

Georgia Voting Law Fact Sheet

Overview

Georgia recently enacted Senate Bill 202, an elections omnibus that builds upon many of Georgia's strong election policies while enacting several measures that make voting easier and that are commonly advocated for by progressives.¹ Lawmakers responded to Georgia's contentious 2020 election cycle by enacting SB 202, attempting to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting.²

Under the United States Constitution, state legislatures are tasked with determining the time, place, and manner of elections within their state.³ States have the latitude to implement their own laws and procedures in attempts to administer elections in an open, efficient, and secure manner; therefore, states adopt different election policies and procedures to balance these different concerns. While states may be lenient, or in the minority, on certain election procedures designed to enable voters to easily participate, they often balance these procedures with more stringent, mainstream election rules to guarantee honesty and fairness in the process, similar to what Georgia has done by passing SB 202.

Several lawsuits have been filed challenging numerous provisions of SB 202 on the grounds that they violate Section 2 of the Voting Rights Act (VRA) and the 14th Amendment by placing an unconstitutional burden on the fundamental right to vote. This memo examines these arguments by highlighting similar, valid election procedures already implemented by numerous states across the country, demonstrating the degree to which Senate Bill 202's provisions are solidly within the mainstream.

Drop Boxes

Claim: SB 202 "unduly restricts the use of absentee drop boxes."⁴

While every state provides voters with at least some opportunity to vote absentee, less than half allow voters to return their absentee ballots to a designated drop box.⁵ In considering whether to allow voters to return their ballot by designated drop boxes, states must weigh the desire for voters to easily return their ballots with the security risk of unsupervised drop boxes that may easily be taken advantage of by bad actors.

¹ Among its many provisions, the bill most notably establishes procedures for absentee ballot drop boxes; reforms absentee ballot application procedures to limit third-party involvement; modifies the absentee ballot request period; bolsters absentee ballot verification procedures; requires mandatory Saturday, and codifies optional Sunday, early voting; clarifies early voting location hours; establishes limitations on out-of-precinct provisional voting; and permits voters to challenge any non-qualified voters. See Senate Bill 202 As Passed, Georgia General Assembly (Mar. 25, 2021), available at: <https://www.legis.ga.gov/legislation/59827>.

² *Id.* at 4.

³ U.S. Const. art. I, § 4, cl 1.

⁴ *New Georgia Project v. Raffensperger*, Case 1:21-cv-01229-JPB, Compl. at 3 (March 25, 2021), available at: <https://www.democracymonitor.com/wp-content/uploads/sites/45/2021/03/2021-03-25-GA-Complaint.pdf>.

⁵ Table 9: *Ballot Drop Box Definitions, Design Features, Location and Number*, NCSL (April 23, 2021), available at: <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-9-ballot-drop-box-definitions-design-features-location-and-number.aspx>.

Drop boxes were illegal in Georgia prior to emergency use in 2020. The General Assembly considered a variety of options for voters to return their completed absentee ballots and constructed a system that allows the use of drop boxes while simultaneously ensuring the security of the system and providing options in emergency situations.⁶ Rather than unduly restricting this practice however, SB 202 codified it in Georgia law where it was not before. In doing so, SB 202 made Georgia one of only 11 states that permits voters to return completed ballots to a drop box or other early voting location.⁷

Absentee Ballot Application Distribution and Harvesting

Claim: SB 202 wrongly “[p]rohibits the state from distributing unsolicited absentee ballot applications,” and “[p]rohibits third-parties—including voter engagement organizations—from collecting absentee ballot applications.”⁸

Prior to 2020, officials unilaterally mailing absentee ballot applications was exceedingly rare.⁹ It is common practice across the county to require voters to request their own absentee ballot application.¹⁰ With the passage of SB 202, Georgia remains among the vast majority of states that do not statutorily authorize election officials to unilaterally send absentee ballot applications to voters without their request, leaving the decision in the hands of the voter.

