

3-1-2022

SB 202: Revisions to Georgia's Election and Voting Procedures

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Recommended Citation

Leila Fawaz, Kate Mize & Monica Vu, *SB 202: Revisions to Georgia's Election and Voting Procedures*, 38 GA. ST. U. L. REV. 105 (2022).

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ELECTIONS

Elections and Primaries Generally: Comprehensively Revise Elections and Voting; Amend Title 21 of the Official Code of Georgia Annotated, Relating to Elections and Primaries Generally, so as to Revise a Definition; Provide for the Establishment of a Voter Intimidation and Illegal Election Activities Hotline; Limit the Ability of the State Election Board and Secretary of State to Enter into Certain Consent Agreements, Settlements, and Consent Orders; Provide that the Secretary of State Shall be a Nonvoting Ex Officio Member of the State Election Board; Provide for the Appointment, Confirmation, Term, and Removal of the Chairperson of the State Election Board; Revise Provisions Relating to a Quorum of such Board; Require the Secretary of State to Support and Assist the State Election Board; Provide for the Appointment of Temporary and Permanent Replacement Superintendents; Provide for Procedures; Provide for Performance Reviews of Local Election Officials Requested by the State Election Board or Local Governing Authorities; Provide for a Definition; Provide for Appointment and Duties of Performance Review Boards; Provide for Reports of Performance Review Boards; Provide for Promulgation of Rules and Regulations; Provide Additional Requirements on the State Election Board's Power to Adopt Emergency Rules and Regulations; Provide that No Election Superintendents or Boards of Registrars Shall Accept Private Funding; Provide that the State Election Board Shall Develop Methods for Distribution of Donations; Provide that Certain Persons May Serve as Poll Workers in Other than the County of their Residence; Provide for the Appointment of Acting Election Superintendents in the Event of a Vacancy or Incapacitation in the Office of Judge of the Probate Court of Counties without a Board of Elections; Provide for Resumption of the Duties of Election Superintendent upon the Filling of Such Vacancy; Provide for the Compensation of Such Acting Election Superintendents; Provide for the Reduction in Size of Certain Precincts under Certain Circumstances; Provide for Notice When Polling Places are Relocated; Provide for Certain Reports; Provide Limitations on the

Use of Buses and Other Moveable Facilities; Provide that the Name and Designation of the Precinct Appears on Every Ballot; Provide for Allocation of Voting Equipment by Counties and Municipalities; Provide for the Manner of Handling the Death of a Candidate Prior to a Nonpartisan Election; Provide that No Candidate Shall Take or be Sworn into Any Elected Public Office unless Such Candidate Has Received a Majority of the Votes Cast for Such Office Except as Otherwise Provided by Law; Provide for Participation in a Multistate Voter Registration System; Revise Procedures and Standards for Challenging Electors; Provide for the Printing of Ballots on Safety Paper; Provide for the Time and Manner for Applying for Absentee Ballots; Provide for Certain Limitations and Sanctions on the Distribution of Absentee Ballot Applications; Provide for Absentee Ballot Drop Boxes and the Requirements Therefore; Provide for the Time and Manner of Issuing Absentee Ballots; Provide for the Manner of Voting and Returning Absentee Ballots; Revise the Times for Advance Voting; Limit Changes to Advance Voting Locations in the Period Prior to an Election; Provide Notice Requirements for Changes of Advance Voting Locations; Provide for the Processing and Tabulation of Absentee Ballots; Provide Sanctions for Improperly Opening an Absentee Ballot; Provide for Certain Elector Identification for Absentee Balloting; Provide for Monitors and Observers; Provide for Poll-Watcher Training; Provide for Restrictions on the Distribution of Certain Items within Close Proximity to the Polls on Election Days; Provide for the Voting and Processing of Provisional Ballots; Provide for Duplication Panels for Defective Ballots that Cannot Be Processed by Tabulating Machines; Provide for Ranked Choice Voting for Military and Overseas Voters; Revise the Time for Runoffs; Revise Eligibility to Vote in Runoffs; Provide for the Deadline for Election Certification; Provide for a Pilot Program for the Scanning and Publishing of Ballots; Provide for the Inspection and Copying of Original Ballots by Certain Persons Following the Completion of a Recount; Provide for Special Primaries and Special Elections to Fill Vacancies in Certain Offices; Provide for Public Notice and Observation of Preparation of Voting Equipment; Provide for Observation of Elections and Ballot Processing and Counting; Provide for the Filling of

Vacancies in Certain Offices; Prohibit Observing or Attempting to Observe How a Voter Marks or Has Marked His or Her Ballot or Inducing a Voter to do so; Prohibit the Acceptance of a Ballot for Return without Authorization; Prohibit the Photographing or Other Recording of Ballots and Ballot Markers; Amend Chapter 35 of Title 36 of the Official Code of Georgia Annotated, Relating to Home Rule Powers, so as to Provide for the Delay of Reapportionment of Municipal Corporation Election Districts When Census Numbers Are Delayed; Amend Title 50 of the Official Code of Georgia Annotated, Relating to General Provisions Regarding State Government, so as to Provide for the Submission and Suspension of Emergency Rules by the State Election Board; Provide a Short Title; Provide for Related Matters; Provide for Effective Dates; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:

O.C.G.A. §§ 21-2-2 (amended); 21-2-3 (amended); 21-2-10 (amended); 21-2-11 (amended); 21-2-30 (amended); 21-2-32 (amended); 21-2-33.1 (amended); 21-2-33.2 (new); 21-2-35 (new); 21-2-45 (amended); 21-2-50 (amended); 21-2-70 (amended); 21-2-71 (amended); 21-2-74.1 (new); 21-2-92 (amended); 21-2-105 (new); 21-2-106 (new); 21-2-134 (amended); 21-2-212 (amended); 21-2-229 (amended); 21-2-230 (amended); 21-2-232 (amended); 21-2-263 (amended); 21-2-265 (amended); 21-2-266 (amended); 21-2-267 (amended); 21-2-280 (amended); 21-2-285 (amended); 21-2-285.1 (amended); 21-2-290 (amended); 21-2-300 (amended); 21-2-367 (amended); 21-2-372 (amended); 21-2-379.25 (amended); 21-2-381 (amended); 21-2-382 (amended); 21-2-383

(amended); 21-2-384 (amended);
21-2-386 (amended); 21-2-390
(amended); 21-2-403 (amended);
21-2-408 (amended); 21-2-414
(amended); 21-2-418 (amended);
21-2-419 (amended); 21-2-420 (new);
21-2-421 (new); 21-2-437 (amended);
21-2-438 (amended); 21-2-483
(amended); 21-2-492 (amended);
21-2-493 (amended); 21-2-501
(amended); 21-2-540 (amended);
21-2-541 (amended); 21-2-542
(amended); 21-2-546 (new); 21-2-568
(amended); 21-2-568.1 (new);
21-2-568.2 (new); 36-35-4.1
(amended); 50-13-4 (amended);
50-18-71 (amended)

BILL NUMBER:

SB 202

ACT NUMBER:

9

GEORGIA LAWS:

2021 Ga. Laws 14

SUMMARY:

This Act primarily functions to revise elections and voting in three significant areas: voting access, ballot counting, and power and controls. With regard to voting access, the Act confines drop boxes to early voting sites, requires identification for absentee voting, changes the early voting hours, criminalizes the handing out of food and water to voters in line, moves up absentee ballot deadlines, bans voting buses, deems provisional ballots cast in the improper precinct void, restricts the mass mailing of absentee ballot request forms, removes limitations on voter eligibility challenges, and opens the potential for more voting sites when there are long lines. In terms of ballot

counting, the Act provides for quicker election reporting times, requires that ballots appear on special paper, deems digital images of paper ballots as public records, and grants more access to poll watchers. Finally, regarding power and controls, the Act provides that state officials may replace county election boards, stipulates that a law enforcement hotline will be the point of contact for voter complaints, eliminates outside funding for elections, requires that runoff elections be held soon after general elections, and replaces free-for-all special elections with partisan races.

EFFECTIVE DATE: March 25, 2021

History

Coined by President Joe Biden as the “battle for the soul of the nation,” the contentious 2020 presidential election that flipped Georgia blue became the driving force behind the Election Integrity Act of 2021 (the Act).¹ The Act, originally introduced in the General Assembly as Senate Bill (SB) 202, can be described disparately as either “the epitome of voter suppression” or “the embodiment of election integrity.”² The dichotomous view of the bill—apparent from its party-line passage—leads to differing theories and understandings of its history.

Characterizing SB 202 as “fallout,” Georgia’s Lieutenant Governor Geoff Duncan (R) blames the bill’s formation on the “ten weeks of misinformation that flew in from former President Donald Trump.”³

1. Nolan D. McCaskill & Zach Montellaro, *All Eyes Are on Georgia. Again*, POLITICO (Apr. 4, 2021, 7:00 AM), <https://www.politico.com/news/2021/04/04/georgia-voting-law-479002> [<https://perma.cc/4CB6-4WMG>].

2. *Id.*

3. *Georgia’s Lt. Governor Says Elections Law Was a Result of Trump’s Misinformation*, CNN (Apr. 7, 2021) [hereinafter CNN Interview], <https://www.cnn.com/videos/politics/2021/04/07/lieutenant->

The bill stems from a line of previous election bills consumed by SB 202, including House Bill (HB) 531.⁴ Lieutenant Governor Duncan contends that SB 202 gained momentum in the legislature after Rudy Giuliani, a member of President Trump's legal team, appeared in committee rooms spreading misinformation.⁵ In December 2020, Giuliani caravanned around the United States seeking to overturn election results in states that favored then-President-elect Biden, including Georgia.⁶ During the seven-hour Senate Judiciary Committee meeting, Giuliani touted claims of widespread voter fraud in Georgia.⁷ Among other things, he claimed voting machines malfunctioned and voters cast tens of thousands of illegal absentee ballots.⁸ Giuliani's allegations along with rumors, such as multiple precincts counting "suitcases" of ballots, resulted in weakened confidence in the integrity of Georgia elections and ultimately caused the hurried push behind SB 202.⁹ Georgia Senator Chuck Payne (R-54th) contends that SB 202's push stemmed from numerous reports from his constituents, both locally and statewide, that when they went to vote during Early Voting or on Election Day, they were only allowed to vote a provisional ballot because their names had been improperly listed as already having requested an absentee ballot when, in actuality, they had not requested such a ballot.¹⁰ On the other hand, Democratic opponents of SB 202 claim that increased Democratic voter turnout sparked the rush to pass SB 202.¹¹

governor-geoff-duncan-georgia-elections-law-newday-vpx.cnn.

