



THE CARTER CENTER

ASK THE EXPERTS

VOTER CHALLENGES IN GEORGIA



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What are the voter challenge rules in Georgia in 2022?

A voter challenge takes place when an individual questions the eligibility of a voter to cast a ballot in a given election. Ineligibility can be based on numerous grounds, including being a non-citizen, a convicted felon whose voting rights have not been restored, or because the voter no longer meets residency requirements.

The Election Integrity Act of 2021 (SB 202) significantly expanded the opportunities for making challenges. Any registered voter in a given county or municipality is allowed to make an unlimited number of challenges to the eligibility of any voter to register to vote in that county or municipality. Both applicants for voter registration and the currently registered may be challenged. The law requires that any challenge must be submitted in writing and filed with the board of registrars with specification of the grounds supporting the challenge.

In addition, a registered voter can submit unlimited challenges to voters' eligibility to cast a vote on Election Day. Similar to a voter registration eligibility challenge, any registered voter in the county or municipality may submit a challenge of another person's right to vote in writing, specifying the grounds for the challenge. The challenge may be submitted at any time before the challenged voter is to vote in-person at the polling place, or in case of an absentee voter, before 5:00 p.m. on the day before absentee ballots are to be scanned and tabulated.

How will I be notified if my registration or voter status has been challenged in Georgia?

Once a voter registration challenge is submitted in writing, election officials are required to set a hearing within 10 business days after receipt. Voters whose eligibility is challenged are to be notified by mail, at least three days prior to the hearing, of the date, time, and place of the hearing. A voter who has moved might not receive the notice since the notice will be mailed to the address listed in the voter's registration file. As such, it is important to maintain an updated mailing address with election officials so that you will receive notice of any challenge.

The Georgia state elections director specified that voter challenges cannot be filed with a poll manager or a poll worker at the polls. This means that for voters who are told they are on a "challenged voter" list, a written challenge submitted to the board of registrar has taken place, and poll managers/workers have been notified.

For these voters, the challenge has likely been submitted too close to Election Day for election officials to conduct a hearing. According to Georgia law, election officials are required to immediately consider the challenge and make a determination about whether probable cause exists to sustain the challenge. If election officials believe there is a probable cause, they must notify the poll officers at the precinct, who will then notify the challenged voter and offer the voter an opportunity to address the challenge. For voters who cast an absentee ballot or are voting in person, the law states that if a hearing is not possible due to time constraints, a voter will be asked to cast a challenged ballot, which will be placed in a secrecy envelope and reviewed by election officials later. If the challenge is upheld, the vote will not count.

Can I still vote if my status has been challenged?

If your registration is challenged prior to Election Day, and the challenge is submitted within a timeframe that does not allow for a hearing, you will be asked to cast a challenged ballot - the same type of ballot that is used for provisional ballots. The subsequent decision (after close of polls but prior to tabulation of results) on an individual's eligibility to vote may be appealed to the superior court by filing a petition.

What should I expect at a challenge hearing and how can I prepare?

Election procedures are not always applied uniformly by local election officials. The law does establish procedures for handling challenges, however. The burden of proof lies on the registered voter making the challenge of either a voter's registration or voting eligibility. The level of proof required for allowing a challenge to the right to vote is whether there is probable cause to sustain the challenge. If a voter's eligibility is challenged before Election Day and the voter is notified in advance about the upcoming hearing and why eligibility is challenged, then the voter may prepare documentation showing eligibility to register and cast a ballot.

Other than carrying all documentation that establishes the right to vote on Election Day, it is not clear how voters can prepare for a potential challenge on Election Day. Considering that Georgia requires an I to vote and inclusion on the list of electors is supporting proof of eligibility, unsubstantiated challenges should be resolved quickly. As it is likely that some challenges will raise the issue of residency, voters should consider carrying a copy of a current utility bill or other government document that shows both name and address. For an absentee voter, the absentee ballot will be processed as soon as the voter's eligibility is verified.

For challenges that take place prior to Election Day, the law states that election officials must conduct a hearing. In this hearing, officials will have the option to invite witnesses and request any materials they consider significant in determining whether the challenge is credible. When a voter is asked to attend a hearing, election officials have the discretion to call witnesses and request materials documenting why a voter's eligibility is challenged. After the hearing, election officials will make their determination and notify the registered voter making the challenge by mail.

What should I do if my voter status has been challenged?

A voter should gather all documentation that establishes her right to vote and present the documentation in support of her response to the challenge. If a challenge is upheld, a voter can file a written petition in the superior court appealing the decision.. A copy of the petition must be served to the challenging party and the registrars. The current court fee for filing a petition in the superior court is \$214.00. This court fee does not include potential additional fees, eg, legal services for petition preparation and filing, etc. The decision of the registrars will stand unless reversed by the court.

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