



P.O. Box 77208, Atlanta, GA 30357  
678.439.9143 | syoung@acluga.org

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Via Publication

**Re: Mass Challenges to Voter Eligibility**

Dear Georgia Elections Officials,

The ACLU of Georgia has learned that True the Vote, an organization based in Texas, has filed baseless voter eligibility challenges to 364,541 Georgia voters in the middle of the ongoing runoff election. We write to warn all county Georgia elections officials that participating in this charade violates state and federal law, as explained below. **Accordingly, you must reject such challenges because they lack probable cause, and you cannot force hundreds of thousands of Georgia voters to answer these baseless charges as a condition for having their ballot counted.** Otherwise, you will face legal consequences.

This mass challenge is one of the oldest tricks in the voter suppression handbook: a practice known as “voter caging.” Step one: target thousands of eligible voters based on a common characteristic that is perfectly legal: in this case, having your mail sent to a different address through the National Change of Address (“NCOA”) system. Any Georgia resident has the right to do this if, for instance, they are staying with relatives temporarily during the pandemic, are in the military, or go to college elsewhere. Step two: wait until an election is underway and suddenly challenge all of those voters at the same time. Step three: cause elections officials to send hearing “notices” to thousands of these voters last minute, forcing these voters to appear in-person at a hearing (usually on or near Election Day) where they must show up or be disenfranchised.

Those who engage in voter caging know that few voters will actually show up at these last-minute hearings, especially in the middle of a pandemic, and will thus have their ballots thrown out. And this assumes the voter even hears about them.

Participating in this kind of voter-caging scheme on the eve of an election is illegal because federal law prohibits any kind of systematic voter removal program

less than 90 days before an election.<sup>1</sup> Moreover, federal and state law already have an elaborate, multi-year procedure for testing whether voters who register address changes with the NCOA have actually moved. 52 U.S.C. § 20507(d)(1); O.C.G.A. § 21-2-233. Elections officials cannot use voter caging to circumvent this legally required process for NCOA removals.

In order for these challenges to proceed, challengers must establish “probable cause.” O.C.G.A. § 21-2-230(b). Probable cause requires “a reasonable ground for belief” which is “something more than mere suspicion.”<sup>2</sup> “Rumor, suspicion, speculation or conjecture is not sufficient to show probable cause.”<sup>3</sup> And importantly, probable cause must be “individualized”<sup>4</sup> and “particularized with respect to that person.”<sup>5</sup>

The NCOA information provided by the challengers fails to establish probable cause, as the Cobb County Board of Elections and Registration found in a meeting held on December 18, 2020. This information cannot show whether a voter may have changed their mailing address without forfeiting their eligibility to vote. For example, as noted above, a voter may be a member of the armed forces validly voting from out of state, as was the case for hundreds of Nevada voters who were initially accused of improperly voting in the November general election.<sup>6</sup> Alternatively, a voter may have moved for temporary purposes to stay with relatives during the pandemic or may be attending college in another part of the state. All of these circumstances, among others detailed by Georgia law, would allow a voter to cast their ballot from outside their voting jurisdiction. *See* O.C.G.A. § 21-2-217. Thus, elections officials cannot make a finding of probable cause based on the NCOA information.

For these reasons, this mass challenge must be rejected by elections officials.

Sincerely,



Sean J. Young  
Legal Director  
ACLU of Georgia

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<sup>1</sup> *See Arcia v. Fla. Sec. of State*, 772 F.3d 1335, 1344 (11th Cir. 2014); *N.C. State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enft.*, No. 1:16CV1274, 2018 WL 3748172, at \*7 (M.D.N.C. Aug. 7, 2018); 52 U.S.C. § 20507(c)(2)(A).

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

<sup>3</sup> *Zimmerman v. State*, 207 S.E.2d 220, 222 (Ga. App. 1974).

<sup>4</sup> *Autry v. State*, 277 Ga. App. 305, 309 (Ga. App. 2006).

<sup>5</sup> *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)

<sup>6</sup> Jae C. Hong, *Nevada Election Results: the 3,000 Challenged Votes*, Wall St. J. (Nov. 8, 2020), <https://www.wsj.com/articles/nevada-election-results-the-3-000-challenged-votes-11604863720>.