4. Stephen Fowler, *What's Similar (and Different) About Georgia's Two Omnibus Voting Bills*, GA. PUB. BROAD., <https://www.gpb.org/news/2021/03/23/whats-similar-and-different-about-georgias-two-omnibus-voting-bills> [https://perma.cc/47H6-NRC2] (Mar. 24, 2021, 10:05 AM).

5. CNN Interview, *supra* note 3.

6. Stephen Fowler, *Fact Checking Rudy Giuliani's Grandiose Georgia Election Fraud Claim*, GA. PUB. BROAD., <https://www.gpb.org/news/2020/12/04/fact-checking-rudy-giulianis-grandiose-georgia-election-fraud-claim> [https://perma.cc/9LPF-33HP] (Dec. 8, 2020, 11:24 AM). A District of Columbia appeals court eventually suspended Giuliani's law license for his attempts to overturn the 2020 elections with baseless claims. Jaelyn Diaz, *An Appeals Court Has Suspended Rudy Giuliani's Ability to Practice Law in D.C.*, NPR (July 8, 2021, 1:15 AM), <https://www.npr.org/2021/07/08/1014047881/an-appeals-court-has-suspended-rudy-giulianis-ability-to-practice-law-in-d-c> [https://perma.cc/W4FM-8WZJ].

7. Fowler, *supra* note 6.

8. *Id.*

9. *Id.*; CNN Interview, *supra* note 33.

10. Electronic Mail Interview with Sen. Chuck Payne (R-54th) (July 21, 2021) (on file with the Georgia State University Law Review) [hereinafter Payne Interview].

11. Electronic Mail Interview with Sen. Jen Jordan (D-6th) (June 11, 2021) (on file with the Georgia

Before the 2020 president election, Georgia had not been a blue state for nearly thirty years.¹² Secretary of State Brad Raffensperger (R) reported record-breaking voter turnout during the 2020 election for both total votes and absentee ballot votes.¹³ During the October 2020 early voting process, Georgia saw an almost 110% increase in the number of votes cast from 2016.¹⁴ Many credited Black voters for securing Georgia's Democratic victory because "half of the top [ten] highest-turnout counties [in the run-off elections]... were majority-Black counties."¹⁵ Opponents of SB 202 feel that this high voter turnout, especially by minority voters, provided the actual impetus for SB 202—as opposed to "election integrity."¹⁶ Senator Jen Jordan (D-6th) stated that "[t]he only reason that this bill was passed was because Democratic voters and voters of color cast votes in historic numbers, which resulted in Republican losses."¹⁷

The partisan divide, exacerbated by the 2020 presidential election, caused SB 202 to garner significant statewide and nationwide media attention. The Savannah Tribune called the Act into question before it passed both houses.

The Georgia State Legislature, which is majority Repub[li]can in the Senate and House of Representatives, is in the process of fast-tracking Anti-Voting Bills that will only enhance Voter Suppression in our state by making it more difficult to exercise the right to cast

State University Law Review) [hereinafter Jordan Interview].

12. Caitlyn Stroh-Page, *When Was the Last Time Georgia Voted Blue? It's Been Nearly 30 Years*, ATHENS BANNER-HERALD (Nov. 5, 2020, 8:28 PM), <https://www.onlineathens.com/story/news/politics/elections/2020/11/06/when-was-last-time-georgia-voted-blue-it-s-been-nearly-30-years/43004695/> [<https://perma.cc/NVQ7-H5WZ>].

13. Press Release, Georgia Sec'y of State, Secretary of State Reports Record Breaking Turnout, https://sos.ga.gov/index.php/elections/secretary_of_state_reports_record_breaking_turnout [<https://perma.cc/G2GV-NEVG>].

14. Maya King, *Georgia's Legacy of Voter Suppression Is Driving Historic Black Turnout*, POLITICO (Oct. 26, 2020, 4:30 AM), <https://www.politico.com/news/2020/10/26/georgia-voter-suppression-black-turnout-432405> [<https://perma.cc/JK2X-N7W6>]; Press Release, Georgia Sec'y of State, Record Breaking Early In-Person Voting Continues October 24, 8 P.M. Update, https://sos.ga.gov/index.php/elections/record_breaking_early_in-person_voting_continues_october_24_8_pm_update [<https://perma.cc/AX94-3XP7>].

15. Stef W. Kight, *Data: Black Voters Propelled Democrats' Georgia Victory*, AXIOS (Jan. 8, 2021), <https://www.axios.com/georgia-runoff-turnout-black-vote-5011009f-ed3b-4520-8b3c-e9217db59afc.html> [<https://perma.cc/5W3D-4TBX>].

16. Jordan Interview, *supra* note 11.

17. *Id.*

one's vote—all this after a successful high voter turnout general election in November 2020, followed by another successful, and even higher than expected voter-turnout for the Runoff election in January 2021.¹⁸

One media outlet compared the efforts made in 2020 (in response to the COVID-19 pandemic), which made it easier to vote, with the efforts made in 2021, which proposed laws that would make it harder to vote.¹⁹ Other groups, however, deemed SB 202 “a historic victory,” asserting that “Georgia legislators are leading the fight to protect our elections.”²⁰

Initially introduced by Senator Max Burns (R-23rd), SB 202 sought to impose restrictions on third-party organizations sending voters absentee ballots.²¹ Originally, SB 2020 contained punitive measures for third-party organizations that did indeed send voters absentee ballots.²² Representative Barry Fleming (R-121st) then added language that overhauled the Election Code.²³ Among other things, the bill's language substantively revises early voting rules, vote counting, municipal election procedures, and State Election Board duties.²⁴ The notion that “many electors [were] concerned about allegations of rampant voter fraud” drove the additional language.²⁵

18. Shirley James, *Voter Suppression in Georgia: On the Rise Again!*, SAVANNAH TRIB. (Feb. 24, 2021), <https://www.savannahtribune.com/articles/voter-suppression-in-georgia-on-the-rise-again/> [https://perma.cc/TUR4-7PD4].

19. Nathaniel Rakich, *All the Ways Georgia Could Make It Harder to Vote*, FIVETHIRTYEIGHT (Feb. 25, 2021, 6:00 AM), <https://fivethirtyeight.com/features/all-the-ways-georgia-could-make-it-harder-to-vote/> [https://perma.cc/49VG-XP77].

20. Press Release, Heritage Action for Am., Heritage Action Applauds Georgia Legislators on Passage of Georgia Voting Bill (Mar. 25, 2021), <https://heritageaction.com/press/heritage-action-applauds-georgia-legislators-on-passage-of-georgia-voting-bill> [https://perma.cc/RF48-P2TK].

21. Video Recording of Senate Proceedings at 8 hr., 38 min., 33 sec. (Mar. 8, 2021) (remarks by Sen. Max Burns (R-23rd)), <https://www.youtube.com/watch?v=ERF83-VGOOQ> (“It is a very straightforward bill. It requires an entity that is mailing applications for an absentee ballot to first compare their mailing list with the secretary of state's mailing list and remove duplicates . . .”).

22. See SB 202, as introduced, 2021 Ga. Gen. Assemb.

23. Video Recording of House Special Committee on Election Integrity Proceedings at 2 min., 21 sec., (Mar. 17, 2021) (remarks by Rep. Barry Fleming (R-121st), <https://livestream.com/accounts/25225474/events/8729747/videos/218933436>; 2021 Ga. Laws 14, § 2, at 16–17.

24. Stephen Fowler, *What Does Georgia's New Voting Law SB 202 Do?*, GA. PUB. BROAD., <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do> [https://perma.cc/S9WZ-MSSQ] (Mar. 27, 2021, 10:08 PM).

25. 2021 Ga. Laws 14, § 2, at 16–17.

Whatever the reason for the Act's introduction, it has a substantial impact on Georgia voting law.²⁶ For example, the new law requires identification for absentee voting, which supersedes prior Georgia law that required a comparison of absentee ballot application signatures with those on file.²⁷ The Act also reduces the amount of time voters have to request absentee ballots from “not more than 180 days” before the primary or election to “not earlier than 78 days” before the primary or “less than 11 days” before the election.²⁸ Overall, SB 202 was one of the most comprehensive reform bills passed during the 2021 legislative session.²⁹

On one side, third-party foundations, such as conservative research institution The Heritage Foundation, joined Representative Fleming and Senator Burns in their efforts to pass this election law.³⁰ On the other side, influential leaders, such as Stacey Abrams, joined the opposition to the bill's introduction.³¹ With contrary opinions on Georgia's voter law, the outcome of the 2020 elections, and growing media attention, SB 202 was poised to narrowly pass the Senate and House by a party-line vote.³²

26. Fowler, *supra* note 24.

27. Compare O.C.G.A. § 21-2-381 (a)(1)(C) (2019 & Supp. 2021), with O.C.G.A. § 21-2-381(a)(1)(C) (2019).

28. Compare § 21-2-381(a)(1)(A) (2019) (“[N]ot more than 180 days prior to the date of the primary or election, or runoff of either, in which the elector desires to vote, any absentee elector may make . . . an application for an official ballot of the elector's precinct to be voted at such primary, election, or runoff.”), with § 21-2-381(a)(1)(A) (2019 & Supp. 2021) (“[N]ot earlier than 78 days or less than 11 days prior to the date of the primary or election, or runoff of either, in which the elector desires to vote, any absentee elector may make . . . an application for an official ballot of the elector's precinct to be voted at such primary, election, or runoff.”).