In passing SB 202, lawmakers aimed to restrict who could return a completed absentee ballot application on behalf of a voter in efforts to build elector confidence after it was damaged by the multiple, repetitive absentee ballot applications that were returned by third parties in 2020, often with incorrectly filled-in voter information, leading to significant voter confusion.¹¹ Only 14 states and DC do not place restrictions or deadlines on third parties distributing and collecting absentee ballot applications on behalf of voters.¹² While most states permit third-party groups to distribute, collect, and/or return absentee ballot applications for voters in some degree, a majority of states place restrictions, deadlines, and penalties on third-party groups that distribute new or collect completed absentee ballot applications.¹³ At least 14 states, including Georgia, allow only the voter, the voter’s immediate family member, or the voter’s authorized agent to return the voter’s completed absentee ballot application.¹⁴

⁶ See Senate Bill 202 As Passed at 5 (Mar. 25, 2021).

⁷ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, NCSL (Sept. 24, 2020), available at: <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

⁸ *New Georgia Project v. Raffensperger*, Compl. at 3.

⁹ See *Changes to Election Dates, Procedures, and Administration in Response to the Coronavirus (COVID-19) Pandemic*, Ballotpedia (2020), available at: [https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020).

¹⁰ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, NCSL (Sept. 24, 2020).

¹¹ See Senate Bill 202 As Passed at 5 (Mar. 25, 2021).

¹² *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, NCSL (Sept. 24, 2020).

¹³ *Applying for an Absentee Ballot, Including Third-Party Registration Drives*, NCSL (Aug. 6, 2020). Laws limiting the distribution and collection of absentee ballot applications to voters by third parties have been upheld. See e.g., under T.C.A. § 2-6-202(c)(3) and (4), Tennessee criminalizes the giving of absentee ballot applications by persons to a voter. This law was upheld. See Mattise, Jonathan, *Judge Won’t Halt Tennessee Ban on Giving Out Mail Vote Form*, AP News (Sept. 24, 2020), available at: <https://apnews.com/article/virus-outbreak-nashville-elections-tennessee-courts-5039c7bffd97a78b2c552760679e79>.

¹⁴ *Id.*

Under SB 202, third parties are still allowed to distribute absentee ballot applications to voters, so long as they disclose their identities on the blank form provided online by the Secretary of State.¹⁵ SB 202 follows step with at least 13 other states in only allowing the voter, the voter's relative, or other authorized individual to handle and return the completed absentee ballot application.¹⁶ But even with these restrictions, Georgia's laws concerning absentee ballot applications are not outside the mainstream by putting the onus on the voter to return his or her absentee ballot application and by requiring third-party groups to disclose their identities to voters.

Third Party Ballot Collection

Prior to SB 202, Georgia prohibited anyone other than a close relative, roommate, or caregiver of the voter from returning the voter's completed absentee ballot.¹⁷ SB 202 did not change or Georgia's absentee ballot collection laws or further limit who could return a voter's completed ballot; SB 202 only made doing so by unauthorized persons a felony.¹⁸ With the enactment of SB 202, Georgia now joins a handful of other states that criminalize ballot collection by unauthorized persons.¹⁹

Note: The United States Supreme Court's recent decision in *Brnovich v. Democratic National Committee* upheld Arizona's law making it a felony for third parties to collect and return completed absentee ballots.²⁰ In doing so, the 6-3 Court solidified the ability of states to implement similar election integrity safeguards in light of the strong and entirely legitimate state interests of deterring potential fraud and improving voter confidence.²¹

Absentee Ballot Request Period

*Claim: SB 202's earlier deadline of 11 days before an election for a voter to request an absentee ballot will disenfranchise voters who are unable to meet this deadline.*²²

When considering what timeline states should establish for their absentee voting process, legislators must weigh efficiency and security on one hand with meaningful voter accessibility on the other. Lawmakers passed SB 202 to create a definite period of absentee voting to assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late.²³

Twenty-two states allow voters to apply for absentee ballots less than seven days before an election, and 13 more states set the application deadline at seven days before an election.²⁴ With the enactment of SB 202,

¹⁵ See Senate Bill 202 As Passed at 40 (Mar. 25, 2021).

