

**OCONEE COUNTY BOARD OF ELECTIONS AND REGISTRATION POLICY FOR VOTER
CHALLENGES SUBMITTED PURSUANT TO O.C.G.A. § 21-2-229 AND O.C.G.A. § 21-2-230
Adopted September 4, 2024.**

Purpose:

The Oconee County Board of Elections and Registration (“BER”) adopts this policy¹ so that Oconee County electors wishing to challenge electors under either O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2-230 better understand the requirements for submission of such challenges. Under this policy, any reference to *challenges* shall mean challenges under either O.C.G.A. § 21-2-229 (herein “229”) or O.C.G.A. § 21-2-230 (herein “230”), unless the policy makes express that it is only referring to one or the other.

Segregation of clerical errors and similar list discrepancies: Working with the Secretary of State’s Staff, the BER and its staff constantly strive to ensure the accuracy of voter information on the list of electors. Voters may bring to the attention of the BER any alleged discrepancies and clerical errors in the list of electors, but the voter challenge process in 229 and 230 is not the appropriate avenue for identifying these potential issues. Technical and clerical errors or discrepancies shall not be processed pursuant to the election code relating to voter challenges, but shall be reviewed and, if appropriate, acted on by the Staff. It is the responsibility of the challengers to separate any alleged clerical issue from challenges related to voter eligibility.

1. Challenges may only be filed by an Oconee County elector. An Oconee County elector is any person possessing all necessary qualifications for voting now or otherwise prescribed by Georgia law, including applicable charter provisions, and shall have registered to vote in Oconee County in accordance with all legal requirements. Challenges may not be made by voters who are not registered in the same county or municipality as the challenged voter or by private entities, businesses, political action committees, political parties, or other organizations.
2. Challenges must be in writing and shall specify the grounds of the challenge. There are no limits to the number of electors that may be challenged but challenged electors must be on the Oconee County list of electors as of the date of the challenge. Any challenge must contain all grounds and accompanying documents regardless of whether those grounds and documents were provided previously to the BER for an earlier challenge.
3. To help facilitate the review of challenges and ensure that the information presented relates to the correct voter, a challenge shall provide: a) the full name of the voter being challenged; b) the address at which the voter is currently registered; c) minimally, the year of birth of the challenged voter (full date of birth is preferred); d) the specific basis for the challenge- that is, death, mental incapacity, felony conviction status, or change of residence of the voter; e) under what statute the challenge is brought (i.e., O.C.G.A. § 21-2-229 or O.C.G.A. § 21-2-230).

¹ This policy document is intended to work in tandem with, and be fully consistent with, 229 and 230. To the extent any part of this policy conflicts with either of the referenced statutes, the statutes shall control. This policy document is not intended as providing legal advice. Any person considering bringing a challenge under 229 or 230 should consult with an attorney of their choosing.

4. Any challenge must be submitted to the Oconee County BER (1) via hand delivery to the BER, 7635 Macon Highway, Watkinsville, GA 30677; (2) via regular mail to that same address; or (3) via email delivery to the attention of the Department Director at sgregg@oconee.ga.us.
5. The submitted documents supporting a challenge should contain detail regarding why the challenger is (1) challenging the elector's right to appear on the elector list (for a challenge under O.C.G.A. § 21-2- 229) or (2) the elector's right to vote in the next upcoming election (for a challenge under O.C.G.A. § 21- 2-230). Documentation or information supporting a challenge that is vague, generalized, speculative, or the product of conjecture will not satisfy the standards of the pertinent Code sections or the requirements of the BER.
6. For reasons of computer and network security, the Elections Department cannot accept USB drives, CDs or other storage media that must be uploaded and retrieved by Elections Department staff. Submitted documents also should not include website "links" that are intended to be accessed to provide information supporting the challenge. All information submitted to the BER for consideration must be completely set forth within the submitted challenge documents. While challengers are strongly encouraged to provide references to source information, the pertinent data that the BER is expected to review must be made available within the tendered documents. The BER will not access website links for the purposes of tracking down information to support a challenge.
7. Examples of documents that may be submitted for review and consideration by the BER are listed below. This list is not exhaustive and the mere submission of evidence is not the determining factor for the BER. The BER will evaluate all submissions and hear from the challenger and challenged voter, if present.
 - Documents indicating the sale of Oconee County property;
 - Documents showing the purchase of property in another county, state or country;
 - Evidence of property homestead exemption at a different Oconee County address than the voter's current address as registered or in another county or state;
 - Voter registration outside of Oconee County after the Oconee County date of voter registration;
 - Records demonstrating voting in another county, state or country after the date of voter registration in Oconee County;
 - Notice of voter's death or obituary; or
 - First-hand knowledge of the voter who is being challenged.
8. The BER will also consider the factors listed below in weighing the evidence submitted by the challenger. This list is not exhaustive and the BER reserves the right to inquire into the methodology and procedures used by the voter challenger in preparing the submitted challenge.
 - Whether the person bringing the challenge conducted, gathered, compiled, or performed the research themselves and, if not, the source of the research and evidence submitted;
 - Whether the individual conducting the research, if separate from the person bringing the challenge, is present for questioning by the BER;

