

No. 19-14065

In the
**United States Court of Appeals
For the Eleventh Circuit**

MARTIN COWEN et al.,

Plaintiffs-Appellants

v.

BRAD RAFFENSPERGER,
in his official capacity as
GEORGIA SECRETARY OF STATE,
Defendant-Appellee

Appeal from the United States District Court
For the Northern District of Georgia

APPELLANTS' REPLY BRIEF

Bryan L. Sells
The Law Office of
Bryan L. Sells, LLC
P.O. Box 5493
Atlanta, Georgia 31107-0493
(404) 480-4212
bryan@bryansellsllaw.com

Attorney for Plaintiffs-Appellants Martin Cowen et al.

**Cowen v. Raffensperger
19-14065**

**Certificate of Interested Persons
and
Corporate Disclosure Statement**

Pursuant to Eleventh Circuit Rule 26.1, 26.1-2, and 26.1-3, counsel for the appellants certifies that the following persons and entities have or may have an interest in the outcome of this case:

Buckley, Allen

Carr, Christopher

Correia, Cristina

Cowart, Annette

Cowen, Martin

Gilmer, Aaron

Libertarian Party of Georgia, Inc.

May, Leigh Martin

McGowan, Charlene S.

**Cowen v. Raffensperger
19-14065**

**Certificate of Interested Persons
and
Corporate Disclosure Statement
(continued)**

Monds, John

Raffensperger, Brad

Sells, Bryan

The Law Office of Bryan L. Sells, LLC

Willard, Russell

/s/ Bryan L. Sells

Attorney Bar No. 635562

Attorney for the Plaintiffs-Appellants

The Law Office of Bryan L. Sells, LLC

PO Box 5493

Atlanta, Georgia 31107-0493

Telephone: (404) 480-4212

Email: bryan@bryansellslaw.com

Table of Contents

Certificate of Interested Persons and Corporate Disclosure Statement.....	2
Table of Contents	4
Table of Citations.....	5
Argument	7
I. The defendant provides no basis for concluding that the <i>Anderson</i> test does not apply to this case.....	7
II. The defendant ignores material differences between this case and <i>Jenness</i>	10
III. The defendant concedes that <i>Jenness</i> does not foreclose the plaintiffs' Equal Protection claim, but he misstates the factual record.	18
Conclusion	22
Certificate of Compliance	24
Certificate of Service.....	25
Addendum	26

Table of Citations

Cases

<i>American Party of Texas v. White</i> , 415 U.S. 767 (1974)	12
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983)	<i>passim</i>
<i>Bergland v. Harris</i> , 767 F.2d 1551 (11th Cir. 1985)	9
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992)	12, 17
<i>Cartwright v. Barnes</i> , 304 F.3d 1138 (11th Cir. 2002) (per curiam)	14
<i>Clingman v. Beaver</i> , 544 U.S. 581 (2005)	16
<i>Coffield v. Kemp</i> , 599 F.3d 1276 (11th Cir. 2010) (per curiam)	12
<i>Green Party of Georgia v. Georgia</i> , 551 F. App'x 982 (11th Cir. 2014)(per curiam)	9, 17
<i>Jenness v. Fortson</i> , 403 U.S. 431 (1971)	<i>passim</i>
<i>Libertarian Party of Florida. v. Florida</i> , 710 F.2d 790 (11th Cir. 1983)	12, 13
<i>Munro v. Socialist Workers Party</i> , 479 U.S. 189 (1986)	13
<i>New Alliance Party v. Hand</i> , 933 F.2d 1568 (11th Cir. 1991)	12, 13

Planned Parenthood of Southeastern Pennsylvania v. Casey,
 947 F.2d 682 (3d Cir. 1991), *aff'd in part and rev'd in part*
on other grounds, 505 U.S. 833 (1992) 8

Swanson v. Worley,
 490 F.3d 894 (11th Cir. 2007) 13

United States v. Anthem,
 855 F.3d 345 (D.C. Cir. 2017) 8

United States v. Johnson,
 921 F.3d 991 (11th Cir. 2019) (en banc)..... 11

Williams v. Rhodes,
 393 U.S. 23 (1968) 11, 15, 16

Other Authorities

Bryan A. Garner et al.,
The Law of Judicial Precedent (2016) 8, 10, 12

Ga. Comp. R. & Regs. 183-1-15-.02(5) 15

Ga. Election Code Amended,
 ch. 1031, 1978 Ga. Laws 1004 15

Ga. Election Code Amended,
 ch. 997, 1968 Ga. Laws 871 15

Henry Campbell Black,
Handbook on the Law of Judicial Precedents
or the Science of Case Law (1912)..... 10

O.C.G.A. § 21-2-133(a) 15

Argument

I. The defendant provides no basis for concluding that the *Anderson* test does not apply to this case.

The defendant offers only a tepid defense of the district court's choice not to apply the balancing test set out in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). This is not altogether surprising, as the defendant's summary-judgment brief explicitly identified the *Anderson* test as the applicable legal standard and urged the district court to apply it. (V:73-2 at 10-14.)¹ Now he offers two arguments to the contrary, and neither of them has any merit.

First, the defendant argues that *Anderson* “did not establish a ‘new’ or ‘different’ balancing test” but “only clarified” the test set forth in *Jenness v. Fortson*, 403 U.S. 431 (1971). (Appellee's Br. 15.) Even if that were an accurate description of *Anderson*—and it is not²—that would make no difference here. As a lower court, this Court is “bound by both the Supreme Court's choice of legal

¹ Throughout this brief, citations to the Appendix will be in the form “Volume:Tab at Page” unless otherwise noted.

² As the plaintiffs explained in their opening brief, *Anderson* represented a substantial departure from *Jenness* and has been recognized as such. (Appellants' Br. 36.).

standard or test and by the result it reaches under that standard or test.” *Planned Parenthood of Southeastern Pa. v. Casey*, 947 F.2d 682, 691 (3d Cir. 1991), *aff’d in part and rev’d in part on other grounds*, 505 U.S. 833 (1992); accord *United States v. Anthem*, 855 F.3d 345, 378 (D.C. Cir. 2017) (Kavanaugh, J.) (“We are bound by the modern approach taken by the Supreme Court.”). *See generally*, Bryan A. Garner et al., *The Law of Judicial Precedent* § 2, at 31 (2016). Whether it’s completely new or merely a clarification, the *Anderson* test is indisputably the Supreme Court’s current choice of legal standard for ballot-access cases, and the district court should have applied it.

The defendant’s brief lists a number of cases to demonstrate the continuing vitality of *Jenness* (Appellee’s Br. 17), but those cases are beside the point. Unlike the district court here, all of the post-*Anderson* ballot-access cases in the defendant’s string citation applied the *Anderson* test. The fact that they may also cite to *Jenness* does not establish that the district court in this case properly declined to apply the *Anderson* test. And the defendant

has failed to identify a single post-*Anderson* ballot-access case that has ever held that a district court need not apply the *Anderson* test.

Second, the defendant argues that “the district court was correct to conclude that *Bergland* [*v. Harris*, 767 F.2d 1551 (11th Cir. 1985)] and *Green Party* [*of Georgia v. Georgia*, 551 F. App’x 982 (11th Cir. 2014) (per curiam)] are not controlling here” because those cases apply only to presidential elections. (Appellee’s Br. 18-19.) While those cases did, indeed, involve presidential elections, the defendant reads them too narrowly. As the plaintiffs discussed at length in their opening brief, those cases stand for the proposition that a district court must apply the *Anderson* test notwithstanding *Jeness*. (Appellants’ Br. 37-42.) It is *Anderson* that is controlling here, and both *Bergland* and *Green Party* merely recognize the fact-intensive nature of the test and the well-established principle, discussed above, that lower courts must apply the Supreme Court’s choice of legal standards. Both the Supreme Court and this Court have applied the *Anderson* test in non-presidential settings, and the defendant’s brief fails to reconcile those cases with the district court’s decision in this case.

The defendant thus gives this Court no basis for concluding that the *Anderson* test does not apply. The district court should have applied it and, in doing so, the court should have based its decision on all of the relevant evidence in this voluminous record. The court's failure to do so was error.

II. The defendant ignores material differences between this case and *Jenness*.

It is blackletter law that “[f]or one decision to be precedent for another, the facts in the two cases need not be identical. But they must be substantially similar, without material difference.” Garner et al., *supra*, § 7, at 92. A “material difference” exists if the first case “contained facts or circumstances, essentially a part of the issue and directly influencing the judgment, not present in the second case, or if the second case contains facts or circumstances ... which were not present in the first case but which, if present, would have modified or changed the judgment therein.” Henry Campbell Black, *Handbook on the Law of Judicial Precedents or the Science of Case Law* § 15, at 60 (1912). “As binding authority, a judicial decision is inherently limited to the facts of the case then

before the court and the questions presented to the court in the light of those facts.” *United States v. Johnson*, 921 F.3d 991, 1003 (11th Cir. 2019) (en banc) (cleaned up).

In their opening brief, the plaintiffs argued that *Jenness* is not controlling here because of specific material differences between that case and this one. (Appellants’ Br. 42-47.) In his response, the defendant asserts without discussion that this case is “materially identical” to *Jenness*, and he does not otherwise respond to the plaintiffs’ argument. (Appellee’s Br. 10.) In his description of the facts upon which the Supreme Court relied in *Jenness*, moreover, he simply omits material facts—again, without discussion—that do not support his position. (*Id.* at 10-11.)

For instance, the Supreme Court relied heavily on the fact that Georgia’s ballot-access laws “do not operate to freeze the political status quo.” 403 U.S. at 438; *see also id.* at 439. This fact was critical, because it distinguished *Jenness* from the Court’s earlier ruling in *Williams v. Rhodes*, 393 U.S. 23, 25 (1968), which had found that Ohio’s ballot-access laws made it “virtually impossible for any party to qualify on the ballot except the

Republican and Democratic Parties.” *See Jenness*, 403 U.S. at 434-40 (distinguishing *Williams*).

In fairly determining which facts were essential to the judgment in *Jenness*, the Supreme Court’s own language must be the “starting point,” Garner et al., *supra*, § 4 at 73, and the text of the decision emphasizes this particular fact more than any other. In addition, subsequent decisions of the Supreme Court and this Court have recognized the centrality of this particular fact to the outcome in *Jenness*. *See, e.g., Burdick v. Takushi*, 504 U.S. 428, 435 n.4 (1992) (observing that *Jenness* found Georgia’s system to be constitutional “because it did not operate to freeze the political status quo”); *American Party of Tex. v. White*, 415 U.S. 767, 783 (1974); *id.* at 787; *New Alliance Party v. Hand*, 933 F.2d 1568, 1572-73 (11th Cir. 1991); *Libertarian Party of Fla. v. Florida*, 710 F.2d 790 (11th Cir. 1983); *cf. Coffield v. Kemp*, 599 F.3d 1276 (11th Cir. 2010) (per curiam) (rejecting a constitutional challenge to Georgia’s ballot-access laws where the plaintiff failed to allege that they froze the status quo).