29. See generally 2021 Ga. Laws 14.

30. Stanley Dunlap, *Conservative Heritage Group Takes Credit for Georgia Voting Overhaul*, GA. PUB. BROAD. (May 17, 2021, 9:53 AM), <https://www.gpb.org/news/2021/05/17/conservative-heritage-group-takes-credit-for-georgia-voting-overhaul> [<https://perma.cc/6KZV-T5DM>].

31. *On Strengthening American Democracy: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. 1–4 (2021) (statement of Stacey Y. Abrams, Founder, Fair Fight Action), <https://www.judiciary.senate.gov/imo/media/doc/Abrams%20-%20Testimony1.pdf> [<https://perma.cc/QY8P-KGQ4>].

32. Georgia House of Representatives Voting Record, SB 202, #297 (Mar. 25, 2021); Georgia Senate Voting Record, SB 202, #283 (Mar. 25, 2021).

*Bill Tracking of SB 202**Consideration and Passage by the Senate*

Senator Max Burns (R-23rd) sponsored SB 202 in the Senate with Senator Butch Miller (R-49th), Mike Dugan (R-30th), Frank Ginn (R-47th), Lee Anderson (R-24th), Randy Robertson (R-29th), Jeff Mullis (R-53rd), John Albers (R-56th), Larry Walker, III (R-20th), Matt Brass (R-28th), Jason Anavitarte (R-31st), Marty Harbin (R-16th), Billy Hickman (R-4th), Dean Burke (R-11th), Sheila McNeill (R-3rd), Brandon Beach (R-21st), Bruce Thompson (R-14th), Tyler Harper (R-7th), Carden Summers (R-13th), Chuck Payne (R-54th), Chuck Hufstetler (R-52nd), Blake Tillery (R-19th), and John Kennedy (R-18th) cosponsoring.³³ As originally introduced, the bill limited the sending of absentee ballot applications only to registered voters.³⁴

The Senate first read the bill on February 18, 2021.³⁵ On March 3, 2021, the Senate Committee on Ethics offered a substitute for the bill.³⁶ In the substitute, the Senate Committee on Ethics offered a change clarifying that Section 1 only applied to sending “unsolicited” applications rather than applications generally.³⁷ Additionally, the Committee added that “[a] person or entity shall not be liable for any violation of this subparagraph if such person or entity relied upon data made available by the Secretary of State within five business days prior to when such applications are mailed.”³⁸ Finally, the substitute further clarified that any violation of the new law results in sanctions.³⁹ The

33. See Georgia General Assembly, SB 202, Bill Tracking [hereinafter SB 202, Bill Tracking], <https://www.legis.ga.gov/legislation/59827>.

34. See SB 202, as introduced, 2021 Ga. Gen. Assemb.

35. State of Georgia Final Composite Status Sheet, SB 202, May 13, 2021.

36. *Id.*

37. SB 202 (SCS), § 1, p. 1, l. 16, 2021 Ga. Gen. Assemb. Section 1 only allowed absentee ballots to be sent to registered voters “who have not already requested, received, or voted an absentee ballot.” *Id.* § 1, p. 2, ll. 18–19. This section required the sender to conduct a full evaluation of the elector information. *Id.* § 1, p. 2, ll. 19–26. If found in violation of this section, a person or entity could have been liable to a maximum of \$100.00 per violated absentee ballot or the actual cost incurred by the affected locality. *Id.* § 1, p. 2, ll. 30–34.

38. *Id.* § 1, p. 2, ll. 26–29.

39. *Id.* § 1, p. 2, ll. 30–31.

Senate Committee on Ethics favorably reported the bill by substitute on March 3, 2021.⁴⁰

The Senate then read the bill for the second time on March 5, 2021.⁴¹ On March 8, 2021, after the Senate engrossed, tabled, and read the bill for the third time, it passed and adopted the bill by substitute by a vote of 32 to 20.⁴²

Consideration and Passage by the House

Representative Barry Fleming (R-121st) sponsored the bill in the House.⁴³ The House first read the bill on March 9, 2021.⁴⁴ The House read the bill for the second time on March 10, 2021.⁴⁵ The House Special Committee on Election Integrity favorably reported the bill by substitute on March 22, 2021.⁴⁶ The substitute added a total of 2,388 lines to the bill.⁴⁷ The exhaustive changes mainly limited absentee ballot voting and altered certain election processes.⁴⁸ Some of the changes included decreasing the amount of time voters have to request, complete, and turn in absentee ballots; adding identification requirements; prohibiting government entities from sending unsolicited absentee ballots; adding mandatory Saturday and Sunday voting opportunities; and mandating ballot marker testing.⁴⁹

On March 25, 2021, the House adopted two floor amendments proposed by the House Committee on Rules.⁵⁰ The first amendment clarified throughout the bill that “if [a] county or municipality does not maintain . . . a website,” then election reports shall be posted at “a place of public prominence in the county or municipality.”⁵¹ The second amendment provided for multiple changes.⁵² First, it added that

40. State of Georgia Final Composite Status Sheet, SB 202, May 13, 2021.

41. *Id.*

42. *Id.*; Georgia Senate Voting Record, SB 202, #189 (Mar. 8, 2021).

43. SB 202, Bill Tracking, *supra* note 33.

44. State of Georgia Final Composite Status Sheet, SB 202, May 13, 2021.

45. *Id.*

46. *Id.*

47. *See* SB 202 (HCS), 2021 Ga. Gen. Assemb.

48. *Id.*

49. *Id.*

50. SB 202, Bill Tracking, *supra* note 33.

51. SB 202 (HCR) (AM 28 1868), p. 1, ll. 3–8, 2021 Ga. Gen. Assemb.

52. SB 202 (HCR) (AM 28 1870), 2021 Ga. Gen. Assemb.

another purpose of the bill is “to provide that the name and designation of the precinct appears on every ballot.”⁵³ Further, the amendment added multiple sections dictating the configuration of the absentee ballot forms, requiring that each form indicate the voting precinct, the voting date, and in some instances, the party affiliation clearly at the top of the form.⁵⁴ Additionally, it proposed that each printed electronic ballot states “OFFICIAL BALLOT” at the top.⁵⁵ On March 25, 2021, after the House read the bill for the third time, it passed and adopted the bill by substitute by a vote of 100 to 75 and immediately transmitted the bill to the Senate.⁵⁶

On March 25, 2021, the Senate agreed to the House’s substitute by a vote of 34 to 20.⁵⁷ The Senate sent the bill to Governor Brian Kemp (R) on March 25, 2021, and the Governor signed the bill into law that same day.⁵⁸

The Act

The Act amends the following portions of the Official Code of Georgia Annotated: Article 1 of Chapter 2 of Title 21, relating to elections and primaries generally; Article 1 of Chapter 2 of Title 21, which was previously reserved; Article 2 of Chapter 2 of Title 21, relating to creation, composition, terms of service, vacancies, quorum, seal, bylaws, and meetings of the State Board of Elections; Article 2 of Chapter 2 of Title 21, relating to enforcement of chapter; Article 2 of Chapter 2 of Title 21, relating to the State Election Board; Article 2 of Chapter 2 of Title 21, relating to payment by county or municipality of superintendent’s expenses; Article 2 of Chapter 2 of Title 21, relating to superintendents; Article 2 of Chapter 2 of Title 21, relating

53. *Id.* p. 1, ll. 1–2.

54. *See generally* SB 202 (HCR) (AM 28 1870), 2021 Ga. Gen. Assemb.

55. *Id.*

56. State of Georgia Final Composite Status Sheet, SB 202, May 13, 2021; Georgia Senate Voting Record, SB 202, #296 (Mar. 25, 2021).

57. State of Georgia Final Composite Status Sheet, SB 202, May 13, 2021; Georgia Senate Voting Record, SB 202, #283 (Mar. 25, 2021).

58. State of Georgia Final Composite Status Sheet, SB 202, May 13, 2021. The signing of the bill caused tension in the Georgia Capitol Building, as “the signing appeared to have been cut short as Democratic state Rep. Park Cannon was escorted out of the building and arrested by Georgia State Patrol.” Stephen Fowler, *Georgia Governor Signs Election Overhaul, Including Changes to Absentee Voting*, NPR, <https://www.npr.org/2021/03/25/981357583/georgia-legislature-approves-election-overhaul-including-changes-to-absentee-vot> [https://perma.cc/A766-DJUK] (Mar. 25, 2021, 8:07 PM).

to qualifications of poll officers, service during municipal election or primary, and the Student Teen Election Participant (STEP) program; Article 2 of Chapter 2 of Title 21, relating to supervisory boards and officers; Article 4 of Chapter 2 of Title 21, relating to withdrawal, death, or disqualification of candidate for office, return of qualifying fee, and nomination certificate; Article 6 of Chapter 2 of Title 21, relating to county registrars, appointment, certification, term of service, vacancies, compensation and expenses of chief registrar, registrars, and other officers and employees, and budget estimates; Article 6 of Chapter 2 of Title 21, relating to challenge of applicant for registration by other electors, notice and hearing, and right of appeal; Article 6 of Chapter 2 of Title 21, relating to challenge of persons on list of electors by other electors, procedure, hearing, and right of appeal; Article 6 of Chapter 2 of Title 21, relating to removal of elector's name from list of electors; Article 7 of Chapter 2 of Title 21, relating to reduction in size of, or provision of additional voting equipment or poll workers to, precincts containing more than 2,000 electors when voting in such precincts at previous general election not completed on hour after closing of polls; Article 7 of Chapter 2 of Title 21, relating to duty of superintendent to select polling places, change, petition objecting to proposed change, space for political parties holding primaries, facilities for disabled voters, selection of polling place outside precinct to better serve voters, and restriction on changing polling place on or near date of election; Article 7 of Chapter 2 of Title 21, relating to use of public buildings as polling places, use of portable or movable facilities, and unrestricted access to residential communities; Article 8 of Chapter 2 of Title 21, relating to form of ballot, run-off election, and declaration of prevailing candidate in nonpartisan elections; Article 9 of Chapter 2 of Title 21, relating to installation of systems, number of systems, and good working order; Article 9 of Chapter 2 of Title 21, relating to ballot description; Article 9 of Chapter 2 of Title 21, relating to programming for ballot design and style, verification, appointment of custodians, and role of custodians; Article 10 of Chapter 2 of Title 21, relating to making of application for absentee ballot, determination of eligibility by ballot clerk, furnishing of application to colleges and universities, and persons entitled to make application; Article 10 of Chapter 2 of Title 21, relating to additional sites as additional registrar's office or place