¹⁶ *Id.* at 39.

¹⁷ See O.C.G.A. § 21-2-385(a).

¹⁸ See Senate Bill 202 As Passed at 92 (Mar. 25, 2021).

¹⁹ North Carolina (N.C. Gen. Stat. Ann. § 163.226.3), Texas (Tex. Elec. Code Ann. § 86.006(g)), and Arizona (A.R.S. § 16-1005).

²⁰ *Brnovich v. Democratic National Committee*, 19-1257, 2021 WL 2690267 (U.S. July 1, 2021), available at:

https://www.supremecourt.gov/opinions/20pdf/19-1257_g204.pdf.

²¹ See *id.*

²² *Georgia State Conference of the NCAAP v. Raffensperger*, Compl. at 22-23 (March 28, 2021), available at:

<https://www.democracymonitor.com/wp-content/uploads/sites/45/2021/03/georgia-sb-202-complaint.pdf>.

²³ See Senate Bill 202 As Passed at 5 (Mar. 25, 2021).

²⁴ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, NCSL (Sept. 24, 2020).

Georgia is among 11 states that set the application deadline more than seven days before the election.²⁵ While in the minority of states, Georgia's new deadline is still well within the norm, and voters are still able to vote in person during early voting and on Election Day if they miss this request deadline.

Absentee Ballot Verification

Claim: SB 202 “[i]mposes unnecessary and burdensome new identification requirements for absentee voting.”²⁶

All states enforce verification measures for absentee ballots, for without them, there exists no safeguard for the authenticity of mail ballots. Thirty states verify absentee ballots by comparing the signatures voters provide on the ballot envelope to their voter file.²⁷ Three states require absentee ballots to be notarized.²⁸ Eight other states require a witness signature.²⁹ Two states require photocopies of identification to be included.³⁰ Courts have consistently held all of these measures to be lawful.

SB 202 removed the requirement for voters to sign their absentee ballots and exchanged it with a requirement for voters to provide their driver's license number or identification card number on the ballot envelope for verification.³¹ Voters who have neither must put the last four digits of their Social Security Number. A voter with none of the above must include a copy of any permitted form of identification. In doing so, lawmakers revoked an ambiguous and subjective verification process, as signatures regularly change for voters and election workers compare signatures differently, and replaced it with an objective and consistent verification procedure.

Although it is not the most common verification procedure, Georgia is not the only state that requires voters to include a driver's license number or other identification number on their absentee ballot.³² This is not to mention how federal law has long required states to compel voters to present a driver's license or other identification number in order to request an absentee ballot, vote by mail for the first time, register to vote, or vote in person.³³

Weekend Early Voting

Claim: “SB 202’s significant limitations on early voting, in particular the impact on Sunday early voting, impose a substantial burden on all voters.”³⁴

²⁵ *Id.*

²⁶ *New Georgia Project v. Raffensperger*, Compl. at 3.

²⁷ *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, NCSL (Sept. 24, 2020).

²⁸ Mississippi, Missouri, and Oklahoma. *See id.*

²⁹ Alaska, Louisiana, Minnesota, North Carolina, Rhode Island, South Carolina, Virginia, and Wisconsin. *See id.*

³⁰ Alabama and Arkansas. *See id.*

³¹ *See Senate Bill 202 As Passed at 51-52* (Mar. 25, 2021).

³² Minnesota and Ohio also do. *See How States Verify Voted Absentee Ballots*, NCSL (April 17, 2020), available at:

<https://www.ncsl.org/research/elections-and-campaigns/vopp-table-14-how-states-verify-voted-absentee.aspx>.