The cases also make clear that whether a ballot-access scheme operates to freeze the political status quo is matter of fact to be decided on the record before the court. In *Jenness*, for example, the Court based its finding on the stipulated fact that two statewide candidates had petitioned onto the ballot in the preceding five years: “a candidate for Governor in 1966 and a candidate for President in 1968.” 403 U.S. at 439. *See also, e.g., Munro v. Socialist Workers Party*, 479 U.S. 189, 197 n.11 (1986) (noting that 36 out of 40 minor-party candidates had qualified for the ballot under the challenged provisions in the preceding nine years); *Swanson v. Worley*, 490 F.3d 894, 905 (11th Cir. 2007) (observing that the Libertarian Party’s successes in the 2000 and 2002 election cycles demonstrated the openness of Alabama’s ballot-access scheme); *New Alliance Party*, 933 F.2d at 1575-76 (tallying the number of independent and minor-party candidates that had recently qualified for the ballot under the challenged provision); *Libertarian Party*, 710 F.2d at 794 (same).

In this case, the undisputed record shows that (1) no political-body candidate for U.S. Representative has ever satisfied the

requirements to appear on Georgia's general-election ballot since the five-percent petition requirement was adopted in 1943 (IX:113 at 6); (2) more than 20 independent and political-body candidates for U.S. Representative have unsuccessfully attempted to qualify for the general-election ballot since 2002 (*id.*); and (3) Georgia's signature requirement is higher, in absolute terms, than any signature requirement that an independent or third-party candidate for U.S. Representative has ever overcome in the history of the United States (VII:97 at 32-35 ¶¶83-91). These facts compel the conclusion that Georgia's current ballot-access laws make it virtually impossible for third-party candidates for U.S. Representative to qualify for the ballot, and they add up to a material difference between this case and *Jenness*.

The district court addressed this distinction only in passing, suggesting that, while it was "sympathetic to the Plaintiffs' plights," it was precluded as a matter of law from considering the evidence of exclusion in this case by *Cartwright v. Barnes*, 304 F.3d 1138, 1141 (11th Cir. 2002) (*per curiam*). (IX:113 at 14.) As even the defendant concedes, however, that case involved the

Qualifications Clause and not the First and Fourteenth Amendments (Appellee’s Br. 13), and the snippet quoted by the district court is dictum. It is also apparent that the record of exclusion in *Cartwright* was not nearly as robust as it is here. *Cartwright* in no way establishes, as a matter of law or otherwise, that the district court could not consider the actual record of exclusion in this case or that the facts of this case are materially indistinguishable from *Jenness*.

Other material differences between this case and *Jenness* include the following:

- Georgia law regarding write-in candidates—which was the first fact on which the Supreme Court relied in *Jenness* to distinguish the Ohio law struck down in *Williams*, 403 U.S. at 438—has changed dramatically. Georgia no longer “freely provides for write-in votes.” *Id.*³

³ Compare Ga. Election Code Amended, ch. 997, § 9A, 1968 Ga. Laws 871, 878 (codified at 1933 Ga. Code Ann. § 34-1324) (“In elections, electors shall be permitted to cast write-in votes.”) with O.C.G.A. § 21-2-133(a) (write-in candidates must publish and file a notice of candidacy); Ga. Comp. R. & Regs. 183-1-15-.02(5) (votes cast for a person who has not so qualified are not counted). Georgia’s restrictions on write-in voting were first adopted in 1978, see Ga. Election Code Amended, ch. 1031, § 17, 1978 Ga. Laws 1004, 1013 (codified at 1933 Ga. Code Ann. § 34-1017), and have been amended several times since then. For the Court’s convenience, the cited provisions are reproduced in the Addendum.

- *Jenness* did not involve a challenge to Georgia’s candidate filing fee,⁴ but this case does. This case is about the “cumulative burdens” of Georgia’s ballot-access laws, which include not only a burdensome petition requirement but also the highest candidate filing fee in the nation. *Clingman v. Beaver*, 544 U.S. 581, 607 (2005) (O’Connor, J., concurring); accord *Williams*, 393 U.S. at 34 (measuring the burden of Ohio laws “taken as a whole”).

The defendant mentions none of these material differences or the others identified in the plaintiffs’ opening brief, and so apparently concedes the point. The district court likewise failed to address these distinctions.

The defendant’s approach to *Jenness*, which focuses only on the five-percent petition requirement and those few aspects of Georgia’s ballot-access law which have not changed since 1971,

⁴ The district court in *Jenness* had enjoined as unconstitutional the filing-fee statute that was in effect at the time, and “[n]o appeal was taken from that injunctive order.” 403 U.S. at 433. As a result, the filing fee was not at issue when *Jenness* reached the Supreme Court. Georgia replaced the enjoined provisions in 1974 (VIII:105-1 at 11 ¶ 21) and has amended them several times since then. The district court in this case suggested that the Supreme Court had *rejected* a constitutional challenge to the filing fee in *Jenness*, but that suggestion is plainly mistaken. (IX:113 at 10.)

turns the case on its head.⁵ The Supreme Court upheld an earlier version of Georgia’s ballot-access scheme “*because* it did not operate to freeze the political status quo,” *Burdick*, 504 U.S. at 435 n.4 (emphasis added), and now the defendant urges this Court to foreclose the plaintiffs’ challenge to Georgia’s current ballot-access scheme *despite* its operation to freeze the political status quo. Under the defendant’s reading of the case, it matters not that Georgia’s laws have excluded third-party candidates from the ballot for 76 years. This Court should not read *Jenness* so broadly.

As the plaintiffs noted in their opening brief, the fact that *Jenness* is not “controlling” here does not mean that the district court could not reason from it when applying the proper legal standards to the evidence in the record. (Appellants’ Br. 42.) What it does mean, however, is that the district court erred when it

⁵ In another section of his brief, the defendant argues that *Jenness*, as a matter of law, precludes a court on remand from determining, as a matter of fact, that Georgia’s ballot-access scheme imposes a severe burden on the plaintiffs’ constitutional rights. (Appellee’s Br. 19-20.) That argument similarly ignores the material differences noted here, and it turns the five-percent petition into a bright-line litmus-paper test which has been soundly rejected by the courts. See *Anderson*, 460 U.S. at 789; *Green Party*, 551 F. App’x at 983-84.

concluded that *Jenness* foreclosed the plaintiffs' claims notwithstanding the evidence in the record.

III. The defendant concedes that *Jenness* does not foreclose the plaintiffs' Equal Protection claim, but he misstates the factual record.

The defendant devotes the last section of his brief to the plaintiffs' Equal Protection claim. (Appellee's Br. 21-24.) He describes the claim as "novel" and explains that it is different from the Equal Protection claim decided in *Jenness*. (*Id.* at 21-22.) And, although he does not say so directly, he thereby concedes the plaintiffs' argument that their Equal Protection claim could not have been foreclosed by *Jenness*, as the district court ruled. (*See* Appellants' Br. 43-44.)

The plaintiffs' claim, stated succinctly, is that Georgia law violates the Constitution by treating Libertarian Party candidates for U.S. Representative differently, without sufficient justification, from Libertarian Party candidates for statewide offices. (*Id.* at 60.) The defendant acknowledges that, according to the relevant cases, "a state cannot require a greater signature petition requirement for

a political subdivision than for statewide office,” but he contends that, as a matter of fact, “Georgia requires *fewer* petition signatures for local or district offices than for statewide offices.” (Appellee’s Br. 23-24.) But the defendant’s factual contention is at odds with the undisputed record.

According to the parties’ statements of undisputed material facts, a Libertarian candidate for U.S. Representative in 2020 will have to submit between 19,777 and 26,539 valid signatures, depending on the congressional district at issue, in order to appear on the general-election ballot. (VIII:105-1 at 31-33 ¶62.) According to those same documents, a Libertarian candidate for statewide office in 2020—which could include the offices of President, U.S. Senator, and two members of Georgia’s Public Service Commission—will not need to gather any signatures in order to appear on the general-election ballot. (*Id.* at 23 ¶44; *id.* at 130 ¶204.) This is because the Libertarian Party has repeatedly demonstrated at the ballot box that it has substantial statewide support in Georgia. (*Id.* at 130 ¶204.)

The defendant suggests, without any discussion, that a comparison between Libertarian candidates for U.S. Representative and Libertarian candidates for statewide office “is not the correct comparison” because the Libertarian Party has qualified to nominate candidates for statewide office by convention.⁶ (Appellee’s Br. 23.) But the defendant’s factual contention would not be true even if one were to consider candidates nominated by political bodies that have not demonstrated the Libertarian Party’s level of statewide support. A Green Party candidate for U.S. Representative in 2020, for instance, would have to submit the same 19,777 to 26,539 valid signatures. (VIII:105-1 at 31-33 ¶62.) And the Green Party’s statewide candidate for President would only have to submit 7,500 valid signatures. (*Id.* at 27-28 ¶¶51-52.)

⁶ The plaintiffs do not concede that the comparison is “incorrect” in any way. The defendant hints that he believes the comparison to be incorrect because “[t]he qualification process is an alternative means of achieving ballot access.” (Appellee’s Br. 23.) But it is not an alternative means of achieving ballot access for candidates for U.S. Representative. And, if that is the defendant’s argument, it merely restates the Equal-Protection problem.

The following table summarizes, by way of example, Georgia’s 2020 signature requirements for Libertarian, Green, Democratic, and Republican candidates for U.S. Representative and President.

	U.S. Representative (Cong. Dist. 5)	President
Libertarian	26,539	0
Green	26,539	7,500
Republican	0	0
Democrat	0	0

Under the defendant’s own “correct” comparison, and according to the defendant’s own statement of the applicable law, the plaintiffs should prevail on their Equal Protection claim. There are no material facts in dispute, and the defendant has failed to justify a frankly absurd classification. This Court should therefore conclude that Georgia’s ballot-access restrictions violate the Equal Protection Clause to the extent that they treat Libertarian Party candidates for U.S. Representative differently from Libertarian Party candidates for statewide offices and grant summary judgment in the plaintiffs’ favor.

Conclusion

The defendant all but concedes the main points of the plaintiffs' opening brief: the district court should have considered the plaintiffs' First and Fourteenth Amendment claim under the *Anderson* test, and it should have considered the plaintiffs' other arguments separately, because they raise issues not present in *Jenness*. But what is perhaps most remarkable about the defendant's brief is what it lacks.

The defendant has no answer to the overwhelming evidence in the record that the actual operation of Georgia's ballot-access scheme makes it virtually impossible for Libertarian candidates for U.S. Representative to qualify for the ballot. He fails to reckon with the fact that no third-party candidate for U.S. Representative has appeared on the general-election ballot since the scheme was first enacted in 1943. He does not address the fact that Georgia's petition requirement and filing fee are by far the most stringent in the nation. He offers not a word of justification for requiring Libertarian candidates for U.S. Representative to gather far more signatures than Libertarian candidates for U.S. Senator or even

President. And he does not even attempt to argue that Georgia's scheme is remotely necessary for the State to advance its legitimate interests.