of registration for absentee ballots; Article 10 of Chapter 2 of Title 21, relating to preparation and delivery of supplies, mailing of ballots, oath of absentee electors and persons assisting absentee electors, master list of ballots sent, challenges, and electronic transmission of ballots; Article 10 of Chapter 2 of Title 21, relating to procedure for voting by absentee ballot and advance voting; Article 10 of Chapter 2 of Title 21, relating to safekeeping, certification, and validation of absentee ballots, rejection of ballots, delivery of ballots to manager, duties of managers, precinct returns, and notification of challenged elector; Article 10 of Chapter 2 of Title 21, relating to delivery of election materials to clerk of superior court or city clerk after primary or election and accounting for ballots by registrars or municipal absentee ballot clerks; Article 11 of Chapter 2 of Title 21, relating to time for opening and closing of polls; Article 11 of Chapter 2 of Title 21, relating to poll watchers, designation, duties, removal of interference with election, reports by poll watchers of infractions or irregularities, and ineligibility of candidates to serve as poll watchers; Article 11 of Chapter 2 of Title 21, relating to restrictions on campaign activities and public opinion polling within the vicinity of a polling place, cellular phone use prohibited, prohibition of candidates from entering certain polling places, and penalty; Article 11 of Chapter 2 of Title 21, relating to provisional ballots; Article 11 of Chapter 2 of Title 21, relating to validation of provisional ballots and reporting to Secretary of State; Article 11 of Chapter 2 of Article 21, relating to general provisions regarding preparation for and conduct of primaries and elections; Article 11 of Chapter 2 of Title 21, relating to procedure as to count and return of votes generally and void ballots; Article 11 of Chapter 2 of Title 21, relating to ballots identifying voter, not marked, or improperly marked declared void; Article 11 of Chapter 2 of Title 21, relating to counting of ballots, public accessibility to tabulating center and precincts, execution of ballot recap forms, and preparation of duplicate ballots; Article 12 of Chapter 2 of Title 21, relating to computation and canvassing of returns, notice of when and where returns will be computed and canvassed, blank forms for making statements of returns, and swearing of assistants; Article 12 of Chapter 2 of Title 21, relating to computation, canvassing, and tabulation of returns, investigation of discrepancies in vote counts, recount procedure, certification of returns, and change in returns; Article 12 of

Chapter 2 of Title 21, relating to number of votes required for election; Article 14 of Chapter 2 of Title 21, relating to conduct of special elections generally; Article 14 of Chapter 2 of Title 21, relating to holding of special primary or election at time of general primary or election and inclusion of candidates and question in special primary or election on ballot; Article 14 of Chapter 2 of Title 21, relating to special election for United States senator vacancy and temporary appointment by Governor; Article 14 of Chapter 2 of Title 21, relating to special elections and primaries generally and municipal terms of office; Article 15 of Chapter 2 of Title 21, relating to entry into voting compartment or booth while another voting, interfering with elector, inducing elector to reveal or revealing elector's vote, and influencing voter while assisting; Article 15 of Chapter 2 of Title 21, relating to miscellaneous offenses; Chapter 35 of Title 36, relating to home rule powers; Article 1 of Chapter 13 of Title 50, relating to state government; and Article 4 of Chapter 18 of Title 50, relating to right of access to public records, timing, fees, denial of requests, and impact of electronic records.⁵⁹

The Act's overall purpose is to revise elections and voting in three significant areas: voting access, ballot counting, and power and controls.⁶⁰

Section 1

Section 1 titles the Act as "Election Integrity of 2021."⁶¹

Section 2

Section 2 of the Act describes the reasoning behind the General Assembly's amendments to the Election Code.⁶²

Subsection (1) explains the lack of confidence in Georgia election systems.⁶³ Subsection (2) notes the challenges of the Georgia election

59. *See generally* 2021 Ga. Laws 14.

60. *Id.*

61. 2021 Ga. Laws 14, § 1, at 15.

62. 2021 Ga. Laws 14, § 2, at 16.

63. *Id.*

process after the 2020 general election, and subsection (3) mentions the stress of the 2020 elections.⁶⁴

Subsection (4) provides that the Act is designed to address the lack of confidence in elections, reduce the burden on election officials, and streamline the election process.⁶⁵ Subsections (5) and (6) provide examples of how the Act achieves its goals: the Act gives broad discretion to local officials to vary hours of advanced voting and restricts grant funding for elections to only certain counties.⁶⁶ Subsection (7) describes that uniform mechanisms will help certain counties' with issues of long lines and wait times during elections.⁶⁷

Subsections (8), (9), and (10) focus on absentee ballots and how clarifying the rules, creating a definite period of absentee voting, and constructing a streamlined process will build elector confidence in the absentee ballot system.⁶⁸

Subsection (11) explains that providing ranked choice voting for military and overseas citizens will alleviate the exhaustion and burden of the runoff process.⁶⁹ Subsections (12) and (13) focus on the length of time it previously took to count absentee ballots and how the elections brought the sanctity of the precinct into focus.⁷⁰ Subsection (14) alleges that the number of duplicated ballots rose dramatically from 2016 to 2020 and explains how lessening the duplicated ballots relieves the burden on election officials.⁷¹ Subsection (15) describes the burden of out-of-precinct voting.⁷²

Subsections (16) and (17) provide a summary of the testimony given before the General Assembly and explain how the changes in Georgia's election system make it "easy to vote and hard to cheat."⁷³

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. 2021 Ga. Laws 14, § 2, at 16–17.

69. *Id.* at 17.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

Section 3

Section 3 of the Act amends paragraph 35 of Code section 21-2-2, which relates to the definition of “Superintendent.”⁷⁴ Specifically, the Act adds a definition of “Superintendent” in subsection (E).⁷⁵ “In the case of the State Election Board exercising its powers under subsection (f) of Code Section 21-2-33.1, the individual appointed by the State Election Board . . . exercise[s] the power of [the] election superintendent.”⁷⁶

Section 4

Section 4 of the Act amends Code section 21-2-3, which was previously reserved.⁷⁷ Accordingly, the Section’s new amendment allows the Attorney General to maintain a telephone hotline to receive anonymous tips regarding complaints of allegations of voter intimidation and illegal election activities.⁷⁸ The Attorney General can then review each complaint within three business days or expeditiously as possible and decide whether to investigate or prosecute such complaint.⁷⁹

Section 5

Section 5 of the Act amends Code section 21-2-30, which relates to the creation, composition, formation, and bylaws of the State Board of Elections.⁸⁰ The Act amends subsection (a) replaces “the Secretary of State” with “a chairperson elected by the General Assembly,” allowing the State Election Board to include such chairperson.⁸¹

74. 2021 Ga. Laws 14, § 3, at 18 (codified at O.C.G.A. § 21-2-2(35) (2019 & Supp. 2021)).

75. *Id.* at 18 (codified at § 21-2-2(35)(E)).

76. § 21-2-2(35)(E).

77. 2021 Ga. Laws 14, § 4, at 18 (codified at O.C.G.A. § 21-2-3 (2019 & Supp. 2021)).

78. § 21-2-3.

79. *Id.*

80. 2021 Ga. Laws 14, § 5, at 18 (codified at O.C.G.A. § 21-2-30 (2019 & Supp. 2021)).

81. *Id.* (codified at § 21-2-30(a)).

Subsection (a.1) paragraph (1) describes the process of electing the chairperson.⁸² Subsection (a.1) paragraph (2) mandates a nonpartisan chairperson.⁸³ Subsection (a.1) paragraph (3) details the term of office of the chairperson and the Governor's duty to appoint a chairperson in the case of a vacancy.⁸⁴

The Act amends subsection (d) to describe the Secretary of State's role as an "ex officio nonvoting member" of the Board.⁸⁵ It further describes that three voting members comprise the remainder of the Board.⁸⁶

Section 6

Section 6 of the Act amends Code section 21-2-33.1, which relates to enforcement of the chapter, by adding subsections (f)–(h).⁸⁷ Subsection (f) allows the State Election Board to suspend county or municipal superintendents and appoint temporary superintendents.⁸⁸ Subsection (g) limits the State Election Board from suspending more than four county or municipal superintendents.⁸⁹ Subsection (h) allows the State Election Board to request assistance and support from the Secretary of State.⁹⁰

Section 7

Section 7 of the Act amends Subpart 1 of Part 1 of Article 2, which relates to the State Election Board, by adding Code section 21-2-33.2.⁹¹ Subsection (a) gives the State Election Board discretion to pursue relief after investigations.⁹² Subsection (b) provides that the

82. § 21-2-30(a.1)(1).

83. *Id.* § 21-2-30(a.1)(2).

84. *Id.* § 21-2-30(a.1)(3).

85. 2021 Ga. Laws 14, § 5, at 20 (codified at § 21-2-30(d)).

86. § 21-2-30(d).

87. 2021 Ga. Laws 14, § 6, at 21 (codified at O.C.G.A. § 21-2-33.1(f)–(h) (Supp. 2021)).

88. § 21-2-33.1(f).

89. *Id.* § 21-2-33.1(g).

90. *Id.* § 21-2-33.1(h).

91. 2021 Ga. Laws 14, § 7, at 21 (codified at O.C.G.A. § 21-2-33.2 (Supp. 2021)).

92. § 21-2-33.2(a).

