when **over 50% of absentee voters are seniors or physically disabled.**<sup>6</sup>
  - **Electronic access:** The bill is vague about whether the Secretary of State’s absentee ballot portal will accept uploads of all forms of valid photo ID.
- **Creates an 11-day cutoff for ballot applications with no emergency provisions or notice for late submissions.**
  - Gov. Kemp wouldn’t have been able to vote in November under this provision--he requested his ballot the Friday before the election due to an unexpected COVID-19 quarantine.<sup>7</sup>
  - **ACCG asked for the cutoff to be one week (7 days) before election day,** not 11 days before Election Day.<sup>8</sup>
  - The bill does not provide meaningful notice to voters whose ballot applications come in after the deadline.
- **Reduces the period for mailing and receiving ballots by over 40%.** Current law requires ballots to be mailed out 49-45 days before an election. This bill requires mailing ballots out 29-25 days before an election.
  - This timeline delays ballots for the nearly 600,000 Georgians on the rollover absentee list who are, by definition, physically disabled or age 65+.

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<sup>3</sup> [School boards defy Gov. Nathan Deal on state schools takeover](#), By Ty Tagami, The Atlanta Journal Constitution, September 24, 2016.

<sup>4</sup> OCGA § 21-2-499

<sup>5</sup> “The Big Lie” is the language used by the House Impeachment Managers to refer to former President Trump’s “baseless and overwhelmingly debunked effort to call the results of the 2020 election into question.” [Trump’s ‘Big Lie’ was bigger than just a stolen election](#), By Aaron Blake, The Washington Post, February 12, 2021.

<sup>6</sup> [Data analysis by U.S. Elections Project](#), November 5, 2020.

<sup>7</sup> [Gov. Kemp In Quarantine After Potential COVID-19 Exposure](#), By Stephen Fowler and Grant Blankenship, GPB, October 30, 2020.

<sup>8</sup> [Report of the ACCG Elections Subcommittee](#), ACCG General County Government Committee, August 13, 2020.

- Elections offices would be severely burdened by the simultaneous demands of processing new voter registrations, mailing the initial batch of absentee ballots, and preparing for early vote.
- **Makes absentee dropboxes functionally useless** by placing them inside early voting locations only during voting hours.
  - Increases the burden on disabled and senior voters. Dropboxes save resources for voters since the state doesn't pay for return postage on absentee ballots.
  - Voters should be able to cut out the middleman and return their ballot, conspicuous and containing sensitive personal information, directly to a dropbox.
  - Absentee ballots can circulate for days--or, sometimes, weeks--in the postal system.

### 3. 28-day runoff cycle:

- **This provision forces all runoffs to be 28 days after the general election**, which creates an impossible situation for elections offices while drastically reducing voter access.
  - 4.5 million voters cast ballots in the January 5 runoff,<sup>9</sup> a nine week runoff. A 28-day runoff would have made that impossible.
- **Early voting for federal runoffs is cut down from three weeks to a maximum of one week, with no weekends.** This week will often include Thanksgiving and the day after Thanksgiving, as it did in the 2020 cycle, which means early voting will be available on just three days.
  - 2.1 million Georgians voted in the three weeks of early vote for the January 5 election.<sup>10</sup> If this bill were in effect, those voters would have been limited to the three days before Thanksgiving. **How can we accommodate 2.1 million voters in three days, during the week in which more Americans travel than any other?**
- **Sending out absentee ballots for the runoff will be impossible.** The state certifies elections 17 days after Election Day... when will a runoff ballot even be available to send out? When will voters actually receive them?
  - The “rollover” absentee list, which is the first non-military group to receive absentee ballots for any given election, is all voters who are disabled or age 65+ -- the list contained almost 600,000 Georgia voters this past cycle.
  - In the 2020 election cycle, the Secretary of State moved the 4-week state runoffs to coincide with the 9-week federal runoffs to ease the burden on elections offices.<sup>11</sup>
- **Candidate-requested audits or recounts for races on the runoff ballot would be impossible.**
  - After the Trump campaign exercised its right to a recount, the November general election was finally re-certified by the state on December 7, 2020<sup>12</sup> -- 6 days after December 1, the date for the 28-day runoff. **How can you conduct a runoff election for a race that may not have even been certified yet?**

<sup>9</sup> [January 5, 2021 Runoff Election Results](#), Georgia Secretary of State.

<sup>10</sup> Id.

<sup>11</sup> [Secretary of State Announces Hand Recount. Moves PSC Runoff](#), By Stephen Fowler, Flagpole, November 11, 2020.

<sup>12</sup> [Georgia's Secretary of State officially recertifies the results of election after 3 counts](#), By WSBTV.com News Staff, December 7, 2020.