- The methodology used to conduct the research and documentation submitted as evidence;
 - The reliability of the underlying sources of the research and documents submitted as evidence;
 - The age of the underlying research and documents submitted as evidence; or
 - Whether the submissions are certified as accurate.
9. The BER shall not remove any voters from the Oconee voter registration list based on a challenge alleging that they were properly registered to vote in Oconee at the time of initial registration but may have moved from the address listed in their voter registration file. The sole procedure to be followed in this circumstance is an administrative dismissal of the challenge and 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 National Voter Registration Act of 1993 ("NVRA"). If the challenger fails to affirmatively state in writing that the challenge is based upon the challenged voter's residency status at the time the voter initially registered to vote, the BOE shall follow the following protocols:
- If such written notice to the challenged voter is returned marked "undeliverable" by the United States Postal Service, the BOE shall send the challenged voter a confirmation notice pursuant to O.C.G.A. § 21-2-234(b).
 - If no response to the BOE's written notice of challenge is received from the challenged voter, the BOE shall inform the challenger that the challenge does not present grounds to contest the eligibility of the voter to remain on the Oconee voter list and no further action shall be taken on the challenge.
 - If the challenged voter responds to the written notice with a written confirmation of a change of address, the BOE 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 Oconee.
 - The Elections Department staff will inform the members of the BOE of the submitted challenge and its dismissal.
 - The Elections Department staff will notify the challenger of the reason for the dismissal.
10. For any challenge under 229 or 230, if the voter supplied a phone number or email address on the registration form or in other writings such as an absentee ballot application received by the BOE, then in addition to any other notice provided for herein, as soon as possible after receiving the challenge, the BOE 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 quickly, efficiently, and informally.

11. Challenges filed under 230.

- a. Pursuant to 230, the BER will *immediately* consider whether there is probable cause to sustain the challenge.
- b. Probable cause to uphold the challenge will exist when the facts and circumstances before the BER would lead a reasonable person to believe that the challenged elector should not vote in the next upcoming election².
- c. If the BER finds no probable cause, the challenge will be dismissed.
- d. If the BER finds probable cause to uphold the challenge, the voter's record will be marked in a challenged status in the statewide voter registration system. The challenged status designation will be removed from the voter's record in the statewide voter registration system after the conclusion of the election (or as designated by Georgia Election Code).
- e. Upon a finding of probable cause, the BER shall afford the challenged voter an opportunity to answer the challenge at its next regular meeting. Where the challenge is based on residency, the challenged voter may elect to file a BER residency affirmation form rather than attend the meeting. Staff may contact the challenger to ascertain whether the challenger anticipates attending. If the challenger submits a list of names to both a 230 challenge and a 229 challenge, the BER may opt to postpone the answer to the 230 challenge until after the hearing for the 229 challenge.
- f. If received within 45 days of a primary, election or runoff, the challenge shall be automatically postponed until following the certification of the primary, election or runoff.
- g. The challenger is encouraged to be present at the meeting when their challenge is considered, but it is not required.
- h. While the BER desires staff to review the list of challenged voters for registration status, date of last contact, and other pertinent information that may assist the BER, the ability for staff to do so may be hindered by volume of the list of challenged voters, the timeframe to any upcoming elections, staffing issues, or other factors.

² See *Adams v. Carlisle*, 278 Ga. App. 777, 782 (2006)

- i. Each voter challenge and any supporting documentation submitted shall be submitted independent of any prior challenge submitted for the same voter. Each voter challenge shall be considered by the BER independent of any prior challenge submitted for the same voter. It is the challenger's responsibility to review the elector's list to ensure the voter's name remains on the list of electors prior to submitting the challenge. It is the challenger's responsibility to submit supporting documentation with each voter challenge.