State Election Board must conduct a preliminary investigation to determine if cause exists and then followed by a preliminary hearing.⁹³

Subsection (c) addresses when the State Election Board can suspend a municipal or county superintendent.⁹⁴ Three members of the Board must either (1) find by a preponderance of the evidence that the superintendent committed three violations in the last two general election cycles and failed to remedy those violations or (2) find by clear and convincing evidence that the superintendent demonstrated “nonfeasance, malfeasance, or gross negligence in the administration of the elections” for two elections within a two-year period.⁹⁵

Subsection (d) allows the State Election Board to continue the preliminary hearing outlined in subsection (b) and any subsequent hearings.⁹⁶ The deliberations to determine whether to continue a hearing are not open to the public.⁹⁷ Yet, the Board will take both the testimony and the vote on the recommendation in an open meeting.⁹⁸

Subsection (e) allows the State Elections Board to add a temporary superintendent.⁹⁹ It further allows the suspended superintendent to petition the State Election Board for reinstatement during a specific time.¹⁰⁰ If the suspended superintendent does not petition the Board, the suspension becomes permanent, and the temporary superintendent becomes the permanent superintendent subject to removal by the jurisdiction not less than nine months after their appointment.¹⁰¹

Subsection (f) outlines the process of the suspended superintendent’s petition for reinstatement, requiring the Board to conduct a hearing.¹⁰² If the Board denies the petition, the final decision becomes appealable.¹⁰³

Subsection (g) prohibits local governments from expending public funds on litigation pursuant to this Code section, except for the

93. *Id.* § 21-2-33.2(b).

94. *Id.* § 21-2-33.2(c).

95. *Id.*

96. *Id.* § 21-2-33.2(d).

97. *Id.*

98. § 21-2-33.2(d).

99. *Id.* § 21-2-33.2(e)(1).

100. *Id.* § 21-2-33.2(e)(2).

101. *Id.*

102. *Id.* § 21-2-33.2(f).

103. *Id.*

expenses incurred before and through the recommendation of the State Election Board outlined in subsection (c).¹⁰⁴ Any reinstated superintendent will be reimbursed for attorney's fees and related expenses incurred throughout the reinstatement process.¹⁰⁵

Subsection (h) addresses judges acting as superintendents, providing that the suspension would only relate to their superintendent duties.¹⁰⁶ Subsection (i) outlines the use of local funds to carry out certain obligations.¹⁰⁷

Section 8

Section 8 of the Act amends Subpart 1 of Part 1 of Article 2 by adding Code section 21-2-35, which relates to the State Election Board's emergency rules.¹⁰⁸ It provides that the Board can adopt such rules "in circumstances of imminent peril to public health, safety, or welfare."¹⁰⁹ Subsection (a) outlines the process of adopting any emergency rules.¹¹⁰

Subsection (b) requires certification in writing of the emergency rule adoption.¹¹¹ Subsection (c) addresses any potential conflicts, providing this section governs or supersedes any provision of Chapter 13 of Title 50.¹¹²

Section 9

Section 9 of the Act amends Code section 21-2-71, which relates to the payment of superintendent expenses.¹¹³ The Act amends subsection (b) to prohibit superintendents from accepting funds or gifts from any source other than "the governing authority of the county or

104. § 21-2-33.2(g).

105. *Id.*

106. *Id.* § 21-2-33.2(h).

107. *Id.* § 21-2-33.2(i).

108. 2021 Ga. Laws 14, § 8, at 23 (codified at O.C.G.A. § 21-2-35 (Supp. 2021)).

109. § 21-2-35(a).

110. *Id.*

111. *Id.* § 21-2-35(b).

112. *Id.* § 21-2-35(c).

113. 2021 Ga. Laws 14, § 9, at 24 (codified at O.C.G.A. § 21-2-71 (2019 & Supp. 2021)).

municipality, the State of Georgia, or the federal government.”¹¹⁴ The Act amends subsection (c) to require the State Election Board to study and report a proposed method for accepting donations meant to aid in administering elections and a method for equitably distributing the donations to the General Assembly.¹¹⁵

Section 10

Section 10 amends Part 3 of Article 2 by adding Code section 21-2-74.1, which relates to counties lacking a board of elections.¹¹⁶ Subsection (a) allows the circuit’s superior court chief judge to appoint a qualified individual as the election superintendent if the county lacks a board of elections and either the probate court judge’s position is vacant or the probate court judge is incapacitated.¹¹⁷

Subsection (b) reinstates the probate court judge as the election superintendent upon filling the vacant position.¹¹⁸ Subsection (c) permits the sole county commissioner to fix the compensation of the acting superintendent.¹¹⁹

Section 11

Section 11 amends the Act by revising subsection (a) of Code section 21-2-92, which relates to qualifications of poll officers.¹²⁰ Paragraph (2) of subsection (a) provides an exception to the poll officer requirement of only serving in their residing county by allowing a poll officer to serve in an adjoining county to the officer’s residence subject to the discretion of the election superintendent.¹²¹

114. *Id.* (codified at § 21-2-71(b)).

115. *Id.* at 25 (codified at § 21-2-71(c)).

116. 2021 Ga. Laws 14, § 10, at 25 (codified at O.C.G.A. § 21-2-74.1 (2019 & Supp. 2021))

117. § 21-2-74.1(a).

118. *Id.* § 21-2-74.1(b).

119. *Id.* § 21-2-74.1(c).

120. 2021 Ga. Laws 14, § 11, at 25 (codified at O.C.G.A. § 21-2-92 (2019 & Supp. 2021)).

121. § 21-2-92(a)(1)-(2).

Section 12

Section 12 further amends Article 2 by adding a new part that includes Code sections 21-2-105, 21-2-106, 21-2-207, and 21-2-108, which relate to supervisory boards and officers.¹²² Code section 21-2-105 defines “local election official” to mean a county board of elections, a probate court judge, or a municipal election superintendent.¹²³

Subsection (a) of Code section 21-2-106 provides entities, such as certain governing authorities, the option to request a performance review of a local election official.¹²⁴ Subsection (b) adds duties to the performance review board and entitles the performance review board to reimbursement for reasonable expenses.¹²⁵ The performance review board must issue a report of its findings, which can act as grounds for removal of the local election official.¹²⁶

Subsections (a) and (b) of Code section 21-2-107 permit the State Election Board to appoint an independent performance review board of three competent persons if it calls the competence of the local election official into question.¹²⁷ Subsections (c) and (d) require this independent review board to submit its findings, potentially acting as grounds for removal of a local election authority.¹²⁸

Code section 21-2-108 allows the State Election Board to “promulgate such rules and regulations as may be necessary for the administration of this part.”¹²⁹

Section 13

Section 13 of the Act amends Code section 21-2-134 by adding a new subsection, which relates to the death of a candidate on the

122. 2021 Ga. Laws 14, § 12, at 26–28 (codified at O.C.G.A. §§ 21-2-105 to -108 (Supp. 2021)).

123. § 21-2-105.

124. *Id.* § 21-2-106(a).

125. *Id.* § 21-2-106(b).

126. *Id.* § 21-2-106(b)-(c).

127. *Id.* § 21-2-107(a)-(b).

128. *Id.* § 21-2-107(c)-(d).

129. § 21-2-108.

ballot.¹³⁰ The Act adds subsection (g) to require a candidate who dies in a nonpartisan election before the election to remain on the ballot; if the deceased candidate receives the needed number of votes to win, the election results in a failure to fill the office.¹³¹

Section 14

Section 14 of the Act amends subsection (f) of Code section 21-2-212, which relates to county registrars, the chief registrar, and other officers.¹³² The Act amends subsection (f) to prohibit any member of the board of registrars from accepting any funding or gifts from any authority other than the county's governing authority, the State of Georgia, or the federal government.¹³³

Section 15

Section 15 of the Act amends Code section 21-2-229, which relates to the challenge of an applicant registering to vote by other electors.¹³⁴ The Act amends subsection (a) to clarify that no limit exists on the number of challenges allowed to any elector.¹³⁵ The Act amends subsection (b) to require the challenge's hearing "within ten business days after serving notice of the challenge."¹³⁶ The Act adds subsection (f) to inflict sanctions for a failure to comply with the provisions of this Code section.¹³⁷

Section 16

Section 16 of the Act amends Code section 21-2-230, which relates to the challenge of persons on the list of electors by other electors.¹³⁸

130. 2021 Ga. Laws 14, § 13, at 28 (codified at O.C.G.A. § 21-2-134(g) (Supp. 2021)).

131. *Id.* (codified at § 21-2-134(g)).

132. 2021 Ga. Laws 14, § 14, at 28 (codified at O.C.G.A. § 21-2-212(f) (2019 & Supp. 2021)).

133. *Id.* at 28 (codified at § 21-2-212(f)).

134. 2021 Ga. Laws 14, § 15, at 28 (codified at O.C.G.A. § 21-2-229 (2019 & Supp. 2021)).

135. *Id.* 28–29 (codified at § 21-2-229(a)).

136. *Id.* at 29 (codified at § 21-2-229(b)).

137. *Id.* (codified at § 21-2-229(f)).

138. 2021 Ga. Laws 14, § 16, at 29 (codified at O.C.G.A. § 21-2-230 (2019 & Supp. 2021)).

The Act amends subsection (a) to allow any elector to challenge the right of any other elector of the county or municipality, whose name appears on the list of electors, “prior to 5:00 P.M.” on the day before “the absentee ballots are . . . to be scanned and tabulated,” rather than the day before the election.¹³⁹

The Act adds subsection (j) to impose sanctions for a failure to comply with the provisions of this Code section.¹⁴⁰

Section 17

Section 17 of the Act amends subsection (b) of Code section 21-2-232, which relates to the removal of electors’ names from the list of electors, by adding a new paragraph.¹⁴¹ The Act adds paragraph (3) requiring the Secretary of State to collect information regarding deceased electors, current out-of-state electors, or otherwise ineligible electors to conduct list maintenance on the list of eligible electors.¹⁴²

Section 18

Section 18 of the Act amends Code section 21-2-263, which relates to the reduction in number of electors at precincts.¹⁴³ The Act adds subsection (b) to maintain the 2,000-electors precinct size for precincts that had electors that desired to vote and had to wait in line for more than one hour.¹⁴⁴ Alternatively, the superintendent can provide additional voting equipment.¹⁴⁵

Section 19

Section 19 of the Act amends subsection (a) of Code section 21-2-265, which relates to the duty of the superintendent to select

139. *Id.* at 30 (codified at § 21-2-230(a)).