Because the district court did not apply the correct legal standards to the evidence in the record, this Court should either vacate the district court's judgment and remand for further proceedings or, reviewing the evidence *de novo*, grant summary judgment in the plaintiffs' favor.

Dated: December 26, 2019

Respectfully submitted,

/s/ Bryan L. Sells
BRYAN L. SELLS
Georgia Bar #635562
The Law Office of
Bryan L. Sells, LLC.
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com

Attorney for the Plaintiffs-Appellants

Certificate of Compliance

This brief complies with the type-volume limitation of Rule 32(a)(7)(B)(i) of the Federal Rules of Appellate Procedure because, excluding parts of the brief exempted by Rule 32(f), it contains 3,133 words. This brief also complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook font using version 16.32 of Microsoft Word for Mac.

/s/ Bryan L. Sells
BRYAN L. SELLS

Attorney for the Plaintiffs-Appellants

Certificate of Service

I hereby certify that on December 26, 2019, I electronically filed the foregoing **Appellants' Reply Brief** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Bryan L. Sells: bryan@bryansellslaw.com
Christopher Carr: ccarr@law.ga.gov
Cristina Correia: ccoreia@law.ga.gov
Charlene McGowan: cmcgowan@law.ga.gov

/s/ Bryan L. Sells
BRYAN L. SELLS

Attorney for the Plaintiffs-Appellants

Addendum

Index

Statute, Rule and Session Laws	Page
O.C.G.A. § 21-2-133. Giving notice of intent of write-in candidacy; filing of affidavit; limitations on candidacy; certification of candidates	27
Ga. Comp. R. & Regs. 183-1-15-.02	29
Ga. Election Code Amended, ch. 997, 1968 Ga. Laws 871	32
Ga. Election Code Amended, ch. 1031, 1978 Ga. Laws 1004	41

Lexis Advance®

Document: O.C.G.A. § 21-2-133

O.C.G.A. § 21-2-133

Copy Citation

Current through the 2019 Regular Session of the General Assembly

**GA - Official Code of Georgia Annotated TITLE 21. ELECTIONS CHAPTER 2. ELECTIONS AND PRIMARIES
GENERALLY ARTICLE 4. SELECTION AND QUALIFICATION OF CANDIDATES AND PRESIDENTIAL
ELECTORS PART 1. GENERAL PROVISIONS**

§ 21-2-133. Giving notice of intent of write-in candidacy; filing of affidavit; limitations on candidacy; certification of candidates

(a) No person elected on a write-in vote shall be eligible to hold office unless notice of his or her intention of candidacy was filed and published no earlier than January 1 and no later than the Tuesday after the first Monday in September prior to the election for county, state, and federal elections; no later than seven days after the close of the qualifying period for nonpartisan elections in the case of nonpartisan elections for state or county offices; no later than seven days after the close of the municipal qualifying period for municipal elections in the case of a general election; or no later than seven days after the close of the special election qualifying period for a special election by the person to be a write-in candidate or by some other person or group of persons qualified to vote in the subject election, as follows:

- (1)** In a state general or special election, notice shall be filed with the Secretary of State and published in a newspaper of general circulation in the state;
- (2)** In a general or special election of county officers, notice shall be filed with the superintendent of elections in the county in which he or she is to be a candidate and published in the official organ of the same county; or
- (3)** In a municipal general or special election, notice shall be filed with the superintendent and published in the official gazette of the municipality holding the election.

In the event that such intention of candidacy is filed and published by a person or group of persons other than the candidate, such person or group of persons shall also file a written, notarized authorization by the candidate for such filing and publication.

(b) In addition to the requirements contained in subsection (a) of this Code section, the person or persons giving notice of intention of candidacy for a write-in candidate shall also file, with the appropriate official specified in paragraph (1), (2), or (3) of subsection (a) of this Code section, a copy of the notice as published with an affidavit stating that the notice has been published and including the name of the newspaper and the date of publication, not later than the fifth day after the deadline for filing and publishing such notice. The affidavit may be made by the person giving notice of intention of candidacy or by the publisher of the newspaper in which the notice was published or by an employee of the newspaper designated by the publisher.

(c) No person shall be eligible as a write-in candidate in a special or general primary, a special or general primary runoff, or in a special or general election runoff.

12/26/2019 <https://advance.lexis.com/documentprint/documentprintclick/?pdmfid=1000516&crd=ba668083-e8ac-4513-ac62-af0f9ff51361&ecom=9s-fkkk&prid...>

(d) No person shall be eligible as a write-in candidate in a general or special election if such person was a candidate for nomination or election to the same office in the immediately preceding primary.

(e)

(1) The Secretary of State shall certify and transmit to the election superintendent of each county affected within five days following the deadline for the submission by write-in candidates of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the Secretary of State for such general or special election.

(2) The county election superintendent shall certify within five days following the deadline for the submission by write-in candidates for county offices of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the county election superintendent for county offices for such general or special election.

(3) The municipal election superintendent shall certify within five days following the deadline for the submission by write-in candidates for municipal offices of the notice and documentation required by this Code section to be a write-in candidate in a general or special election the names of all persons who have filed notices of intention to be write-in candidates with the municipal election superintendent for municipal offices for such general or special election.

History

Code 1933, § 34-1017, enacted by Ga. L. 1978, p. 1004, § 17; Ga. L. 1979, p. 963, § 1; Ga. L. 1987, p. 417, § 1; Ga. L. 1987, p. 1360, § 6; Ga. L. 1989, p. 682, § 1; Ga. L. 1997, p. 590, § 9; Ga. L. 1998, p. 295, § 1; Ga. L. 1999, p. 21, § 1; Ga. L. 1999, p. 52, § 6; Ga. L. 2001, p. 230, § 5; Ga. L. 2001, p. 269, § 6; Ga. L. 2001, Ex. Sess., p. 325, § 3; Ga. L. 2002, p. 437, § 1; Ga. L. 2005, p. 253, § 15/HB 244; Ga. L. 2011, p. 678, § 2/HB 158; Ga. L. 2012, p. 995, § 6/SB 92; Ga. L. 2017, p. 697, § 4/HB 268.

OFFICIAL CODE OF GEORGIA ANNOTATED

Copyright 2019 by The State of Georgia All rights reserved.

Content Type:

Terms:

Narrow By: -None-

Date and Time: Dec 26, 2019 01:22:19 p.m. EST



About LexisNexis®

Privacy Policy

Cookie Policy

Terms & Conditions

Sign Out

Copyright © 2019 LexisNexis. All rights reserved.



Rules and Regulations of the State of Georgia

Home | Browse | Help | Go to Georgia SOS

Route : [GA R&R](#) » [Department 183](#) » [Chapter 183-1](#) » [Subject 183-1-15](#)

[Search tips](#)

Subject 183-1-15 RETURNS OF PRIMARIES AND ELECTIONS

Rule 183-1-15-.01 Repealed

Rule 183-1-15-.02 Definition of Vote

[Rule 183-1-15-.01
Repealed](#)

[Rule 183-1-15-.02
Definition of Vote](#)

- (1) DRE Equipment. A vote cast on a DRE unit shall be the choice made by a voter by:
 - (a) Pressing the appropriate place on the DRE unit's touchscreen to cause an "X" or similar designation to display adjacent to the name of the candidate or answer to a question for which the voter desires to vote;
 - (b) Typing on the touchscreen the name of a qualified write-in candidate in accordance with the instructions for voting on the DRE unit; or
 - (c) Pressing the appropriate buttons on the keypad in the case of persons using the VWD device attached to the DRE unit.
- (2) Lever-type Voting Machines. A vote cast on a lever-type voting machine shall be the choice made by a voter by either operating the lever adjacent to the name of the candidate or answer to a question for which the voter desires to vote or by writing of the name of a qualified write-in candidate on the machine in accordance with the instructions for voting on the voting machine and then recording such votes on the machine by the actuation of the main lever which casts such votes and returns the other levers to their original positions.
- (3) Optical Scan Voting Systems.
 - (a) A vote cast on an optical scan voting system shall be the choice made by a voter by either:
 1. Filling in the oval or completing the arrow adjacent to the name of the candidate or answer to a question for which the voter desires to vote; or
 2. Filling in the oval or completing the arrow adjacent to the appropriate write-in space and writing the name of a qualified write-in candidate in the appropriate space on the ballot as specified in the instructions for voting such ballot.
 - (b) In reviewing an optical scan ballot which has been rejected as containing an overvote in accordance with O.C.G.A. § [21-2-483\(g\)\(2\)](#), if the voter filled in the oval or completed the arrow next to the name of a candidate whose name appears on the ballot and filled in the oval or completed the arrow adjacent to the write-in space and

Copyright © 2019 Lawriter LLC - All rights reserved. | Email Us | 844-838-0769 | Live Chat

Rules and Regulations of the State of Georgia

Home | Browse | Help | Go to Georgia SOS

 Search GA R&R...

 Go to Citation...


Route : [GA R&R](#) » [Department 183](#) » [Chapter 183-1](#) » [Subject 183-1-15](#)

[Search tips](#)

(4), it appears that there is a properly cast vote and what is clearly a stray mark which has caused the tabulator to read the vote for such office as an overvote, the properly cast vote shall be counted and the stray mark shall be ignored.

- (d) If, in reviewing an optical scan ballot which has been rejected as containing an overvote in accordance with O.C.G.A. § [21-2-483\(g\)\(2\)](#), a voter marks his or her ballot in a manner other than that specified by law and this rule, the votes shall be counted if, in the opinion of the vote review panel as provided in O.C.G.A. § [21-2-483\(g\)\(2\)\(B\)](#), the voter has clearly and without question indicated the candidate or candidates and answers to questions for which such voter desires to vote.
 - (e) When an optical scan ballot contains stray marks or marks which prevent the tabulating machine from properly recording valid votes as determined under this rule and by law, the ballot shall be duplicated in accordance with law to correct such problems and the duplicate shall then be tabulated.
- (4) Paper Ballots.
- (a) A vote cast on a paper ballot shall be a choice made by a voter by either:
 1. Placing an "X", a check, or other similar mark in the square adjacent to the name of the candidate or answer to a question for which the voter desires to vote; or
 2. Writing the name of a qualified write-in candidate in the appropriate space on the ballot as specified in the instructions for voting such ballot.
 - (b) If a voter marks his or her paper ballot in a manner other than that specified by law and this rule, the votes shall be counted if, in the opinion of the poll officers as provided in O.C.G.A. § [21-2-439](#), the voter has clearly and without question indicated the candidate or candidates and answers to questions for which such voter desires to vote.
 - (c) If the voter marked the square next to the name of a candidate whose name appears on the ballot and wrote in the name of the same candidate in the write-in space for the same office, the properly cast vote shall be counted and the write-in vote shall be ignored.
- (5) Write-in Votes. In no event shall votes cast for write-in candidates who have not qualified in accordance with O.C.G.A. § [21-2-133](#) be counted or recorded.

