

Policy Number: BRE-701

**Gwinnett County
Board of Registrations and Elections
Board Policy File**

Policy Title: **Voter Challenges**

Version: 2023-05

Effective Date: June 21, 2023

I. Authority:

The Gwinnett County Board of Registrations and Elections (“Board”) is empowered with all the powers and duties relating to the conduct of elections as election superintendents. 1988 Ga. Laws p. 4296 (Section 9).

II. Purpose:

The purpose of this policy is to establish standard procedures for voter challenges under O.C.G.A. § 21-2-229.

III. Applicability and Scope:

This policy applies to any voter challenge brought by a registered voter of Gwinnett County to provide a simple and transparent process to ensure confidence in our county voter list and in compliance with the National Voter Registration Act, Section 52 U.S.C. §20507 (“NVRA”) and state law.

IV. Related Documents and References:

- A.** O.C.G.A. § 21-2-229
- B.** O.C.G.A. §21-2-216
- C.** O.C.G.A. §21-2-217
- D.** O.C.G.A. §21-2-234
- E.** National Voter Registration Act, 52 U.S.C. §20507
- F.** Secretary of State, Official Election Bulletin, 8.18.2017

V. Definitions:

Original registration or initial registration means a voter's first qualifying registration in Gwinnett County. Where the voter has intervening registrations in other counties or is cancelled, then the initial registration will be the first qualifying registration after cancellation or returning to the County.

Restricted address means the address of any non-residential property, excluding extended stay motels and hotels. A special exemption shall be made for any homeless or precariously housed voter or applicant with special circumstances who communicates their status to the Elections Superintendent.

VI. Policy:

1. Challenges to the qualifications of a Gwinnett County registered voter to remain on the voter registration list under O.C.G.A. § 21-2-229 may only be made by a registered voter of Gwinnett County. Therefore, before acting upon a challenge, the Board must determine whether the challenger is registered to vote in Gwinnett County and, if not, the Board must reject the challenge.
2. O.C.G.A. § 21-2-229(a) requires that a challenge "be in writing and specify distinctly the grounds of the challenge." Challenges that are not in writing or which consist of vague, generalized, speculative assertions or conjecture do not satisfy this standard and must be rejected. The Elections Supervisor is authorized to request additional information from a challenger if he determines that such information is necessary to clarify the basis of a challenge. In particular, residency-based challenges must allege facts sufficient to specifically and distinctly identify the grounds for the challenger's contention that a registered voter has not satisfied the residency requirements of O.C.G.A. § 21-2-217.
3. The Board shall develop a preferred challenge form for challengers to use to help collect relevant information for the Board to make an informed decision. Upon receiving a written challenge to a voter's eligibility based upon the allegation that the challenged voter does not reside in Gwinnett County or in one of its municipalities, the Board shall require the challenger, under the authority of O.C.G.A. §21-2-229(a), to specify whether the challenge is based on the challenged voter's current residency status or the voter's residency status at the time the voter's initial registration.
4. Upon receipt of the challenge, the Board's staff shall verify that information pertinent to a challenge presented by the challenger about the challenged voter is accurate and current, including, but not limited to a voter's current voter status and address, and that the voter record does not contain errors or omissions. Any additional research shall only be conducted at the Board's request at the first hearing on the challenge.
5. The Board shall not remove any voters from the Gwinnett County voter registration list based on a challenge alleging that such voters were properly registered to vote in Gwinnett County at

the time of initial registration, but may have moved from the address listed in their voter registration file. When such challenges are received, the Board will send the challenger a letter, via first class mail, advising them of the requirements of the National Voter Registration Act (hereinafter referred to as NVRA) regarding removing a voter from the list based solely on change of address. The sole procedure to be followed in this circumstance is to send the voter a confirmation notice, and wait two federal election cycles for the voter to either vote or update their information., before removing them from the rolls as outlined under Section 8(d) of the NVRA.

- (a) If written notice of the challenge to the challenged voter is returned marked "undeliverable" by the United States Postal Service, the Board shall send the challenged voter a confirmation notice pursuant to O.C.G.A. § 21-2-234(b) and pursuant to that process a non-responsive voter would be placed in inactive status and their voting record flagged to ensure that said voter provided updated address information prior to voting.
- (b) If the challenged voter responds to the written notice with written confirmation of a change of address, then the Board shall update the voter's record to reflect such change, including the removal of such voter from the active voter list if such written confirmation from the challenged voter reflects that such voter is no longer qualified to vote in Gwinnett County.

6. If the challenger affirmatively states that the challenge is based upon the challenged voter's residency status at the time the challenged voter initially registered to vote, not due to any change of address, or that the challenge is based on grounds other than the challenged voter's residency status, then, the Board shall send written notice via first class mail to the challenged voter at their registered address and provide the challenged voter with a copy of the challenge.

7. If the challenged voter supplied a phone number or email address on the registration form, then in addition to the notice provided for in paragraph 5 above, as soon as possible after receiving the challenge, the Board will make at least three reasonable attempts, including at least one attempt during non-traditional working hours, to call or email the challenged voter to determine if the issue raised by the challenge can be resolved.