140. *Id.* at 31 (codified at § 21-2-230(j)).

141. 2021 Ga. Laws 14, § 17, at 32 (codified at O.C.G.A. § 21-2-232(b) (2019 & Supp. 2021)).

142. *Id.* (codified at § 21-2-232(b)(3)).

143. 2021 Ga. Laws 14, § 18, at 32 (codified at O.C.G.A. § 21-2-263 (Supp. 2021)).

144. *Id.* (codified at § 21-2-263(b)).

145. § 21-2-263(b).

polling places.¹⁴⁶ The Act amends subsection (a) to require posting of polling place changes during the seven days before and on the day of the first election.¹⁴⁷ The postings must state the location of the moved polling place and direct electors to the new polling place with at least one four-by-four-foot notice.¹⁴⁸

Section 20

Section 20 of the Act amends subsection (a) and (b) of Code section 21-2-266, which relates to using public buildings as polling places.¹⁴⁹ The Act amends subsection (a) to also include “advance voting locations” in the duties and requirements when selecting a public building for that purpose.¹⁵⁰ The Act amends subsection (b) to only allow for portable polling facilities in emergencies declared by the Governor.¹⁵¹

Section 20A

Section 20A of the Act amends subsection (a) of Code section 21-2-284, which relates to the form of primary election ballots.¹⁵² The Act amends subsection (a) to require the name of each precinct at the top of the ballot.¹⁵³

Section 20B

Section 20B of the Act amends Code section 21-2-284.1, which relates to the form of nonpartisan municipal primary ballots.¹⁵⁴ The Act amends the section to include “the printing of the name and designation of the precinct on the top of the ballot.”¹⁵⁵

146. 2021 Ga. Laws 14, § 19, at 33 (codified at O.C.G.A. § 21-2-265(a) (2019 & Supp. 2021)).

147. *Id.* (codified at § 21-2-265(a)).

148. § 21-2-265(a).

149. 2021 Ga. Laws 14, § 20, at 33 (codified at O.C.G.A. § 21-2-266(a)-(b) (2019 & Supp. 2021)).

150. *Id.* (codified at § 21-2-266(a)).

151. *Id.* at 33–34 (codified at § 21-2-266(b)).

152. 2021 Ga. Laws 14, § 20A, at 34 (codified at O.C.G.A. § 21-2-284(a) (2019 & Supp. 2021)).

153. *Id.* (codified at § 21-2-284(a)).

154. 2021 Ga. Laws 14, § 20B, at 34 (codified at O.C.G.A. § 21-2-284.1 (2019 & Supp. 2021)).

155. *Id.* (codified at § 21-2-284.1).

Section 20C

Section 20C of the Act amends subsection (a) of Code section 21-2-285, which relates to the form of the official ballot.¹⁵⁶ The Act amends subsection (a) to require the name of each precinct at the top of the ballot.¹⁵⁷

Section 21

Section 21 of the Act amends Code section 21-2-285.1, which relates to ballot forms in nonpartisan elections.¹⁵⁸ Section 21 addresses the format of ballots in nonpartisan elections, including spacing and required information.¹⁵⁹ It requires labeling ballots “OFFICIAL NONPARTISAN ELECTION BALLOT” with voting process directions placed directly underneath.¹⁶⁰ Additionally, it requires that the forms list each candidate in alphabetical order, with no indication of party designation.¹⁶¹ Further, Section 21 explains the runoff election process.¹⁶²

Section 21A

Section 21A of the Act amends paragraph (3) of subsection (b) of Code section 21-2-286, which relates to printing requirements of ballots.¹⁶³ Section 21A requires that the name and designation of the precinct are printed at the top of each ballot.¹⁶⁴

156. 2021 Ga. Laws 14, § 20C, at 34 (codified at O.C.G.A. § 21-2-285(a) (2019 & Supp. 2021)).

157. *Id.* (codified at § 21-2-285(a)).

158. 2021 Ga. Laws 14, § 21, at 35 (codified at O.C.G.A. § 21-2-285.1 (2019 & Supp. 2021)).

159. § 21-2-285.1.

160. *Id.*

161. *Id.*

162. *Id.*

163. 2021 Ga. Laws 14, § 21A, at 35 (codified at O.C.G.A. § 21-2-286(3)(b) (2019 & Supp. 2021)).

164. § 21-2-286.

Section 21B

Section 21B of the Act revises Code section 21-2-287, which relates to the absentee ballot forms.¹⁶⁵ It mandates that the precinct name and designation be printed or stamped on the absentee ballot.¹⁶⁶

Section 22

Section 22 of the Act revises subsection (b) of Code section 21-2-367, which relates to voting systems.¹⁶⁷ The Act amends subsection (b) paragraph (1) to require the election superintendent, instead of the municipal or governing authority, provide one voting booth for every 250 electors in statewide general elections.¹⁶⁸ Furthermore, the Act adds paragraph (2) of subsection (b) to allow the election superintendent in any non-statewide election have discretion in the amount of voting booths depending on the circumstances.¹⁶⁹

Section 23

Section 23 of the Act revises Code section 21-2-372, which relates to the ballot material.¹⁷⁰ It requires physical ballots to “be printed on security paper that incorporates features which can be used to authenticate the ballot as an official ballot but which do not make the ballot identifiable to a particular elector.”¹⁷¹

Section 23A

Section 23A of the Act amends Code section 21-2-379.23, which relates to electronic ballot marker requirements.¹⁷² It adds that “[e]ach

165. 2021 Ga. Laws 14, § 21B, at 36 (codified at O.C.G.A. § 21-2-287 (2019 & Supp. 2021)).

166. § 21-2-287.

167. 2021 Ga. Laws 14, § 22, at 36 (codified at O.C.G.A. § 21-2-367(b) (2019 & Supp. 2021)).

168. *Id.* at 36 (codified at § 21-2-367(b)(1)).

169. *Id.* at 36 (codified at § 21-2-367(b)(2)).

170. 2021 Ga. Laws 14, § 23, at 36 (codified at O.C.G.A. § 21-2-372 (2019 & Supp. 2021)).

171. § 21-2-372.

172. 2021 Ga. Laws 14, § 23A, at 37 (codified at O.C.G.A. § 21-2-379.23 (2019 & Supp. 2021)).

ballot printed by an electronic ballot marker shall include the name and designation of the precinct at the top” of the ballot.¹⁷³

Section 24

Section 24 of the Act revises subsection (c) of Code section 21-2-379.25, which relates to ballot verification and custodians.¹⁷⁴ Section 24 requires that each electronic ballot marker be tested for accuracy in recording ballots.¹⁷⁵ It directs each county to post public notice of the testing details online, in the county’s newspaper, and in a physical location in the municipality.¹⁷⁶ It also requires that the superintendents provide notice of the testing to the Secretary of State.¹⁷⁷ Furthermore, it prohibits political, media, or public interference in the testing.¹⁷⁸

Section 25

Section 25 of the Act revises Code section 21-2-381, which relates to absentee ballot applications.¹⁷⁹ This section is one of the more publicly known sections of SB 202. First, it reduces the amount of time given before an elector can apply for an absentee ballot from 180 days to 78 days, and no less than 11 days, before the election date.¹⁸⁰ Second, it requires electors to request an absentee ballot application through the Secretary of State’s office by completing a form and including their driver’s license or identification number in the application.¹⁸¹ Third, it requires the elector to affirm their identity with a signature.¹⁸² Fourth, it requires each county to make applications available online.¹⁸³ Fifth, it prohibits any government agency from

173. § 21-2-379.23(c).

174. 2021 Ga. Laws 14, § 24, at 37 (codified at O.C.G.A. § 21-2-379.25(c) (2019 & Supp. 2021)).

175. § 21-2-379.25(c).

176. *Id.*

177. *Id.*

178. *Id.*

179. 2021 Ga. Laws 14, § 25, at 37 (codified at O.C.G.A. § 21-2-381 (2019 & Supp. 2021)).

180. § 21-2-381(a)(1)(A).

181. *Id.* § 21-2-381(a)(1)(C)(i).

182. *Id.*

183. *Id.* § 21-2-381(a)(1)(C)(ii).

sending unsolicited absentee ballots to electors, any unauthorized person from sending a prefilled application, and any unauthorized person from returning an absentee ballot application that is not theirs.¹⁸⁴ It makes “[h]andling a completed absentee ballot application by any person or entity other than as allowed in this subsection . . . a misdemeanor.”¹⁸⁵ Sixth, it requires placement of a disclaimer on every application that states that the application is not a ballot.¹⁸⁶ Seventh, it states that inmates must have access to absentee ballot applications.¹⁸⁷ Eighth, it provides processes to prevent any elector from receiving more than one absentee ballot application and subjects anyone who violates this process to sanctions.¹⁸⁸ Finally, it describes the process for verifying each absentee ballot application with the elector’s identity.¹⁸⁹

Section 26

Section 26 of the Act revises Code section 21-2-382, which relates to absentee ballot registration places.¹⁹⁰ It allows the board of registrars to create additional voting sites.¹⁹¹ It limits the amount of absentee ballot drop boxes to “the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county.”¹⁹² It requires that the drop boxes close when advance voting ends, the drop box slots be small enough to avoid tampering, the drop boxes be labeled clearly, and the collection of absentee ballots be done in accordance with this section.¹⁹³

184. *Id.*

185. *Id.*

186. § 21-2-381(a)(1)(C)(iii).

187. *Id.* § 21-2-381(a)(1)(D).

188. *Id.* § 21-2-381(a)(3).

189. *Id.* § 21-2-381(b).