Copyright © 2019 Lawriter LLC - All rights reserved. | Email Us | 844-838-0769 | Live Chat

12/26/2019

GA - GAC

Rules and Regulations of the State of Georgia

[Home](#) | [Browse](#) | [Help](#) | [Go to Georgia SOS](#)



Route : [GA R&R](#) » [Department 183](#) » [Chapter 183-1](#) » [Subject 183-1-15](#)

[Search tips](#)

Server S|A GALILEO Digital Initiative Database

While in this database, use the Search and Help buttons below.

Georgia Legislative Documents [Search](#) [Help](#)

Content of Act/Resolution

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1968

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1968

1968 Vol. 1 -- Page: 871

Sequential Number: 146

Short Title: GEORGIA ELECTION CODE AMENDED.

Law Number: No. 997

Origin: (House Bill No. 1051).

Full Title: An Act to amend Title 34 of the Code of Georgia, relating to elections, as amended, so as to provide for additional deputy registrars; to provide that certain tax commissioners or tax collectors shall be a deputy to certain boards of registrars; to provide for the hours which the main office of the board of registrars shall remain open;

Page: 872

to change certain of the procedures relating to the registration of electors; to provide that electors may vote only in the election district in which they reside, with certain exceptions; to provide for the transferring of the elector's registration; to provide that no elector shall vote in any county other than the county of his residence; to provide that no person shall be a candidate in a primary for more than one of certain listed public offices; to change certain provisions relating to substituted nominations made by conventions; to change the method of determining the number of signatures required on nomination petitions; to change the method of marking ballots in primaries; to provide how certain ballots may be counted; to make provision for the design of the ballot card for vote recorders; to change the method of marking certain ballots and to provide that improperly marked ballots shall not be counted; to provide that the Secretary of State shall prescribe the form and arrangement of ballot labels; to change the method of folding the ballot prior to depositing the ballot in the ballot box; to change the method of marking spoiled vote recorder ballots; to change the number of electors who may be assisted in voting by any one person; to authorize the use of more than one tabulating center for tabulating votes cast on vote recorders; to provide that the write-in ballot and the ballot card shall be kept together if the votes exceed the number allowed by law; to allow poll officers to vote by absentee ballot; to provide that in counties using voting machines or vote recorders absentee ballots may conform substantially to the form of ballot labels for such machines or recorders; to change certain of the procedures relating to voting by absentee ballot; to provide that counties in which the use of vote recorders has been authorized may furnish, free of cost, for party primaries, the use of the recorder, all labels, ballot cards and other supplies, and may provide necessary service for counting ballots; to change the provisions relating to who may contest an election; to provide the procedure connected with all of the foregoing matters; to repeal conflicting laws; and for other purposes.

Page: 873

Be it enacted by the General Assembly of Georgia:

12/26/2019

GALILEO: Georgia Legislative Documents: Results

Section 1. Title 34 of the Code of Georgia, relating to elections, as amended, is hereby amended by striking in its entirety Code section 34-604, relating to deputy registrars, and substituting in lieu thereof a new Code section 34-604 to read as follows:

"Section 34-604. Deputy Registrars. -- (a) The registrars may appoint additional deputies and hire clerical help to aid them in the discharge of their duties if the compensation required therefor has been first approved by the governing authority of the county.

"(b) In every county wherein the registrars do not maintain an office which is open and staffed during regular business hours when the tax commissioner or tax collector's office is open, the tax commissioner or the tax collector shall be a deputy to the board of registrars. He shall perform the duties required of him under this Chapter with no extra compensation unless the governing authority so authorizes. He may, with the prior approval of the board, designate one or more of his own deputies to act as additional deputies."

Section 2. Said Title is further amended by striking the period at the end of the title of Code section 34-610, relating to voting registration, and inserting in lieu thereof the following: "office hours."; and by inserting "(a)" immediately preceding the first sentence of said Code section; and by striking the word "an" from the first sentence of said Code section and inserting in lieu thereof the words "a main"; and by striking the period at the end of the second sentence thereof and inserting in lieu thereof the words "and such office shall be deemed the main office of the board of registrars."; and by adding a new subsection at the end thereof so that when so amended Code section 34-610 shall read as follows:

"Section 34-610. Keeping of registration cards and other papers; voter registration places; office hours. -- (a) In those counties where the registrars have a main office

Page: 874

separate from the office of the tax collector or tax commissioner, the registrars shall keep the completed registration cards and their other papers in such office which shall be in the courthouse or other public building. If no such office exists, the registrars shall keep the completed registration cards and their other papers in the office of the tax collector or the tax commissioner; and such office shall be deemed the main office of the board of registrars. For the purpose of taking applications for registration and for the purpose of registering electors, such number of registrars or deputy registrars as shall be designated by the chief registrar shall be stationed at such main office where the completed registration cards are kept at such times as the office is open during regular office hours. The chief registrar, in addition to the main office, may designate other fixed places in the county to be used for the purpose of receiving applications for registration and for the registration of electors. In any county having a population of more than 100,000, according to the United States Decennial Census of 1960 or any such future census, the chief registrar in each even-numbered year shall designate and staff, on a full or part-time basis, additional voter registration places within the county at least six months prior to the voter registration deadline for the November election in that year. Blank registration cards shall be kept in the places designated for registration and completed registration cards shall be kept in the main office of the registrars.

"(b) The main office of the board of registrars in each county shall remain open for business during regular office hours on each business day, except Saturday. The board of registrars may enlarge such minimum office hours and may open the offices at any time in order to suit the convenience of the public."

Section 3. Said Title is further amended by striking in its entirety the title and subsection (a) of Code section 34-613, relating to registration, and inserting in lieu thereof the following:

"Section 34-613. Examination of registration card; registration. -- (a) If the answer to the question propounded

Page: 875

to the applicant relating to the offenses enumerated in Paragraph I of Section II of Article II of the State Constitution is answered in the affirmative and the applicant has not been pardoned, the registration officer shall reject the application. If such question is answered in the negative, the applicant shall be immediately subjected to an examination as to his qualifications. The examination of the applicant shall be conducted in accordance with the procedure hereinafter prescribed."

Section 4. Said Title is further amended by striking in its entirety Code Section 34-629, relating to place of voting, and substituting in lieu thereof a new Code Section to read as follows:

"Section 34-629. Voting only from lists; exception in counties of 40,000 or less. All persons whose names appear on the list of electors placed in the possession of the managers in each election district, and no others, shall be allowed to deposit their ballots according to law, at the election district in which they are registered, except that in counties having a population of less than 40,000 according to the 1960 United States decennial census or any future such census, an elector may be permitted to cast his vote in that election district containing the county courthouse."

Section 4A. Said Title is further amended by striking in its entirety subsection (c) of Code section 34-631, relating to the change of residency of an elector, and substituting in lieu thereof a new subsection (c) to read as follows:

"(c) An elector who desires to transfer his registration as described in subsections (a) and (b) of this section shall make such application at least fifteen days prior to the primary or election in which he wishes to vote, and the board of registrars shall complete such transfer at least five days prior to such primary or election. No person shall vote in any county except the county of his residence."
[Sidenote: Code § 34-631 amended.]

Section 5. Said Title is further amended by adding at the end of Code section 34-1001, as amended, relating to

Page: 876

the nomination of candidates, a new subsection to be subsection (f) and to read as follows:

"(f) No person shall be nominated, nor shall any person be a candidate in a primary, for more than one of the following public offices to be filled at any one election: Governor, Lieutenant Governor, Secretary of State, Attorney General, State School Superintendent, Comptroller General, Treasurer, Commissioner of Agriculture, Commissioner of Labor, United States Senator, or Representative in Congress, Public Service Commissioner, Justice of the Supreme Court, Judge of the Court of Appeals, Ordinary, Clerk of Superior Court, Tax Commissioner, Tax Collector, Sheriff, Judge of Superior Court, County Treasurer, County School Superintendent, Tax Receiver, and members of the Senate and House of Representatives of the General Assembly."
[Sidenote: Code § 34-1001 amended.]

Section 6. Said Title is further amended by striking in its entirety subsection (a) of Code section 34-1003, relating to the nomination of candidates, and substituting in lieu thereof a new subsection (a) to read as follows:

"(a) Any vacancy happening in any party nomination (filled by primary) for a public office to be filled by the vote of the electors of more than one county, by reason of the death or withdrawal of any candidate therefor, occurring after nomination but at least ten days prior to the election to fill the public office sought by such candidate, may be filled by a substituted nomination made by a convention composed of the delegates of the county executive committee of such party in each county in which electors reside who are eligible to vote for the filling of such public office. Immediately upon such vacancy occurring, the State executive committee, or a subcommittee

12/26/2019

GALILEO: Georgia Legislative Documents: Results

thereof appointed for the purpose, shall fix a time within six days of the happening of such vacancy and shall select and provide a convenient place for the holding of such a convention, which shall be open to the public, and shall give notice thereof to the chairman and secretary of each county executive committee entitled to participate in the convention. Each county executive committee shall be entitled to select the number of

Page: 877

delegates apportioned to it by the State executive committee; provided, however, that each county executive committee shall be entitled to select at least one delegate. Such apportionment of delegates among the counties shall be based substantially upon the population of the area involved in the convention according to the last United States Decennial Census, or upon the number of votes cast within such area for the party's candidates for presidential electors in the last presidential election. A two-thirds majority of the delegates of such county executive committees shall constitute a quorum for the transaction of business, and a majority of the delegates present while a quorum exists shall be sufficient to fill such nomination by a substituted nomination. Each delegate shall have one vote and all votes taken shall be by a roll call vote. The records of the convention shall be filed with the State executive committee. In the event such a vacancy in party nomination shall happen during the ten days preceding the day of such an election or on the morning of such an election prior to the opening of the polls, such vacancy may be filled by a substituted nomination made by the State executive committee or a subcommittee thereof appointed for the purpose."

[Sidenote: Code § 34-1003 amended.]

Section 7. Said Title is further amended by striking in its entirety subsection (b) of Code section 34-1010, relating to nomination petitions, as amended by an Act approved March 30, 1965 (Ga. L. 1965, p. 349), and substituting in lieu thereof a new subsection (b) to read as follows:

"(b) A nomination petition of a candidate shall be signed by a number of electors of not less than five percent of the total number of electors eligible to vote in the last election for the filling of the office the candidate is seeking; except that in the case of a candidate seeking the office of judge of the superior court or solicitor general the five percent figure shall be computed only on the total number of such electors of the judicial circuit directly involved."