- **Runoff voter registration cutoff date would be the day prior to the general election.** Elections offices will be extraordinarily burdened by having to process those registrations while conducting audits, recounts, and certifying the general election.
    - This timeline is bordering on fantasy, election law should not be written based on a wish and a prayer that there is no post-certification recount required, after a post-election audit is already required.
  - **Counties will have to expend enormous resources to 1) process registrations 2) conduct the runoff and 3) certify the election and recount ballots at the same time.**
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## **Second tier**

### **4. Line warming is prohibited:**

- **Criminalizes the act of handing water or food to any voter in line**, no matter how long the line.
  - Due to cuts in absentee voting and early voting (for runoffs), **we are likely to see even longer lines.**
  - **Georgia frequently experiences extreme weather (especially heat and humidity).** Long wait times, which occurred at a few early voting locations across the state during the general election and the runoff, would be exacerbated by disallowing voters who are dehydrated or having low blood sugar from receiving snacks and water.
- **Inability to access food and hydration can make a bad situation (extremely long lines) worse** if voters unnecessarily pass out or require medical attention due to unnecessary election laws.
  - Disabled and senior voters may be most disenfranchised by this provision as they are unable to bear the burden of waiting in line without support.
- **Neighbors would be charged with a misdemeanor for offering a bottle of water to voters waiting in line.** The provision would even criminalize a parent for bringing food to their child (of voting age).

### **5. Out-of-precinct provisionals:**

- **The bill invalidates out-of-precinct provisional ballots** if they are cast before 5pm.<sup>13</sup> These ballots are disproportionately cast by Black voters.
  - **These are ballots cast by eligible voters within their counties of residence.**
  - 11,000+ general election<sup>14</sup> and 10,000+ runoff voters cast provisional ballots. Most of these are out-of-precinct ballots.
- Reasons voters show up at locations out of precinct include:
  - They never received accurate information on their polling location / a precinct card.

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<sup>13</sup> [Uncounted Votes: The Racially Discriminatory Effects of Provisional Ballots](#), By Joshua Field, Charles Posner, Anna Chu, Center for American Progress, October 2014.

<sup>14</sup> [November 3, 2020 Election Results](#), Georgia Secretary of State.

- Their precinct has changed, sometimes even mid cycle.
- They show up to various early voting locations in their county on Election Day, even if that location is not their assigned precinct, because for three weeks, they hear that they can vote anywhere in their county, at any of those locations.
- Their work/family/life obligations.
- **The runoff ballot was the same statewide**, therefore voters who cast out-of-precinct provisional ballots were not, in fact, excluded from voting in their local races. There is no reason for these provisional ballots, cast by eligible voters, to be thrown out.
- Provisional ballots are thoroughly checked and vetted – **out-of-precinct ballots are an important backstop against disenfranchisement.**
- **The concern for down-ballot races is pretextual and unfounded.**
  - Many voters choose not to vote in down-ballot races. In the 2020 general election: **500,000 voters who cast votes for President did not vote for State Senate.**
  - Of the around 10,000 valid provisional ballots cast in the 2020 election for president, nearly 8,000 also voted in their down-ballot State Senate race.

## 6. Private funding ban and unfunded mandates on counties:

- **The bill bans private funding, gifts, and support, and creates unfunded mandates.**
- **43 Georgia counties--including many rural counties--received over 32 million dollars** in grant funding this past cycle.<sup>15</sup> Grant funding eligibility is not limited to metro counties.<sup>16</sup>
  - The provision is overbroad and could lead to absurd bans on pro-voting activities like pizzerias donating food to election workers; non-public polling locations offering to provide free janitorial services or utilities during usage periods; Georgia power providing generators at no cost; election volunteers donating their time.
- **Why limit supplemental help to ease the election cost burden on taxpayers?** The pandemic is not over, and we do not know what the next emergency might be.
  - Governor Kemp has been forced to make millions in budget cuts for 2021 due to reduced tax revenue -- state funding for elections is unlikely to effectively match the level of private donations. We should not dissuade private parties from offering to support critical elections infrastructure.
- **This bill would mean the loss of critical supplemental funding** when we do not have the budget to meet our *existing* financial needs for elections, let alone meet the new requirements of this bill--a particularly challenging budget crisis for rural elections offices.
- **The bill contains many unfunded mandates**, including, but not limited to:
  - All ballots must be printed on security paper.
  - Counties must perform many election functions simultaneously during a 28-day runoff.
  - Counties must hold hearings for an unlimited number of frivolous voter challenges within 10 days of the challenge being filed.

<sup>15</sup> [Center for Tech and Civic Life: Grants Awarded by State and County](#)

<sup>16</sup> [CTCL COVID-19 Response Grants Available for Georgia Runoff](#), Center for Tech and Civic Life, November 17, 2020.

**Bonus issue:**

- **Mobile voting units are banned from being used during early vote.**
  - Voters check in, cast their ballots, and scan their ballots the exact same way in a mobile unit.
  - Mobile units can offer necessary emergency supplements to local election infrastructure.
  - Douglas County just purchased a mobile voting unit, which would now be a total waste of taxpayer funds.<sup>17</sup>
  - No questions have been raised at any level regarding the security of mobile voting units; why prohibit another means by which local elections officials can meet their jurisdictions' needs and prevent long lines?

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<sup>17</sup> [Douglas County purchasing voting bus with \\$371K in grant funds](#), By Derrick Mahone, The Douglas County Sentinel, December 19, 2020.