190. 2021 Ga. Laws 14, § 26, at 43 (codified at O.C.G.A. § 21-2-382 (2019 & Supp. 2021)).

191. § 21-2-382(a).

192. *Id.* § 21-2-382(c)(1).

193. *Id.* § 21-2-382(c)(2)-(4).

Section 27

Section 27 of the Act revises Code section 21-2-384, which relates “to preparation and delivery of supplies, mailing of ballots, oath of absentee electors and persons assisting absentee electors, master list of ballots sent, challenges, and electronic transmission of ballots.”¹⁹⁴ The revisions require the superintendent provide the correct amount of absentee ballots to the board of registrars between twenty-nine and twenty-five days before any primary election, with exceptions for municipal and special elections.¹⁹⁵ The amount of time decreases when the election is municipal or a runoff.¹⁹⁶ It also states that electors cannot receive their absentee ballot “earlier than 22 days prior to the election.”¹⁹⁷ An exception exists for overseas and military citizens for forty-nine days prior.¹⁹⁸ The board of registrars is also responsible for notifying electors of ineligibility.¹⁹⁹

Furthermore, Section 27 allows for electors who are in the hospital to apply “for an absentee ballot on the day of a primary or election or during a ten-day period immediately preceding the day of such primary or election.”²⁰⁰ The section then outlines how an elector shall package his or her absentee ballot and what to include on the ballot.²⁰¹ For example, it requires that the absentee ballot have room for the elector to provide his or her signature and last four digits of their social security number.²⁰² It also dictates the uniform instructions and oath required on each ballot and provides the required oath form.²⁰³ Finally, Section 27 adds certain requirements in subsection (e) for runoff ballots, specifically for uniformed and overseas citizens.²⁰⁴

194. 2021 Ga. Laws 14, § 27, at 45 (codified at O.C.G.A. § 21-2-384 (2019 & Supp. 2021)).

195. § 21-2-384(a)(2).

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* § 21-2-384 (a)(4).

201. O.C.G.A. § 21-2-384(b) (2019 & Supp. 2021).

202. *Id.*

203. *Id.*

204. *Id.* § 21-2-384(e).

Section 28

Section 28 of the Act revises subsections (a) and (d) and adds a new subsection to Code section 21-2-385, which relates to absentee and advance voting procedures.²⁰⁵ The Act revises subsection (a) by adding clauses on how electors must verify their identities on their absentee ballots.²⁰⁶ It requires the elector to include “the number of his or her Georgia driver’s license number or identification card” and date of birth.²⁰⁷ If electors do not have a driver’s license, they have to include the last four digits of their social security numbers.²⁰⁸ If electors also do not have social security numbers, they have to provide alternative forms of identification, such as a bank statement, passport, or military identification card.²⁰⁹

The Act revises subsection (d) by changing the time period available for advance voting.²¹⁰ The Act requires advance voting to start as soon as possible and “no later than the second Monday immediately prior to such runoff.”²¹¹ Further, it requires that advance voting run from 9:00 A.M. to 5:00 P.M. on weekdays and on the second and third Saturdays.²¹² The board of registrars has the option to run advance voting on “the second Sunday, the third Sunday, or both the second and third Sundays prior to a primary or election during hours determined by the registrar or absentee ballot clerk, but no longer than 7:00 A.M. through 7:00 P.M.”²¹³ The Act provides for changes depending on public holidays.²¹⁴ The board of registrars also has the discretion to extend weekday and Saturday hours to between 7:00 A.M. and 7:00 P.M. as needed in the specific precinct.²¹⁵

Finally, the Act requires that the time and dates of advance voting be made available to the public online and in a physical, prominent

205. 2021 Ga. Laws 14, § 28, at 50 (codified at O.C.G.A. § 21-2-385 (2019 & Supp. 2021)).

206. § 21-2-385(a).

207. *Id.*

208. *Id.*

209. *Id.*

210. 2021 Ga. Laws 14, § 28, at 50 (codified at O.C.G.A. § 21-2-385(d) (2019 & Supp. 2021)).

211. § 21-2-385(d)(1)(B).

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

location.²¹⁶ If a county does not have a website, then the notice must go in a local newspaper.²¹⁷ The Act further requires posting the number of issued, returned, and rejected absentee and provisional ballots for the county's public to view.²¹⁸

Section 29

Section 29 of the Act revises Code section 21-2-386, which relates to the preservation of ballots.²¹⁹ First, it requires the board of registrars or ballot clerk to compare each ballot's identification information with the elector's official voter registration information.²²⁰ Second, it requires the registrar or clerk verify that the elector signed the ballot's oath.²²¹ If the ballot has an unsigned oath or an elector's information does not match, the clerk must write "rejected" across the ballot and immediately notify the elector, who can fix the issue with an affidavit.²²² Third, Section 29 requires the election superintendent, after providing notice to the Secretary of State, to open and scan each absentee ballot with at least three "registrars, deputy registrars, poll workers, or absentee ballot clerks" present during the opening and scanning.²²³ The Act requires the process to be open to the public but not susceptible to public influence.²²⁴ Finally, Section 29 dictates the behavior of ballot counting monitors and observers.²²⁵ It prohibits any interference by monitors or observers, including any presence of photos or recordings, campaigning, and tallying of ballots.²²⁶ It allows for ballot counting to begin after 7:00 A.M. the day of the election.²²⁷

216. *Id.* § 21-2-385(d)(3).

217. O.C.G.A. § 21-2-385(d)(3) (2019 & Supp. 2021).

218. *Id.* § 21-2-385(e).

219. 2021 Ga. Laws 14, § 29, at 53 (codified at O.C.G.A. § 21-2-386 (2019 & Supp. 2021)).

220. § 21-2-386(a)(1)(B).

221. *Id.*

222. *Id.* § 21-2-386(a)(1)(B).

223. *Id.* § 21-2-386(a)(2)(A).

224. *Id.* § 21-2-386(a)(2)(B).

225. *Id.*

226. O.C.G.A. § 21-2-386(a)(2)(B) (2019 & Supp. 2021).

227. *Id.* § 21-2-386(a)(4).

Section 30

Section 30 of the Act amends Code section 21-2-390, which relates to the delivery and accounting of ballots.²²⁸ It adds subsection (b) that authorizes the Secretary of State to audit absentee ballots “at his or her discretion at any time during the 24-month retention period.”²²⁹ The audit can be state, county, or citywide and can either be a sample audit or an audit of all the ballots.²³⁰

Section 31

Section 31 of the Act amends Code section 21-2-403, which relates to the “time for opening and closing of polls.”²³¹ It adds subsection (b) requiring a judge-issued court order for any extension of the poll hours.²³² The extension cannot be “longer than the total amount of time during which persons were unable to vote at such precinct,” and factual findings must support an extension past 9:00 P.M.²³³

Section 32

Section 32 of the Act revises subsections (c) and (e) of Code section 21-2-408, which relates to poll watchers.²³⁴ It adds a requirement to subsection (c) for poll watchers to maintain fair observations.²³⁵ Furthermore, it requires that each poll watcher complete designated training.²³⁶

228. 2021 Ga. Laws 14, § 30, at 58 (codified at O.C.G.A. § 21-2-390 (2019 & Supp. 2021)).

229. § 21-2-390(b).

230. *Id.*

231. 2021 Ga. Laws 14, § 31, at 59 (codified at O.C.G.A. § 21-2-403 (2019 & Supp. 2021)).

232. § 21-2-403(b).

233. *Id.*

234. 2021 Ga. Laws 14, § 32, at 59 (codified at O.C.G.A. § 21-2-408 (2019 & Supp. 2021)).

235. § 21-2-408(c), (e).

236. *Id.* § 21-2-408(e).

Section 33

Section 33 of the Act revises subsections (a) and (e) of Code section 21-2-414, which relates to prohibited activities near polling places.²³⁷ It revises subsection (a) prohibiting anyone from offering or giving “any money or gifts, including, but not limited to, food and drink, to an elector.”²³⁸ The section clarifies that it does not prohibit self-service water stations in polling places.²³⁹

Section 34

Section 34 of the Act revises subsections (a) and (b) of Code section 21-2-418, which relates to provisional ballots.²⁴⁰ It adds to subsection (a) by requiring an elector to vote at their designated precinct.²⁴¹ It states, “that any votes cast by a provisional ballot in the wrong precinct will not be counted unless it is cast after 5:00 P.M. and before the regular time for the closing of the polls.”²⁴² Subsection (a) deems poll officials responsible for informing electors of this requirement.²⁴³ Section 34 adds to subsection (b) by requiring an elector voting after 5:00 P.M. in the wrong precinct to “execute a sworn statement, witnessed by the poll official, stating that he or she is unable to vote at his or her correct polling place prior to the closing of the polls and giving the reason therefor.”²⁴⁴

Section 35

Section 35 of the Act amends Code section 21-2-419, which relates to validation of provisional ballots and reporting to the Secretary of State.²⁴⁵ The Act amends subsection (c) paragraph (2) so that a

237. 2021 Ga. Laws 14, § 33, at 60 (codified at O.C.G.A. § 21-2-414(a), (e) (2019 & Supp. 2021)).

238. § 21-2-414(a).

239. *Id.* § 21-2-414(e).

240. 2021 Ga. Laws 14, § 34, at 60 (codified at O.C.G.A. § 21-2-418 (2019 & Supp. 2021)).

241. § 21-2-418(a).

242. *Id.*

243. *Id.*

244. *Id.* § 21-2-418(b).