[Sidenote: Code § 34-1010 amended.]

Section 8. Said Title is further amended by striking the words "Mark Out the name of each candidate for whom you do not wish to vote" from subsection (b) of Code

Page: 878

section 34-1102, relating to the form of primary ballots, and inserting in lieu thereof the words "Place a cross (x) or check ([unk]) mark in the square opposite the name of each candidate for whom you choose to vote", and by striking therefrom the last sentence thereof which reads as follows: "Marks made in violation of these directions shall be disregarded in the counting of the votes cast.", so that, when so amended, subsection (b) of Code section 34-1102 shall read as follows:

"(b) Immediately under this caption, the following directions shall be printed: `Place a cross (x) or check ([unk]) mark in the square opposite the name of each candidate for whom you choose to vote. If you spoil your ballot, do not erase, but ask for a new ballot. Use only pen or pencil.' "

[Sidenote: Code § 34-1102 amended.]

Section 9. Said Title is further amended by striking subsections (b) and (c) of Code section 34-1222, relating to vote recorders, and inserting in lieu thereof new subsections (b) and (c) to read as follows:

- "(b) The arrangement of offices, names of candidates and questions upon the ballot labels shall conform as nearly as practicable to the provisions of this Code for the arrangement of

12/26/2019

GALILEO: Georgia Legislative Documents: Results

same on paper ballots. Provided, however, that such form may be varied in order to present a clear presentation of candidates and questions to the electors. In the event that there are more candidates for any office than can be placed upon one page, the label shall be clearly marked to indicate that the names of candidates for the office are continued on the following page."
[Sidenote: Code § 34-1222 amended.]

- "(c) The form and arrangement of ballot labels shall be prescribed by the Secretary of State and prepared by the superintendent."

Section 9A. Said Title is further amended by striking in its entirety Code section 34-1224, relating to write-in ballots in districts using vote recorders, and inserting in lieu thereof a new Code section 34-1224 to read as follows:

"Section 34-1224. Write-in ballots. In elections, electors shall be permitted to cast write-in votes. The design of the

Page: 879

ballot card shall permit the managers in counting the write-in votes to readily determine whether an elector has cast any write-in vote not authorized by law. The Secretary of State in specifying the form of the ballot, and the State Election Board in promulgating rules and regulations respecting the conduct of elections, shall provide for ballot secrecy in connection with write-in votes."

Section 10. Said Title is further amended by adding between Code sections 34-1322 and 34-1323, a new Code section to be numbered Code section 34-1322A and to read as follows:

"Section 34-1322A. Ballots marked other than as prescribed. Notwithstanding any other provisions of this Title or Code to the contrary, if the elector has marked his ballot in such a manner that he has indicated clearly and without question the candidate for whom he desires to cast his vote, his ballot shall be counted and such candidate shall receive his vote, notwithstanding the fact that the elector in indicating his choice may have marked his ballot in a manner other than as prescribed by this Title or Code."

Section 11. Said Title is further amended by striking from Subsection (b) of Code section 34-1314, relating to the conduct of primaries and elections, the following: "marking out the name of each candidate for whom he does not wish to vote" and inserting in lieu thereof the words "making a cross (x) or check ([unk]) mark in the square opposite the name of each candidate"; and by adding two new sentences at the end thereof to read as follows: "No elector shall be permitted to cast a write-in ballot in a primary. A ballot upon which a voter has marked out or struck through the name of a candidate for whom the voter does not intend to cast his vote may be counted if the ballot clearly indicates that candidate for whom the voter desired to cast his vote.", so that when amended, said Subsection (b) of Code section 34-1314 shall read as follows:

"(b) At primaries, the elector shall prepare his ballot in the following manner: He shall vote for the candidates

Page: 880

of his choice for nomination or election, according to the number of person to be voted for by him, for each office, by making a cross (x) or check ([unk]) mark in the square opposite the name of each candidate. No elector shall be permitted to cast a write-in ballot in a primary. A ballot upon which a voter has marked out or struck through the name of a candidate for whom the voter does not intend to cast his vote may be counted if the ballot clearly indicates that candidate for whom the voter desired to cast his vote."

[Sidenote: Code § 34-1314 amended.]

12/26/2019

GALILEO: Georgia Legislative Documents: Results

Section 12. Said Title is further amended by striking in its entirety subsection (d) of Code section 34-1314, relating to the conduct of primaries and elections, and inserting in lieu thereof a new subsection (d) to read as follows:

"(d) Before leaving the voting compartment, the elector shall fold his ballot, without displaying the markings thereon, in the same way it was folded when received by him, and he shall then leave the compartment and exhibit the number strip of the ballot to a poll officer who shall ascertain by an inspection of the number appearing thereon whether the ballot so exhibited to him is the same ballot which the elector received before entering the voting compartment. If it is the same, the poll officer shall direct the elector, without unfolding the ballot, to remove the perforated portion containing the number, and the elector shall immediately deposit the ballot in the ballot box. If the ballot is marked `Challenged', the numbered perforated portion shall not be removed and the ballot shall be deposited with it attached. Any ballot, other than one marked `Challenged', deposited in a ballot box at any primary or election without having such number removed shall be void and shall not be counted."

[Sidenote: Code § 34-1314 amended.]

Section 12A. Said Title is further amended by striking in its entirety subsection (c) of Code section 34-1316, relating to the manner of voting in districts in which vote recorders are used, and substituting in lieu thereof a new subsection (c) of Code section 34-1316 to read as follows:

"(c) If an elector spoils or defaces a ballot card or write-in ballot, he shall return it to the managers and receive

Page: 881

another. A manager shall immediately cancel the spoiled ballot by writing the word `spoiled' across said ballot, and shall place it in the container for spoiled ballots."

Section 13. Said Title is further amended by striking from the second sentence of subsection (B) of Code section 34-1317, relating to the conduct of primaries and elections, as amended by an Act approved March 4, 1966 (Ga. L. 1966, p. 185), the following: "one" and "elector", and by inserting in lieu thereof the following: "five" and "electors", and by striking therefrom the last sentence, so that when so amended said Subsection (b) of Code section 34-1317 shall read as follows:

[Sidenote: Code § 34-1316 amended.]

"(b) Any elector who is entitled to receive assistance in voting under the provisions of this section shall be permitted by the managers to select (i) any elector, except a poll officer, who is a resident of the election district in which the elector requiring assistance is attempting to vote; or (ii) the mother, father, sister, brother, spouse or child of the elector entitled to receive assistance, to enter the voting compartment or booth with him to assist him in voting, such assistance to be rendered inside the voting compartment or booth. No person shall assist more than five such electors in any primary or election."

[Sidenote: Code § 34-1317 amended.]

Section 14. Said Title is further amended by adding at the end of subsection (d) of Code section 34-1328, relating to the duties of poll officers after the close of the polls in districts in which vote recorders are used, the following:

"or centers, as designated by the superintendent;"

and by striking from subsection (f) the following:

"shall be returned to the envelope,"

12/26/2019

GALILEO: Georgia Legislative Documents: Results

and inserting in lieu thereof:

"shall be kept with the write-in ballot,"

so that when so amended subsection (d) and subsection (f) of Code section 34-1328 shall read as follows:

"(d) Place ballot cards in the ballot container to be taken to the tabulating machine center or centers, as designated by the superintendent."

Page: 882

"(f) Examine each write-in vote to ascertain whether it is valid by checking with the vote cast on the ballot card by the same elector; and if any vote cast on the write-in ballot in combination with the vote cast for the same office on the ballot card, exceeds the allowed number for the office, the entire vote cast for that office shall be marked void and shall not be counted; and the ballot of such elector shall be kept with the write-in ballot, on which shall be written a notation that the vote or votes cast for the office concerned are invalid because they exceed the number allowed by law; and the write-in ballot and the ballot card of such elector shall be returned with the defective ballot cards to the tabulating machine center, where a duplicate ballot card shall be made on which any invalid vote shall be omitted;"

[Sidenote: Code § 34-1328 amended.]

Section 15. Said Title is further amended by inserting between the words "in" and "or" as they appear in Code section 34-1401, relating to absentee ballots, the following: ", or who will be a poll officer in an election district other than the one of his residence in the election he desires to vote in, so that when so amended, Code section 34-1401 shall read as follows:

"Section 34-1401. Definition. -- The words `absentee elector', when used in this Chapter, shall mean, unless otherwise clearly apparent from the context, an elector of the State of Georgia who is required to be absent from the county of his residence during the time of the primary or election he desires to vote in, or who will be a poll officer in an election district other than the one of his residence in the election he desires to vote in, or who because of physical disability will be unable to be present at the polls on the day of such primary or election."

Section 15A. Said Title is further amended by striking in its entirety Code section 34-1403, relating to the form of absentee ballots, and substituting in lieu thereof a new Code section 34-1403 to read as follows:

"Section 34-1403. Official absentee ballots. Ballots for use by absentee electors shall be prepared sufficiently in advance by the superintendent and shall be delivered to the board of registrars as hereinafter provided. Such ballots shall be marked `Official Absentee Ballot' and shall be in

Page: 883

substantially the form for ballots required by Chapter 34-11, except that in counties using voting machines or vote recorders the ballots may be in substantially the form for the ballot labels required by Chapter 34-12. The form for either ballot shall be determined and prescribed by the Secretary of State."

Section 16. Said Title is further amended by striking in its entirety subsection (a) of Code section 34-1406, relating to voting by absentee electors, as amended by an Act approved March 8, 1965 (Ga. L. 1965, p. 119), and substituting in lieu thereof the following:

12/26/2019

GALILEO: Georgia Legislative Documents: Results

"(a) At any time after receiving an official absentee ballot, but before the day of the primary or election, the elector for the purpose of voting, may appear: (i) within the confines of a post office, before a postmaster of the United States or a postal employee designated by a postmaster; (ii) before any commissioned officer of the active armed service of the United States if the elector is a member of such service or if the elector is the spouse or dependent of a member of such service; (iii) before any consul of the United States or his assistant; (iv) before a registrar or deputy registrar of the county of the elector's residence; or (v) before the registrar of any college or university or any employee thereof who has been designated by the registrar. The elector shall first display the ballot to such person as evidence that the same is unmarked, and then shall proceed to mark the ballot with a pen or pencil, in the presence of such person, but in such manner that the person administering the oath is unable to see how the same is marked, and then fold the ballot, enclose and securely seal the same in the envelop on which is printed 'Official Absentee Ballot'. This envelope shall then be placed in the second one, on which is printed the form of affidavit of the elector, the form of jurat of the person before whom the elector appears, and the address of the elector's board of registrars. The elector shall then fill out, subscribe and swear to the affidavit printed on such envelope, and the jurat shall be subscribed and dated by the person before whom the affidavit was taken. Such envelope shall then be securely sealed and the elector shall then mail or personally deliver same to the board of registrars."