³³ *See Absentee/mail-in voting*, Ballotpedia (2020), available at: https://ballotpedia.org/Absentee/mail-in_voting. *See also Voter identification laws by state*, Ballotpedia (2021), available at: https://ballotpedia.org/Voter_identification_laws_by_state; *Help America Vote Act*, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (federal law requiring all voters to provide identification at registration or when first appearing to vote in person).

³⁴ *Georgia State Conference of the NCAA v. Raffensperger*, Compl. at 51.

While states are not required to provide early voting to their electorate, states that choose to do so aim to provide greater voting accessibility without compromising election integrity. Prior to SB 202, broad discretion was given to local officials concerning early voting dates and hours, which led to significant variations across Georgia's counties in the total number of hours of early voting provided.³⁵ Lawmakers therefore chose to require counties to hold two Saturday voting days and two optional Sunday voting days to dramatically increase the total number of early voting hours for voters across the State of Georgia, giving electors in Georgia access to multiple opportunities to vote early in person on the weekend for the first time.³⁶

Less than half of states provide for early voting on the weekend.³⁷ Twenty states, including Georgia, and DC provide for Saturday early voting and another four states leave discretion to counties to offer Saturday voting.³⁸ Only six states provide Sunday early voting,³⁹ and an additional five states, including Georgia, leave the decision to offer Sunday early voting to each county.⁴⁰

Prior to SB 202, counties in Georgia were required by law to provide only one Saturday early voting day to voters; Sundays were not mentioned. Because of SB 202, Georgia is now among the minority of states that mandate Saturday early voting and among an even smaller number of states that offer optional Sunday early voting.

Early Voting Hours

Claim: "SB 202 gives unlimited discretion to election boards to limit early voting hours to 9 am to 5 pm weekdays and on weekends," which in turn disenfranchises voters.⁴¹

The same considerations are in play when states determine the hours for these early voting locations. But prior to SB 202, counties arguably had the discretion to limit early voting hours to an even greater degree than the allegations allege. The previous law required early voting to take place during "normal business hours" on weekdays, leaving counties to determine what "normal business hours" means.⁴² The new law sets a specific minimum time period, requiring county registrars to offer early voting at least from 9 am to 5 pm on weekdays and weekends.⁴³

A majority of states that offer early voting specify early voting locations must be open for regular business hours or no less than eight hours.⁴⁴ Because SB 202 requires a minimum of eight hours and further empowers counties to hold early voting from 7 am to 7 pm, it is among the more expansive early voting laws in place in the country.

³⁵ See Senate Bill 202 As Passed at 4 (Mar. 25, 2021).

³⁶ *Id.*

³⁷ *State Laws Governing Early Voting*, NCSL (Oct. 22, 2020), available at: <https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx>.

³⁸ Virginia and Delaware have passed, but have yet to implement, Saturday early voting. *See id.*

³⁹ Alaska, Florida Illinois, Maryland, New York and Ohio. *See id.*

⁴⁰ California, Georgia, Michigan, Nevada and Massachusetts. *See id.*

⁴¹ *Georgia State Conference of the NCAAP v. Raffensperger*, Compl. at 23.

⁴² See Senate Bill 202 As Passed at 59-60 (Mar. 25, 2021).

⁴³ *Id.*

⁴⁴ *State Laws Governing Early Voting*, NCSL (Oct. 22, 2020).

Out-of-precinct Provisional Voting

Claim: SB 202 “[i]nvalidates ballots cast by lawful voters before 5:00 p.m. in a precinct other than the one to which they were assigned, regardless of the reason or their ability to travel to another location (or wait until after 5:00 p.m.) to cast their ballot.”⁴⁵

When voters register to vote, they are often required to vote at a designated polling location within the precinct in which they reside, for their ballot is specific to the eligible offices for that precinct. When a voter casts their ballot outside of their designated precinct, they are often required to vote by provisional ballot. Lawmakers passed SB 202 to address out-of-precinct voting due to the burden it adds on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct.⁴⁶ The bill requires officials to direct electors to the correct precinct on Election Day to ensure that they are able to vote in all elections for which they are eligible.⁴⁷