12. Challenges filed under 229.

- a. Pursuant to the Code, the BER will set a date, time, and place for a hearing and notify the challenged electors in writing at their registered address. Staff may additionally send a notice to the voter's mailing address if it differs from the address as registered. If the challenge is received more than ten (10) business days prior to the next scheduled BER meeting, the hearing will be set for that meeting and the BER will provide the challenged elector(s) at least three (3) days' notice of the challenge hearing. If the challenge is received less than ten (10) business days before the next scheduled BER meeting, the BER will set a future date to hear the challenges. That hearing date will occur before the next regularly scheduled meeting and the BER will provide the challenged elector(s) at least three (3) days' notice of the challenge hearing. When a voter challenge is submitted within 90 days of an election, the logistics and procedures necessary for the BER to consider such a challenge may dictate that the challenge hearing be set after the date of the election.
- b. When providing notice of the challenge hearing to an elector, staff may also provide a residency affirmation form, a voter cancellation form, and a form to change an address.
- c. The burden of proof to support the challenge shall rest on the elector making the challenge. The challenger must provide sufficient information to the BER to prove that the person being challenged is not qualified to remain on the list of electors. Given that the challenger has the burden of proof, the challenger is strongly encouraged to attend the hearing where their challenge is considered to present his or her evidence to the BER. The BER may elect to dismiss the challenge if the challenger is not present. Nonexclusive examples of challenges that would fail to meet the minimum standards required by Section 21-2-229(a) include: Non-individualized or generalized claims (e.g., challenges to everyone registered at a certain address); 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; "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. The BER has the authority to issue subpoenas for the attendance of witnesses and the production of books, papers, and other material upon application by the person whose

qualifications are being challenged or the elector making the challenge. The party requesting subpoenas shall be responsible to serve such subpoenas and, if necessary, to enforce the subpoenas by application to the superior court. Any subpoenaed witness, after attending, shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court.

- e. The BER will determine whether the challenger has demonstrated by a preponderance of the evidence, that a reasonable and impartial mind would find that the challenged elector should no longer appear on the list of electors³.
- f. If the BER finds that the challenger has not demonstrated by a preponderance of the evidence that the challenged elector should not be on the list of electors, the challenge will be dismissed.
- g. Each voter challenge and any supporting documentation submitted shall be submitted independent of any prior challenge submitted for the same voter. Each voter challenge shall be considered by the BER independent of any prior challenge submitted for the same voter. It is the challenger's responsibility to review the elector's list to ensure the voter's name remains on the list of electors prior to submitting the challenge. It is the challenger's responsibility to submit supporting documentation with each voter challenge.

13. Meeting Procedure for Voter Challenges

- a. If a voter's name appears both on a challenge list submitted pursuant to O.C.G.A. §§ 21-2-229 and 21-2-230, then, if practical and feasible, the BER shall first hear the challenge submitted under O.C.G.A. § 21-2-229. If the BER determines that the voter should no longer be on the list of electors, the challenge filed pursuant to O.C.G.A. § 21-2-230 shall be moot.
- b. Staff will announce each name on the challenged voter list. Staff may provide additional information to the BER regarding current registration status of a challenged voter, current address, contact with the voter, and voting history.
- c. The challenger shall then have no more than five minutes to present any other relevant information on the challenge. The challenged voter shall then have no more than five minutes to respond to the challenge. The BOE shall then have five minutes to ask any questions it may find relevant and, upon motion and vote may extend such time as it determines necessary for its questions.

³ See O.C.G.A. §24-14-3; *Zwiren v. Thompson*, 276 Ga. 498 (2003)

- d. The ability to provide additional information may be limited by available staff time and resources prior to the meeting. Staff may organize the list in a manner different from the submitted list to present efficient data to the BER.
- e. The BER will evaluate the evidence as submitted by the challenger.
- f. If a challenged voter submits a residency affirmation form, it shall be *prima facie* evidence of the voter's residence.
- g. Motions of the BER shall be either to uphold the challenge or dismiss the challenge. For a motion to succeed, a majority of a quorum of the BER must vote in favor.
- h. When the initial letter notifying the voter of the challenge is returned to the Elections Office undeliverable with a legible possible forwarding address, staff may re-send the letter to the address provided by the U.S Postal Service and will inform the BER of the date the notice was re-sent.
- i. A copy of each written challenge upon which the BOE acts will be appended to the Minutes of the BOE meeting at which the action was taken.
- j. The procedures set forth herein shall also apply to challenges to voter qualifications initiated pursuant to O.C.G.A. §21-2-228.
- k. If any members of the BOE or employees or agents of the BOE 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 BOE's consideration of such challenges.
- l. The BOE will process all voter challenges expeditiously and objectively, while erring in all instances on the side of preserving the voter's right to remain on the registration lists, in recognition of the statutory requirement that the challenger has the burden of proving ineligibility.