Page: 884

Section 16A. Said title is further amended by adding to Code section 34-1217, Authorization of Vote Recorders, the following language, to-wit:

"In all counties where the use of Vote Recorders has been authorized, the governing authorities may furnish without cost to any political party in any primary election, the use and servicing of such Vote Recorders, and the necessary ballot labels, ballot cards, and supplies, and further, may provide equipment and trained personnel for counting ballots, after same have been cast in such primary election."

Section 17. Said Title is further amended by striking from Code section 34-1702, relating to who may file a contest, the following:

"five electors who were",

and substituting in lieu thereof the following:

"aggrieved elector who was",

so that when so amended Code section 34-1702 shall read as follows:

"Section 34-1702. Contest authorized; contestant. -- The nomination of any person who is declared nominated at a primary as a candidate for any Federal, State or county office; or the election of any person who is declared elected to any such office (except when otherwise prescribed by the Federal or State Constitution); or the eligibility of any person declared eligible to seek any such nomination or office in a runoff primary or election; or the approval or disapproval of any question submitted to electors at an election; may be contested by any person who was a candidate at such primary or election for such nomination or office, or by any aggrieved elector who was entitled to vote for such person or for or against such question."

Section 18. All laws and parts of laws in conflict with this Act are hereby repealed.

Section 19. If any provision, clause or section of this Act shall be declared invalid, void, or unconstitutional such declaration shall not affect the other provisions of the Act which shall remain of full force and effect.

12/26/2019

GALILEO: Georgia Legislative Documents: Results

Approval Date: Approved April 4, 1968.

Page: 885

Compiler's Note: The effective date of the following Act is September 1, 1968. See section 3.

Server S|A GALILEO Digital Initiative Database

While in this database, use the Search and Help buttons below.

Georgia Legislative Documents [Search](#) [Help](#)

Content of Act/Resolution

Act/Resolution 2 of 2

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1978

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1978

1978 Vol. 1 -- Page: 1004

Sequential Number: 092

Short Title: GEORGIA ELECTION CODE AMENDED.

Intent: Code Title 34 Amended.

Law Number: No. 1031

Origin: (Senate Bill No. 420).

Type: AN ACT

Full Title: To amend Title 34 of the Code of Georgia, said Title being known as the "Georgia Election Code", so as to provide for definitions to be used in the Georgia Election Code; to provide for the preservation of records; to provide for county registrars; to provide for qualification of registrars and deputy registrars; to provide for registration cards; to provide for the keeping of registration cards and other papers, voter registration places and office hours; to provide for the examination of registration cards and registration; to provide for the filing of disqualification lists with registrars; to provide for lists of electors; to provide for voting only from electors' list; to provide for changes of residence of electors; to provide for the equipment and arrangement of polling places; to provide for November elections; to provide for filing notices of candidacy; to provide for the giving of a notice of intent of write-in candidates; to provide for the qualification of candidates for party nominations; to provide for the form of ballot labels on voting machines; to provide for the preparation of voting machines; to provide for the repair of voting machines; to provide for the form of ballot labels on vote recorders; to provide for reexamination of elector's qualifications; to provide for regulations to be enforced at polling places; to provide for lists of electors and voter's certificates; to provide for the duties of poll officers after the close of polls; to provide for the signing and disposition of returns, electors lists and voter's certificates, and posting of cards of instruction and notices, penalties and examination of voting machines; to provide for the disposition of returns; to provide

Page: 1005

for returns in districts in which vote recorders are used; to provide for application for absentee ballots; to provide for the keeping and depositing of ballots; to provide for the delivery of ballots and other documents to the clerk of superior court; to replace the words "Judge of the Probate Court" with the word "superintendent" throughout said Title, except where the context requires otherwise; to prohibit certain persons from serving as poll watchers; to provide for requirements for voter registration places; to provide a severability clause; to provide an effective date; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

12/26/2019

GALILEO: Georgia Legislative Documents: Results

Section 1. Georgia Code Section 34-103, concerning definitions used in the Georgia Election Code, is hereby amended by deleting subsection (ac) in its entirety and the following is substituted in lieu thereof:

"(ac) The word `superintendent' shall mean the Judge of the Probate Court of a county or the county board of elections if a county has such;"

Section 2. Georgia Code Section 34-103, concerning definitions used in the Georgia Election Code, is hereby amended by adding thereto a new subsection (ah) which shall read as follows:

"(ah) The `call', as used in relation to special elections or primaries, shall mean the affirmative action taken by the responsible public officer to cause a special election or primary to be held. The date of the call shall be the date of the first publication in a newspaper of appropriate circulation of such affirmative action."

Section 3. Georgia Code Section 34-303, concerning the preservation of records, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-303. **Preservation of records.** All primary and election documents in the office of the Secretary of State shall be preserved therein for a period of at least twenty-four (24) months and then the same may be destroyed unless otherwise provided by law."

Page: 1006

Section 4. Georgia Code Section 34-404, concerning the preservation of records, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-404. **Preservation of records.** All primary and election documents in the office of the election superintendent of each county shall be preserved therein for a period of at least twenty-four (24) months and then the same may be destroyed unless otherwise provided by law."

Section 5. Georgia Code Section 34-603, concerning county registrars, is hereby amended by deleting subsection (a) in its entirety and the following is substituted in lieu thereof:

"(a) The judge of the superior court in each county or the senior judge, in time of service, in those counties having more than one judge, shall appoint quadrennially, upon the recommendation of the grand jury of such county, not less than three nor more than five judicious, intelligent and upright electors of such county as county registrars. The grand jury shall submit to the judge the names of ten such electors and the appointment shall be made therefrom and shall be entered on the minutes of the court. When making such appointments, the judge will designate one of the registrars as chief registrar who shall serve as such during his term of office, and such designation shall likewise be entered on the minutes of the court. It shall be the duty of the clerk of the superior court to certify the appointments and designation to the Secretary of State within thirty days after the appointments and designation, and commissions shall be issued as for county officers. When certifying such names to the Secretary of State, the clerk of the superior court shall also list the addresses of the registrars. The registrars shall serve for a term of four years and until their successors are appointed and qualified, except in the event of resignation or removal as hereinafter provided. Such judge will have the right to remove one or more of such registrars, at any time, for cause after notice and hearing. Any registrar shall have the right to resign at any time by submitting a resignation to such judge. In the event of any such removal or resignation of a registrar, his duties and authority as such shall terminate instantaneously. In case of the removal, death or resignation of a registrar, the judge shall appoint a successor who shall serve until the next grand jury convenes, at which time the grand jury shall submit to the judge the names of two judicious, intelligent and upright electors

of such county, and the judge shall make his appointment from said list, such successor to serve the unexpired term of his predecessor in office. In the event the grand jury is in session at the time of any such death, removal or resignation, then such grand jury shall immediately submit the names of said electors to the judge for his appointment. Each such appointment or change in designation shall be entered on the minutes of the court and certified as herein provided."

Section 6. Georgia Code Section 34-605, concerning qualifications of registrars and deputy registrars, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-605. **Qualifications of registrars and deputy registrars.** Registrars and deputy registrars shall be electors of the county in which they are appointed and shall be able to read, write and speak the English language. No person, while serving as a registrar, deputy registrar, or member of a County Board of Elections or within a period of six months after so serving, shall be eligible to any nomination or office to be voted for at a primary or election, provided, however, that this ineligibility shall not apply to a tax commissioner or tax collector, or to any candidate for such office of tax commissioner or tax collector. Provided, nothing herein shall preclude a member of a County Board of Elections, a registrar or deputy registrar from holding political party or body office or serving as a presidential elector."

Section 7. Georgia Code Section 34-608, concerning registration cards, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-608. **Registration cards; supply; use.** The registrars of the several counties shall obtain a supply of registration cards from the Secretary of State which shall be used by them in connection with the application of those persons seeking to register as electors."

Section 8. Georgia Code Section 34-610, concerning the keeping of registration cards and other papers, voter registration places and office hours, is hereby amended by adding thereto a new subsection (d) which shall read as follows:

"(d) Blank registration cards shall be numbered and shall be issued only to deputy registrars who shall give the chief registrar a receipt therefor. The chief registrar shall maintain such receipts as he does other voter registration records. Registration shall be conducted only at the main office of the board of registrars and at such additional places as have been designated by the chief registrar pursuant to this Code."

Section 9. Georgia Code Section 34-613, concerning examination of registration cards and registration, is hereby amended by deleting subsection (b) in its entirety and the following is substituted in lieu thereof:

"(b) Notwithstanding any other provision of this Chapter, if additional places for registration have been designated, the chief registrar shall designate one or more registrars or one or more deputies, or any combination thereof, to act as a board of registrars for the purpose of taking applications for registration, examining applicants and registering persons to vote at each place of registration. Such application shall not be complete until approved by the board of registrars. While so acting, such registrar or registrars, or deputy or deputies, or combination thereof, shall have all the rights and powers and shall be subject to all the limitations that are applicable to the board of registrars."

Section 10. Georgia Code Section 34-621, concerning filing of disqualification lists with registrars, is hereby deleted in its entirety and the following is substituted in lieu thereof:

12/26/2019

GALILEO: Georgia Legislative Documents: Results

"34-621. **Filing of disqualification lists with registrars.** The clerk of the superior court of each county shall, on or before the 10th day of each month, prepare and file with the registrars a complete list, alphabetically arranged with their addresses and ages, of persons residing in the county who appear to be disqualified from voting by reason of having been convicted of a crime during the preceding month, the penalty of which is disfranchisement, unless such person has been pardoned and the right of suffrage restored to him. The Judge of the Probate Court of each county shall, by such date, file a similar list of all persons residing in the county who appear to be disqualified from voting by reason of an adjudication of idiocy or insanity during the preceding month. The local registrar of vital statistics of each county shall, by such date, file a similar list of

Page: 1009

those persons who have died during the preceding month. Each such list shall contain such other information as may be necessary to individually identify persons having the same or similar names."

Section 11. Georgia Code Section 34-623, concerning lists of electors, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-623. **Filing of certified list with superior court clerk and Secretary of State; obtaining list from Secretary of State and board of registrars; arrangement of names; appearance of name on list as pre-requisite to voting.** Within three days after completing such list of electors, the registrars shall file with the clerk of the superior court of their county and Secretary of State a certified copy of such list. When requested, it shall be the duty of the Secretary of State or the board of registrars, as the case may be, to furnish a certified copy of such list, or any part thereof, upon payment of a fee sufficient to cover the cost of preparing such list, but in no event shall the fee exceed an amount equal to one-quarter cent for the name of each elector appearing thereon. The list shall be alphabetically arranged by election districts and it shall be the list of electors for the November election to be held in such year. No person whose name does not appear on such list shall vote or be allowed to vote at such November election, except as hereinafter provided. Such lists of electors shall not be used by any person for commercial purposes."