8. Pursuant to O.C.G.A. § 21-2-229, and in addition to the above efforts, the Board will send a written notice, informing the challenged voter and the challenger of the date, time, and place of the hearing along with a copy of the challenge, and shall state that either party may, but is not required to appear or be represented by counsel or another representative at the hearing. Either party may submit documents or information for the Board to consider in the hearing. The notice will be sent by first-class mail and e-mail (if available) or in the manner provided in O.C.G.A. § 21-2-228(c). The notice must be mailed sufficiently in advance of the hearing to provide the person being challenged at least three days' notice of the date, time, and place of the hearing. Where the Board determines that the volume of voter challenges, whether from a single challenger or from multiple challengers cannot be adjudicated in the time allotted for the scheduled hearing, the Board shall continue the challenges to another hearing date and all challengers and challenged voters shall be sent a new written notice in the form specified in paragraph 6.

9. Under O.C.G.A § 21-2-229(c), the challenger bears the burden of proving the challenged voter is not qualified to remain on the registration list. Because O.C.G.A. § 21-2-217(b) gives presumptive effect to the registrar's decision in determining the residence of the challenged voter at the time the registration application is considered, challengers bringing residency-based challenges must produce evidence sufficient to rebut this presumption in order to sustain their burden of proving that the challenged voter is not qualified to remain on the registration list. If the challenger fails to do so, the challenge fails, and it must be denied by the Board pursuant to O.C.G.A. § 21-2-229(c) and 21-2-217(b).

10. Nonexclusive examples of challenges that would fail to meet the minimum standards required by Section 21-2-229(a) include:

- (a) Non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address);
- (b) Assertions that a challenged voter's name is not affiliated with the address of registration in any governmental database. For instance, challenges based on the allegation that the voter's name is not associated with the utility bill for an address as the sole basis for challenge are insufficient because there could be many residents at a particular address who do not pay the utility company;
- (c) "Voter caging" challenges—blanket challenges to large numbers of people living in certain neighborhoods—shall be rejected if they fail to specify distinctly the basis for the challenge to each voter's qualifications;
- (d) Information or data that is older than 90 days from the time of submitting the challenge.

11. Where a voter is a legal resident of Gwinnett County and otherwise qualified to vote within the meaning of O.C.G.A. §§ 21-2-216 and 21-2-217, the BRE shall not remove such individual from the voter list on the basis that the voter faces challenges causing them to live on the streets or in shelters, vehicles, trailers, transitional housing, non-traditional housing or at businesses serving homeless, ill, displaced, economically challenged or other Gwinnett County residents in need of housing assistance in the county. When adjudicating such challenges, the BRE shall consider the particular circumstances, as well as any communication from the voter and the fact that the burden of proof is on the elector who brought the challenge to prove ineligibility.

12. The Board will notify challenged voters, in writing by first class, forwardable mail, and by telephone and email (if available), of any change in registration status resulting from challenge proceedings. This disposition letter shall be immediately sent to the mailing address on the voter's record.

13. A notice of the outcome of the challenge hearing shall be sent to challenger and the challenged voter and shall inform the voter that they have a right to appeal the decision by filing

a petition with the clerk of the superior court within ten days after the date of the decision of the registrars and that such petition must be served upon the other parties to the challenge and the registrars. The notice shall also include contact information for the other parties to the challenge and the registrars to effectuate such service. If the challenged voter is removed but remains eligible to register to vote, then information regarding how they can do so shall be provided.

14. A copy of each written challenge upon which the Board acts will be appended to the minutes of the Board meeting at which the action was taken.

15. The Board shall not take any action on a challenge made pursuant to O.C.G.A. 21-2-229 received between the fifth Monday prior to a primary or election and the date of such primary or election, including any runoffs. Any challenges received during this period shall be processed as set forth above following the certification of the primary or election results by the BRE.

16. If any members of the Board or employees or agents of the Gwinnett County Voter Registrations and Elections division challenge the eligibility of voters in their individual capacity while they remain in that position or have a personal or business interest in the mounting of such a challenge, they must recuse themselves from deliberating, voting or otherwise participating in any way in the Board's consideration of such challenges.

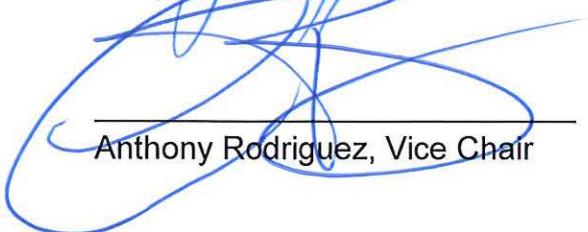
17. The Board will process all voter challenges expeditiously and objectively and shall in all instances preserve the voter's right to remain on the registration list, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.

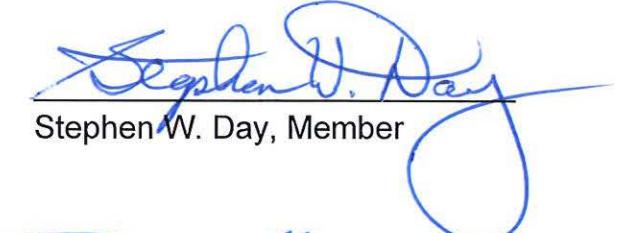
Approved, this 21st day of June 2023

GWINNETT COUNTY
BOARD OF REGISTRATIONS AND ELECTIONS

By:


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Anthony Rodriguez, Vice Chair


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