Twenty-five states wholly refuse to count provisional ballots that are cast out-of-precinct.⁴⁸ Twenty other states, including Georgia, permit only the races the voter was eligible to vote for to be counted on an out-of-precinct provisional ballot.⁴⁹ Only Maine counts provisional ballots cast in the wrong precinct.⁵⁰

Georgia’s new provisional ballot rule precludes voters from casting an out-of-precinct provisional ballot unless it is after 5 pm and the voter confirms they are unable to vote at their proper precinct in time.⁵¹ Because Georgia counts the races the voter is eligible to vote for, Georgia’s out-of-precinct provisional voting law is among the more lenient in the nation while ensuring voters are able to vote in all elections for which they are eligible.

Voter Challenges

Claim: SB 202 “[b]urdens voters with the risk of disenfranchisement due to meritless challenges that require an immediate defense of their qualifications.”⁵²

Voter challenge laws are exceedingly common and are intended to ensure only qualified voters are participating in elections.⁵³ Forty-six states, including Georgia, permit voters to challenge the eligibility of non-qualified voters.⁵⁴ Of the states that permit challenges, 24 allow challenges without requiring any documentation alleging

⁴⁵ *New Georgia Project v. Raffensperger*, Compl. at 3.

⁴⁶ See Senate Bill 202 As Passed at 6 (Mar. 25, 2021).

⁴⁷ *Id.*

⁴⁸ *State by State Provisional Ballot Laws*, Ballotpedia (Oct. 2020), available at: [https://ballotpedia.org/State by State Provisional Ballot Laws](https://ballotpedia.org/State_by_State_Provisional_Ballot_Laws).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Senate Bill 202 As Passed at 74-75 (Mar. 25, 2021).

⁵² *New Georgia Project v. Raffensperger*, Compl. at 3.

⁵³ *Individuals Authorized to Serve as Appointed/Designated Poll Watchers or Challengers*, NASS (Jan. 2020), available at: <https://www.nass.org/sites/default/files/surveys/2020-01/state-laws-poll-watchers-challengers-Jan2020.pdf>.

⁵⁴ Riley, Nicholas, *Voter Challengers*, Brennan Center for Justice, available at: https://www.brennancenter.org/sites/default/files/legacy/publications/Voter_Challengers.pdf.

the voter is ineligible.⁵⁵ This is not the case in Georgia, since SB 202 did nothing to remove the prior requirement that challengers must specify distinctly in writing the grounds of the challenge and are therefore not free to frivolously challenge voters.⁵⁶

SB 202 clarified a voter's ability to challenge any number of non-qualified voters – this was previously assumed – and established a mandatory timeline for reviewing these contests. In doing so, Georgia now joins the 22 other states that require challenged voters to respond to every challenge filed against them once a challenge is filed.⁵⁷

Conclusion

Allegations that these provisions of Georgia SB 202 violate Section 2 of the VRA and the 14th Amendment by placing an unconstitutional burden on the fundamental right to vote means that the rules in an overwhelming number of states that have similar provisions in place are invalid as well. Georgia's new laws may put the state in the minority in terms of permitting the use of drop boxes, expanding weekend early voting, counting eligible races in out-of-precinct provisional ballots, and restricting the ability of third-parties to return completed absentee ballot applications, but Georgia policies to permit voter challenges, verify absentee ballots, and operate a generous absentee voting period are well within the norm. Taken as a whole, they culminate Georgia's efforts to expand voter access while ensuring fairness and honesty in elections. Ultimately, Georgia's new laws are neither new nor unique; they are commonplace election safeguards that have been enacted and upheld for years across the country as states try to meaningfully expand voter participation while safeguarding election integrity.

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⁵⁵ *Id.*

⁵⁶ *See* Senate Bill 202 As Passed at 23 (Mar. 25, 2021).

⁵⁷ *Id.*