Section 12. Georgia Code Section 34-629, concerning voting from lists, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-629. **Voting only from list.** All persons whose names appear on the list of electors placed in the possession of the managers in each election district, and no others, shall be allowed to deposit their ballots according to law, at the election district in which they are registered. Provided, however, nothing herein shall prevent the voting of electors in one central location in the county if provisions are made in that central location for voters to vote as they otherwise would be permitted to vote in their respective election districts. Provided further, however, at least one polling place shall be open in each election district during each primary and each election."

Page: 1010

Section 13. Georgia Code Section 34-631, concerning changes of residence of electors, is hereby amended by adding thereto a new subsection (e) which shall read as follows:

"(e) Any elector who moves to a residence within the county but into a different election district within 30 days prior to an election or a primary and fails to notify the board of registrars of such fact, may go to the office of the board of registrars, make a proper address change and receive a document authorizing the elector to vote in the new district of residence after which the elector shall not vote in the district of his former residence. The board of registrars shall take such

12/26/2019

GALILEO: Georgia Legislative Documents: Results

measures as are necessary to insure that an elector so authorized to vote in a new district shall not be permitted to vote in the district of his former residence."

Section 14. Georgia Code Section 34-708, concerning the equipment and arrangement of polling places, is hereby amended by deleting subsection (a) in its entirety and the following is substituted in lieu thereof:

"(a) The superintendent shall cause all rooms used as polling places to be suitably provided with heat and light, and, in districts in which ballots are used, with a sufficient number of voting compartments or booths with proper supplies in which the electors may conveniently mark their ballots, with a curtain, screen or door in the upper part of the front of each compartment or booth so that in the marking thereof they may be screened from the observation of others. A curtain, screen or door shall not be required, however, for the self-contained units used as voting booths in which vote recorders are located if such booths have been designed so as to insure the privacy of the elector. When practicable, every polling place shall consist of a single room, every part of which is within the unobstructed view of those present therein, and shall be furnished with a guardrail or barrier closing the inner portion of such room, which guardrail or barrier shall be so constructed and placed that only such persons as are inside such rail or barrier can approach within six feet of the ballot box and voting compartments, or booths, or voting machines, as the case may be. The ballot box and voting compartments or booths shall be so arranged in the voting room within the enclosed space as to be in full view of those persons in the room outside the guardrail or barrier. The voting machine or machines shall be so placed in the voting rooms within the enclosed

Page: 1011

space that, unless its construction shall otherwise require, the ballot labels on the face of the machine can be plainly seen by the poll officers when the machine is not occupied by an elector."

Section 15. Georgia Code Section 34-802, concerning November elections, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-802. **November election.** The Governor, Statehouse officers, Members of Congress, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior courts, district attorneys, members of the General Assembly, county officers, and justices of the peace shall be elected in the November election next preceding the expiration of the term of office."

Section 16. Georgia Code Section 34-1002, concerning filing notices of candidacy, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-1002. **Filing notice of candidacy.** (a) The names of nominees of political parties nominated in a primary shall be placed on the ballots without their filing the notice of candidacy otherwise required by this Section.

(b) Candidates, other than the nominees of political parties nominated in a primary, shall file their notice of candidacy in the following manner and pay the prescribed qualifying fee by the date hereinafter prescribed in order to be eligible to have their name placed on the general election ballot by the superintendent.

(c) Each candidate, other than a nominee of a political party nominated in a primary, for federal or State office, or his agent, desiring to have his name placed on the ballot, shall file a notice of his candidacy, giving his name, residence address and the office he is seeking in the office of the Secretary of State no later than 12:00 noon on the second Wednesday in June preceding the election in the case of a general election and at least fifteen days prior to the election in the case of a special election; except that such filing shall not apply to a candidate for a militia district office (justice of the peace). Each candidate, other than a nominee of a political party nominated in a primary, for a

12/26/2019

GALILEO: Georgia Legislative Documents: Results

county or militia district office, or his agent, desiring to have his name placed on the ballots shall file

Page: 1012

notice of his candidacy in the office of the superintendent of his county no later than 12:00 noon on the second Wednesday in June preceding the election in the case of a general election and at least fifteen days prior to the election in the case of a special election.

(d) Each candidate required to file a notice of candidacy by this Section shall, no later than 12:00 noon on the second Wednesday in July immediately prior to the election, file with the same official with whom he filed his notice of candidacy, a nomination petition in the form hereinafter prescribed; except that such petition shall not be required if such candidate is: (i) a nominee of a political party for the office of presidential elector when such party has held a national convention and therein nominated candidates for President and Vice President of the United States; (ii) seeking office in a special election; or (iii) an incumbent qualifying as a candidate to succeed himself if, prior to the election at which he was originally elected to the office for which he seeks reelection, such incumbent accompanied his notice of candidacy with a nomination petition.

(e) Each candidate required by this Section to file a notice of candidacy shall accompany his notice of candidacy with an affidavit stating: (i) his residence, with street and number, if any, and his post office address; (ii) his profession, business or occupation, if any; (iii) the name of his election district; (iv) that he is an elector of the county of his residence eligible to vote in the election in which he is a candidate; (v) the name of the office he is seeking; (vi) that he is eligible to hold such office; (vii) that he has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, felony or crime involving moral turpitude under the laws of this State, or any other state or of the United States, or that he has been pardoned thereof with the date and authority of such pardon; and (viii) that he will not knowingly violate any provisions of this Code or rules and regulations adopted thereunder. The affidavit shall contain such other information as may be prescribed by the officer with whom the candidate files his notice of candidacy.

(f) A pauper's affidavit may be filed in lieu of paying any qualifying fee otherwise required by this Section. A candidate filing a pauper's affidavit instead of paying a qualifying fee shall under oath affirm his poverty and his resulting inability to pay the qualifying fee otherwise required."

Page: 1013

Section 17. Georgia Code Chapter 34-10, concerning nomination of candidates, is hereby amended by adding thereto a new Code Section which shall read as follows:

"34-1017. **Notice of intent of write-in candidates.** No person elected on a write-in vote shall be eligible to hold office unless notice of his intention of candidacy was given twenty or more days prior to the election by the person to be a write-in candidate, or by some other person or group of persons qualified to vote in the subject election, as follows: In a State general election, to the Secretary of State and by publication in a paper of general circulation in the State; in a general election of county officers, to the superintendent of the county in which he is to be a candidate and by publication in the organ of the same county; in a municipal general election, to the mayor or similar officer thereof and by publication in the official gazette of the municipality holding the election."

Section 18. Georgia Code Section 34-1005, concerning qualification of candidates, is hereby deleted in its entirety and the following is substituted in lieu thereof:

12/26/2019

GALILEO: Georgia Legislative Documents: Results

"34-1005. **Qualification of candidates; time for opening and closing qualifications; posting of lists of candidates by political parties; certification of political party candidates to the superintendent and Secretary of State.** (a) A candidate for any party nomination in a primary may qualify by either of the two following methods:

- (1) payment of a qualifying fee pursuant to the Election Code, or
- (2) the submission of a pauper's affidavit by which the candidate, under oath affirms his poverty and his resulting inability to pay the qualifying fee otherwise required.

If a candidate seeks to qualify for a county or militia district office, the pauper's affidavit shall be presented to the county political party; otherwise, the candidate shall file his pauper's affidavit with the State political party. Unless otherwise provided by law, all candidates for party nomination in a primary shall qualify as such candidates in accordance with the procedural rules of their party; provided, however, that no person shall be prohibited from qualifying for such office who meets the requirements of such procedural

Page: 1014

rules and (i) who is eligible to hold the office which he seeks, (ii) who is not prohibited from being nominated or elected by provisions of Code Section 34-106 or 34-107, as presently written or hereafter amended, and (iii) who, if party rules so require, affirms his allegiance to his party by signing the following oath:

'I do hereby swear or affirm my allegiance to the (name of party) Party.'

(b) In the case of a general primary, the candidates shall commence qualifying at 9:00 a.m., on the fourth Wednesday in May and shall cease qualifying at 12:00 noon on the second Wednesday in June immediately preceding such primary. In the case of a special primary, the candidate shall qualify at least 15 days prior to the date of such primary.

(c) Within one hour after the qualifications have ceased, the county executive committee of each political party shall post at the county courthouse a list of all candidates who have qualified with such executive committee, and the State executive committee of each political party shall post a list of all candidates who have qualified with such committee at the courthouse of the county in which such executive committee's office is located.

(d) Each candidate for party nomination described in subsection (a) of this Section shall file an affidavit with the political party at the time of his qualifying stating: (1) his residence, with street and number, if any, and his post office address; (2) his profession, business or occupation, if any, (3) the name of his election district; (4) that he is an elector of the county of his residence eligible to vote in the primary election in which he is a candidate for nomination; (5) the name of the office he is seeking; (6) that he is eligible to hold such office; (7) that he has never been convicted and sentenced in any court of competent jurisdiction for fraudulent violation of primary or election laws, malfeasance in office, felony or crime involving moral turpitude, under the laws of this State, or any other state or of the United States, or that he has been pardoned thereof with the date and authority of such pardon; and (8) that he will not knowingly violate any provisions of this Code or rules or regulations adopted thereunder."

Page: 1015

Section 19. Georgia Code Section 34-1208, concerning form of ballot labels on voting machines, is hereby amended by deleting subsection (a) in its entirety and the following is substituted in lieu thereof:

12/26/2019

GALILEO: Georgia Legislative Documents: Results

"(a) The ballot labels shall be printed in black ink, upon clear white or pastel color material, of such size as will fit the ballot frame, and in plain clear type so as to be easily readable by persons with normal vision."

Section 20. Georgia Code Section 34-1209, concerning preparation of voting machines, is hereby amended by deleting subsection (c) in its entirety and the following is substituted in lieu thereof:

"(c) On or before the twelfth day preceding a primary or election the superintendent shall mail to the foreman of the grand jury, the chairman of the county executive committee of each political party which shall be entitled under existing laws to participate in primaries within the county, and to the chairman or presiding officer of any organization of citizens within the county having as its purpose or among its purposes the investigation or prosecution of primary and election frauds which has registered its name and address and the names of its principal officers with the superintendent at least thirty days before such primary or election, and, in the case of an election, to the appropriate committee of each political body which shall be entitled to have the names of its candidates entered on the voting machines, and to each independent candidate who shall be entitled to have his name printed on the voting machines, a written notice stating the times when and the place or places where preparation of the machines for use in the several election districts in the county will be started. The grand jury shall appoint a committee, consisting of three of its members, which shall inspect the machines and see that the machines are properly prepared and are placed in proper condition and order for use. In the event the hereinabove mentioned committee of the grand jury fails to be present, the superintendent shall immediately appoint a panel consisting of three electors to perform the duties of the committee of the grand jury set forth in this Section. Further, one representative of each political party or body, certified by the chairman of such committee and one representative of each aforementioned organization of citizens, certified by the chairman or presiding officer of such organization, and any such independent candidate or his certified agent shall

Page: 1016

be entitled to be present during the preparation of the machines and to see that the machines are properly prepared and are placed in proper condition and order for use. Such committee of the grand jury, representatives or candidates shall not, however, interfere with the preparation of the machines, and the superintendent may make such reasonable rules and regulations concerning the conduct of such representatives and candidates."

