

February 3, 2023

Dear Director Evans,

In the 2022 election cycle individuals and groups challenged the eligibility of tens of thousands of Georgian voters, largely without sufficient basis. Although county boards rightfully dismissed most of the challenges, competing interpretations of state law caused the boards to use differing processes, at times causing unnecessary burdens on election directors and confusion for the voters subject to the challenges.

We request that this office create guidance that governs how challenges work from start to finish. The upcoming election cycle will likely see more mass challenges. By creating guidance before the cycle's administrative burdens become too intense, this office can help counties navigate a thorny law with more clarity and efficiency. We are happy to offer any assistance requested in the effort to create a standardized approach.

### **I. County Boards Have Faced Mass Voter Challenges in the Last Two Federal Election Cycles**

The Atlanta-Journal Constitution [reported](#) over 65,000 challenges to voters in 2022. Most of these were mass challenges targeting hundreds or thousands of voters on shaky grounds such as their name appearing on the United States Postal Service's change of address registry. These challenges occurred in at least eight counties, including [Gwinnett](#) (to 37,000 voters)<sup>1</sup>, [DeKalb](#), and [Fulton](#). Previously, in December 2020, a group based outside of Georgia [challenged](#) more than 364,000 voters across the state.

These mass voter challenges are rarely successful: county boards [rejected](#) all but around 3,200 of them last year. As [explained](#) in a prior letter to the county boards, they are usually predicated on faulty grounds and more likely to disenfranchise eligible voters than to catch ineligible ones. Further concerning is the burden the challenges bring to the boards, which often comes in the busiest part of the election cycle. The mass challenge in Gwinnett County, for example, [required](#) attention from 5 to 10 workers "all day, every day, six days a week over [a] couple weeks." The challenge did not find a single ineligible voter. Additionally, the challenges frequently flagged voters who were [already](#) in inactive status. Forcing boards to pour resources into investigating voters who are already on the path to removal is not just inefficient: it improperly transfers to citizens the power to decide when boards should conduct voter list maintenance.

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<sup>1</sup> The CEO of the group that brought the Gwinnett challenge [said](#) that the group would bring more in "similar numbers to what you are seeing . . . from Gwinnett," although no other challenge on that scale materialized.

## II. A Lack of Clarity Around What the Law Requires Resulted in Differing Approaches from County Boards on How to Handle Challenges

Two statutory provisions govern the challenge process. The first, § [21-2-229](#), covers challenges to a voter's eligibility to register or remain on the voter rolls. It requires that the board provide notice to the challenged voter within 10 business days and hold a hearing on the challenge within 3-10 further business days. The provision mandates that the challenger has the burden of proving that each voter challenged is ineligible. But boards varied in how they interpreted it. Some placed voters in a "challenged" status not contemplated by § 229 (only § 230). Other voters' statuses were not clear before a hearing and decision occurred. It is unknown what a board would do if it lacked time to hold a hearing before Election Day.<sup>2</sup>

Section [21-2-230](#) controls challenges to a voter's right to cast a ballot and lays out an in-depth [procedure](#) including a required order of operations. The first step is for the board to "immediately consider" whether the challenge establishes probable cause.<sup>3</sup> If it does not, it should be dismissed. If it does, only then does the board hold a hearing for the voter. If there is not time to hold a hearing, then the voter votes a challenged ballot. Nonetheless, boards varied in how they interpreted multiple aspects of the law, such as how to treat voters when the board has not yet met to assess probable cause, when it is feasible to hold a hearing, or what standard to use at a hearing.

As a result of these varying interpretations, county boards handled challenges differently in 2022. Gwinnett County's board staff worked extensively to determine the 37,000 challenges lacked merit, intermittently [dismissing](#) thousands at a time (including the final 11,000 at a public meeting). The DeKalb County board held a probable cause hearing when someone [challenged](#) 1,113 voters under both provisions simultaneously. The board did not summon the voters or engage in fact finding, noting that [imposing](#) such a burden on the board was "not an appropriate use of resources." It rejected the challenges. The Fulton County board, meanwhile, [removed](#) hundreds of voters based solely on list-matching following debate that focused on whether doing so was permissible under the National Voter Registration Act.<sup>4</sup>

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<sup>2</sup> Other sources such as due process and federal statutes [create](#) additional requirements or mandate certain interpretations. We recognize that these intersections can be tricky to navigate, especially under a time crunch, which underscores the need for uniform procedures well in advance of the 2024 election.

<sup>3</sup> Probable cause [requires](#) more than "[r]umor, suspicion, speculation or conjecture." There must be enough evidence to support a "reasonable belief" that the challenged voter is not entitled to vote. Probable cause is required as the first step in the process to ensure that challenges cannot be used to tie up county resources or as a last-minute backdoor to disenfranchise eligible voters.

<sup>4</sup> The law only permits the removal of voters from the rolls if a voter 1) requested to be removed, 2) confirmed in writing that he or she changed addresses, or 3) received a notice, did not respond to it, and subsequently failed to vote in two consecutive federal elections.

### **III. Variation in Mass Challenge Responses Strains Resources, Creates Public Confusion, and Risks Disenfranchising Voters**

These disparate approaches are problematic for several reasons. First, county boards are left to develop their own procedures, a difficult task when they must account for state and federal law plus competing demands on their time and resources. In their diligence, the boards may also take on additional burdens such as Gwinnett’s intensive research.

Second, unclear procedures cause public confusion. Voters may not understand why their names are appearing on public lists and wrongly believe they cannot vote. This problem is more acute when mass challenges force officials to scramble to discover on a wide scale—with little time—who may or may not vote.

Third, challenged voters may not know about the challenge or how to defend their rights. Notice and a meaningful hearing are hallmarks of our legal system to guard fundamental rights such as voting. The lack of clarity around the fine details of the process also increases the chances of missing a step and incorrectly removing a voter.

This office can resolve these uncertainties. County boards should understand that they can take common-sense steps such as rejecting mass challenges based on unreliable list-matching without expending substantial resources. It is equally important that challenged voters know how the challenge process works and that their right to vote will not be taken without all the protections required by the law.

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We thank you for considering our position on this pressing issue and applaud the boards that rejected the many frivolous challenges seen last year. No voter should be subject to harassment or improper burdens when it comes to registering to vote and casting a ballot. We stand ready, if requested, to assist in crafting guidance.

Sincerely,

Andrew Garber  
Brennan Center for Justice

Jennifer Lee  
Asian Americans Advancing Justice-Atlanta

Act2Change

All Voting Is Local

Asian American Advocacy Fund

Athens Immigrant Rights Coalition

Beyond the Streets Social Justice  
Task Force

Black Voters Matter Fund

Center for Pan Asian Community Services

Coalition of Latino Leaders-CLILA-

Common Cause Georgia

Eritrean-American Community Center

Faith in Public Life Action

Georgia Muslim Voter Project

Georgia NAACP

Georgia Stand-Up

Latino Community Fund INC (LCF Georgia)

Migrant Equity Southeast

NAPAWF

New Georgia Project

Partners for Faith & Justice

Protect the Vote GA

Reformative Action Nationwide Taskforce, Inc

Refugee Women's Network

Southeast Immigrant Rights Network

SPLC Action Fund

Step Up Savannah

U-Lead Athens

Women Watch Afrika

Vision Center Of Hope, Inc

Fair Elections Center

The African Women Public Advocacy Committee (TAWPAC)

NAPAC-GA

Social Change

Justice for Georgia

Campus Vote Project

Nigerian American Public Affairs Committee [NAPAC]

CC:

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