Section 21. Georgia Code Section 34-1215, concerning the repair of voting machines, is hereby amended by deleting subsection (b) in its entirety.

Section 22. Georgia Code Section 34-1222, concerning form of ballot labels on vote recorders, is hereby amended by deleting subsection (a) in its entirety and the following is substituted in lieu thereof:

"(a) The ballot labels shall be printed in black ink, upon clear white or colored material, of such size and arrangement as will suit the construction of the vote recorder, and in plain clear type so as to be easily readable by persons with normal vision. Provided, red material shall not be used."

Section 23. Georgia Code Section 34-1302, concerning voter's certificates, is hereby amended by deleting from subsection (a) thereof the following:

"(a) At each primary and election each superintendent shall prepare a suitable number of voter's certificates which shall be in substantially the following form:",

and substituting in lieu thereof the following:

"(a) At each primary and election the Secretary of State shall prepare and furnish to each county a suitable number of voter's certificates which shall be in substantially the following form:".

Section 24. Georgia Code Section 34-627, concerning the right of registrars to reexamine the qualifications of electors, is hereby amended by deleting subsection (b) in its entirety and the following is substituted in lieu thereof:

Page: 1017

"(b) For the purpose of determining the qualification or disqualification of applicants and electors, the registrars may, upon at least five days' notice, require the production of books, papers and other material, and upon like notice may subpoena witnesses. The registrars may swear any witness appearing before them. If the registrars shall differ among themselves upon any question coming before them, the concurrent votes of a majority of the registrars shall control."

Section 25. Georgia Code Section 34-1313, concerning regulations enforced at polling places, is hereby amended by deleting subsections (c), (e) and (g) in their entireties and substituting the following, respectively, in lieu thereof:

"(c) No elector, except a poll officer or poll watcher, shall reenter the enclosed space after he has once left it, except to give assistance as provided by this Code.";

"(e) All persons, except poll officers, poll watchers, persons in the course of voting, persons lawfully giving assistance to electors, and peace officers, when necessary for the preservation of order, must remain outside the enclosed space during the progress of the voting.";

and

"(g) It shall be the duty of the chief manager to secure the observances of this Section, to keep order in the polling place, and to see that no more persons are admitted within the enclosed space than are permitted by this Chapter. Further, from the time a polling place is opened until the ballots are delivered to the superintendent, the ballots shall be in the custody of at least two poll officers at all times."

Section 26. Georgia Code Section 34-1314.1, concerning lists of electors and voter's certificates, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-1314.1. **Return of checked list and voter's certificates; registrars to keep list and certificates open to public inspection.** The chief manager in each election district shall return a checked list of electors, reflecting those who voted and those who received assistance in

Page: 1018

voting and the voter's certificates to the superintendent, to be deposited with the registrars. The board of registrars shall keep such voter's certificates for at least twenty-four (24) months and such electors lists for at least ten (10) years which shall be available for public inspection."

Section 27. Georgia Code Section 34-1321, concerning duties of poll officers after the close of the polls, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-1321. **Duties of poll officers after the close of the polls.** After the polls are closed and the last elector has voted in districts in which ballots are used, at least two poll officers shall remain within the enclosed space. Before the ballot box is opened, the number of ballots issued to electors, as shown by the stubs, and the number of ballots, if any, spoiled and returned by electors and

12/26/2019

GALILEO: Georgia Legislative Documents: Results

cancelled, shall be announced to all present in the voting room, and entered upon the general returns of votes cast at such primary or election. The poll officer shall then compare the number of electors voting as shown by the stubs with the number of names shown as voting by the electors' list, voter's certificate, and the numbered list of voters, and shall announce the result, and shall enter on the general returns the number of electors who have voted, as shown by the voter's certificates. If any differences exist, they shall be reconciled, if possible, otherwise they shall be noted on the general returns. The electors' list, the voter's certificates, the numbered list of voters and the stubs of all ballots used, together with all unused ballots, and all spoiled and cancelled ballots, and all rejected voter's certificates shall then be placed in separate packages, containers or envelopes, and sealed, before the ballot box is opened."

Section 28. Georgia Code Section 34-1326, concerning signing and disposition of returns, electors' list and voter's certificates, posting and return of ballot boxes, is hereby amended by deleting subsection (a) in its entirety and the following is substituted in lieu thereof:

"(a) Immediately after the vote has been counted in districts in which paper ballots are used, all of the general returns shall be signed by the poll officers. If any poll officer shall refuse to sign or certify the general returns, he shall write his reasons therefor upon the general return sheets. One of such returns shall be immediately

Page: 1019

posted for the information of the public outside the polling place or place of tabulation and one of such returns shall be returned sealed to the superintendent in an envelope prepared for the Secretary of State and one shall be entrusted to the chief manager for delivery to the superintendent with the package of unused ballots and other election supplies in an envelope provided for that purpose. The poll officer shall then replace all the ballots cast, so counted and canvassed, in the ballot boxes, including those declared void, spoiled, and cancelled, together with the voter's certificates, one set of the tally papers, one general return sheet, one numbered list of voters, sealed as aforesaid, and one oath of each poll officer, and lock and seal each ballot box so that nothing can be inserted therein until it be opened again; and the chief manager and an assistant manager shall immediately deliver the ballot boxes to the custody of the superintendent, and the superintendent shall not compute any returns from any election district until the ballot boxes therefor, as well as the package of unused ballots and other election supplies therefrom are so delivered."

Section 29. Georgia Code Section 34-1327, concerning opening of polls, posting cards of instruction and notices of penalties and examination of voting machines, is hereby amended by deleting subsection (g) in its entirety and the following is substituted in lieu thereof:

"(g) If during the primary or election, a voting machine becomes inoperative in such manner that it cannot be readily repaired without exposing the count on the candidate counters, the poll officer shall immediately lock and seal the operating lever or mechanism of the machine, so that the voting and counting mechanism will be prevented from operation. Upon the close of the polls, the poll officers shall perform their duties set forth in Sections 34-1331, 34-1332, 34-1333, and 34-1334 with respect to such machine. If necessary, because of the lack of another machine or other machines for use by the electors, after a voting machine becomes inoperative, paper ballots shall be used."

Section 30. Georgia Code Section 34-1337, concerning returns in districts in which vote recorders are used, is hereby deleted in its entirety and the following is substituted in lieu thereof:

Page: 1020

12/26/2019

GALILEO: Georgia Legislative Documents: Results

"34-1337. **Return in districts in which vote recorders are used.** Upon completion of the count of write-in votes, the manager shall prepare and sign a return, in sufficient counterparts, showing: (a) the number of valid ballot cards, including any that are damaged; (b) the number of write-in ballots voted, and the tally of the write-in votes; (c) the number of spoiled and invalid ballot cards; and (d) the number of unused ballot cards. The manager shall then place one counterpart of the return, the voted ballot cards, defective, spoiled, and invalid ballot cards, and write-in ballots, each enclosed in an envelope, in the ballot card container, which shall be sealed and signed by the manager so that it cannot be opened without breaking the seal. The managers shall then deliver in the custody of at least two poll officers the container to the tabulating machine center, or other place designated by the superintendent and shall receive a receipt therefor. The remaining counterparts of the returns, unused ballot cards, records, vote recorders, and other materials shall be returned in the same manner as similar materials in election districts in which voting machines and paper ballots are used."

Section 31. Georgia Code Section 34-1402, concerning applications for absentee ballots, is hereby amended by adding thereto a new subsection (d), which shall read as follows:

"(d) In those counties in which the board of registrars provides application forms for absentee ballots, the board shall provide such quantity of the application form to the dean of each college or university located in that county as said dean determines necessary for the students of his college or university."

Section 32. Georgia Code Section 34-1407, concerning keeping and depositing ballots, is hereby amended by deleting subsection (b) in its entirety and the following is substituted in lieu thereof:

"(b) After the close of the polls on the day of the primary or election, in election districts other than those in which vote recorders are used, a registrar shall deliver the official absentee ballot of each certified absentee elector, as well as the copies of the numbered lists of certified and rejected absentee electors, to the manager in charge of the absentee ballot precinct of the county which shall be located in the county courthouse. Such manager with two assistant managers, appointed by the superintendent, with such clerks as the manager deems necessary shall count the absentee ballots following

Page: 1021

the procedures prescribed by this Code for other ballots, insofar as practicable, and prepare election returns for each election district in which absentee ballots were cast. In those districts in which vote recorders are used, such absentee ballots shall be taken to the tabulation center or other place designated by the superintendent, and the official receiving such absentee ballots shall issue his receipt therefor. A manager shall then open the envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope, marked 'Official Absentee Ballot' in a ballot box reserved for absentee ballots."

Section 33. Georgia Code Section 34-1515, concerning delivery of ballots and other documents to the clerk of superior court, is hereby deleted in its entirety and the following is substituted in lieu thereof:

"34-1515. **Delivery of ballots and other documents to clerk of superior court.** Immediately upon completing the returns required by this Chapter, the superintendent shall deliver in sealed containers to the clerk of the superior court the used, unused and void ballots and the stubs of all ballots used, one copy of oaths of poll officers, one copy of the numbered lists of voters, tally paper, voting machine paper proof sheet, and return sheet, involved in the primary or election. The clerk shall hold such ballots and other documents under seal (unless otherwise directed by the superior court) for at least twenty-four (24) months after which they shall be presented to the grand jury for inspection at its next meeting. Such ballots and other documents shall be preserved in the office of

12/26/2019

GALILEO: Georgia Legislative Documents: Results

the clerk until the adjournment of such grand jury and then they may be destroyed unless otherwise provided by court order."

Section 34. Georgia Code Title 34, also known as the "Georgia Election Code", concerning elections, is hereby further amended by replacing the words "Judge of the Probate Court" with the word "superintendent" throughout said Code Title, except where the context requires otherwise.

Section 35. Code Section 34-1310, relating to poll watchers in primaries and elections, as amended, is hereby amended by adding at the end thereof a new subsection (d) to read as follows:

Page: 1022

"(d) No person shall be appointed or eligible to serve as a poll watcher in any primary or election in which such person is a candidate."

Section 36. Code Section 34-610, relating to the keeping of registration cards and other papers, voter registration places and office hours, as amended, is hereby amended by adding thereto a new subsection (d) which shall read as follows:

"(d) All voter registration places shall be places open to the general public and frequented by the general public."

Section 37. In the event any Section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the Section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part of parts hereof would be declared or adjudged invalid or unconstitutional.

Section 38. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 39. All laws and parts of laws in conflict with this Act are hereby repealed.

Approval Date: Approved March 14, 1978.

[Previous](#)