245. 2021 Ga. Laws 14, § 35, at 61 (codified at O.C.G.A. § 31-2-419 (2019 & Supp. 2021)).

registrar can determine that a provisional ballot cast in the wrong precinct is still eligible only if the person voted between 5:00 P.M. and the regular time for closing of polls.²⁴⁶ The Secretary of State must receive and the State Election Board must review the original ballot and all other required documents.²⁴⁷

Section 36

Section 36 of the Act amends Part 1 of Article 11, by adding new Code sections that require the poll officials complete accounting and related documentation for the precinct and advise the election superintendent of the total number of ballots and provisional ballots cast.²⁴⁸ The election superintendent must then report to the Secretary of State in a prominent public place (1) the number of ballots cast at the polls on the day of the primary, election, or runoff, including provisional ballots cast; (2) the number of ballots cast at advance voting locations during the advance voting period for the primary, election, or runoff; and (3) the total number of absentee ballots returned to the board of registrars by the deadline to receive such absentee ballots on the day of the primary, election, or runoff.²⁴⁹

Section 37

Section 37 of the Act revises subsections (a) and (d) of Code Section 21-2-437, which relates to the procedure for counting and returning votes generally as well as void ballots.²⁵⁰ The revised subsection eliminates the provision that allows poll officers, at the discretion of the superintendent, to stop counting ballots after all contested races and questions are counted.²⁵¹ The revised subsection creates an exception to the rule that voids any votes cast for deceased or

246. § 31-2-419(c)(2).

247. *Id.*

248. 2021 Ga. Laws 14, § 36, at 63 (codified at O.C.G.A. § 21-2-421 (Supp. 2021)).

249. § 21-2-421(a).

250. 2021 Ga. Laws 14, § 37, at 64 (codified at O.C.G.A. § 21-2-437(a), (d) (2019 & Supp. 2021)).

251. § 21-2-437(a).

disqualified candidates in nonpartisan elections in subsection (g) of Code Section 21-2-134, which can be found in Section 13 of the Act.²⁵²

Section 38

Section 38 of the Act revises subsection (a) of Code section 21-2-438, which relates to ballots declared void due to their identification of the voter, lack of marking, or improper marking.²⁵³ The revised subsection creates an exception to the rule that voids any votes cast for deceased or disqualified candidates in nonpartisan elections in subsection (g) of Code section 21-2-134, which can be found in Section 13 of the Act.²⁵⁴

Section 39

Section 39 of the Act revises subsection (f) of Code section 21-2-483, which relates to the counting of ballots, public accessibility to tabulating centers and precincts, execution of ballot recap forms, and preparation of duplicate ballots.²⁵⁵ The revised subsection outlines the required composition of a “duplication panel” and the procedure to appoint said panel.²⁵⁶

Section 40

Section 40 of the Act revises Code section 21-2-492, which relates to computation and canvassing of returns, notice of when and where returns will be computed and canvassed, blank forms for making statements of returns, and swearing of assistants.²⁵⁷ The revised section requires the computation and canvassing of returns of votes cast at each primary and election take place following the close of the polls on the day of such primary or election.²⁵⁸

252. *Id.* § 21-2-437(d).

253. 2021 Ga. Laws 14, § 38, at 65 (codified at O.C.G.A. § 21-2-438 (2019 & Supp. 2021)).

254. § 21-2-438(a).

255. 2021 Ga. Laws 14, § 39, at 66 (codified at O.C.G.A. § 21-2-483(f) (2019 & Supp. 2021)).

256. § 21-2-483(f).

257. 2021 Ga. Laws 14, § 40, at 67 (codified at O.C.G.A. § 21-2-492 (2019 & Supp. 2021)).

258. § 21-2-492.

Section 41

Section 41 of the Act revises subsections (a) and (k) of Code section 21-2-493, which relates to computation, canvassing, and tabulation of returns, investigation of discrepancies in vote counts, recount procedure, and certification of returns.²⁵⁹ The revised subsection (a) requires the superintendent publicly commence the computation and canvassing of returns after the close of the polls on the day of a primary or election.²⁶⁰ The computation and canvassing of returns must continue “until all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast on the day of the primary or election have been counted and tabulated” with the results released to the public.²⁶¹ Then the computation and canvassing of returns proceed “with provisional ballots as provided in Code sections 21-2-418 and 21-2-419 and those absentee ballots as provided in subparagraph (a)(1)(G) of Code section 21-2-386 from day to day until completed.”²⁶² The revised subsection (k) no longer permits the Secretary of State, in his or her discretion, to extend the certification date of returns if necessary to complete a precertification audit as provided in Code section 21-2-498.²⁶³ Section 41 also adds subsection (j.1) which requires that the Secretary of State “create a pilot program for the posting of digital images of the scanned paper ballots created by the voting system.”²⁶⁴

Section 42

Section 42 of the Act revises Code section 21-2-501, which relates to the number of votes required for election.²⁶⁵ The revised section prohibits any candidate from taking or swearing into elected public office unless such candidate receives a majority vote to fill such nomination or public office.²⁶⁶ Section 42 also consolidates six

259. 2021 Ga. Laws 14, § 41, at 68 (codified at O.C.G.A. § 21-2-493 (2019 & Supp. 2021)).

260. § 21-2-493(a).

261. *Id.*

262. *Id.*

263. *Id.* § 21-2-493(k).

264. *Id.* § 21-2-493(j.1).

265. 2021 Ga. Laws 14, § 42, at 68 (codified at O.C.G.A. § 21-2-501 (2019 & Supp. 2021)).

266. § 21-2-501(a)(1).

subsections which previously provided different runoff dates for (1) a general or special primary or special election held in conjunction with a general primary; (2) a general election for a federal office or a special primary or special election for a federal office held in conjunction with a general office; (3) a general election for an office other than a federal office or a runoff from a special primary or special election for an office other than a federal office held in conjunction with a general election; (4) a special primary or special election for a federal office not held in conjunction with a general primary or general election; and (5) a special primary or special election for an office other than a federal office not held in conjunction with a general primary or general election.²⁶⁷ Furthermore, the revised section eliminates a provision allowing a municipal special election held in conjunction with a federal special election but not a general primary or election to hold its runoff on the date of the federal special election runoff.²⁶⁸ The revised section also eliminates a provision allowing only electors entitled to vote in the first primary or election to vote in any resulting runoff.²⁶⁹

Section 43

Section 43 of the Act revises Code section 21-2-540, which relates to conduct of special elections generally.²⁷⁰ The revised section requires “[a]ll special primaries and special elections held at the time of a general primary . . . be conducted by the poll officers by the use of the same equipment and facilities, insofar as practicable, as are used for such general primary.”²⁷¹ Subsection (a) requires a special primary precede a special election in the event “a vacancy occurs in a partisan office to which the Governor is authorized to appoint an individual to serve until the next general election.”²⁷²

The revised section also removes a clause requiring special elections held in conjunction with the 2014 statewide general primary or election be called at least sixty days before the date of said statewide

267. *Id.* § 21-2-501(a).

268. *See* 2021 Ga. Laws 14, § 42, at 68 (formerly found at O.C.G.A. § 21-2-501(a)(1) (2011)).

269. *See id.*

270. 2021 Ga. Laws 14, § 43, at 70 (codified at O.C.G.A. § 21-2-540 (2019 & Supp. 2021)).

271. § 21-2-540(a)(1).

272. *Id.* § 21-2-540(a)(2).

general primary or general election.²⁷³ Finally, the revised section requires that candidates in special primaries and candidates in special elections for partisan offices not preceded by special primaries be listed alphabetically on the ballot.²⁷⁴

Section 44

Section 44 of the Act revises subsection (b) of Code section 21-2-541, which relates to the holding of a special primary or election at the time of a general primary or election and the inclusion of candidates and questions in a special primary or election on a ballot, by specifying throughout “general” and “special” elections.²⁷⁵

Section 45

Section 45 of the Act revises Code section 21-2-542, which relates to special election for United States Senator vacancy and temporary appointment by Governor.²⁷⁶ Specifically:

Whenever a vacancy shall occur in the representation of [Georgia] in the Senate of the United States, such vacancy shall be filled for the unexpired term by the vote of the electors of [Georgia] at a special primary to be held at the time of the next general primary followed by a special election.²⁷⁷

Section 46

Section 46 of the Act amends Article 14, which relates to special elections and primaries generally and municipal terms of office, by adding a new Code section.²⁷⁸ The Code section requires the Governor to appoint a qualified person in each country with a civil and magistrate court to fill vacancies in the office of chief judge until the

273. 2021 Ga. Laws 14, § 43, at 70 (formerly found at O.C.G.A. § 21-2-540 (2011)).

274. O.C.G.A. § 21-2-540(e)(2) (2019 & Supp. 2021).

275. 2021 Ga. Laws 14, § 44, at 72 (codified at O.C.G.A. § 21-2-541(b) (2019 & Supp. 2021)).

276. 2021 Ga. Laws 14, § 45, at 72 (codified at O.C.G.A. § 21-2-542 (2019 & Supp. 2021)).

277. § 21-2-542.

278. 2021 Ga. Laws 14, § 46, at 73 (codified at O.C.G.A. § 21-2-546 (Supp. 2021)).

county duly elects a qualified successor and until January 1 of the year following the next general election.²⁷⁹

Section 47

Section 47 of the Act revises subsection (a) of Code section 21-2-568, which relates to entry into a voting compartment or booth while another voting occurs, interference with an elector, inducing such elector to reveal or revealing the elector's vote, and influencing a voter while assisting.²⁸⁰ The revised subsection prohibits any attempt to induce an elector to show their ballot marks and no longer limits the duration of such attempts to the time before such elector deposits his or her ballot.²⁸¹ The revised subsection finds any person who accepts an absentee ballot from an elector for delivery or return to the board of registrars except as authorized by subsection (a) of Code section 21-2-385 guilty of a felony.²⁸²

Section 48

Section 48 of the Act amends Article 15 relating to miscellaneous offenses by adding a new Code section, which prohibits the intentional observation of an elector while he or she casts a ballot “in a manner that would allow such person to see for whom or what the elector is voting.”²⁸³ Any such violation constitutes a felony.²⁸⁴ The new Code section also makes illegal any electronic monitoring or recording of an electronic ballot marker while the elector votes on the ballot or while the electronic marker displays an elector's votes.²⁸⁵ Any such violation will constitute a misdemeanor.²⁸⁶

279. § 21-2-546.

280. 2021 Ga. Laws 14, § 47, at 73 (codified at O.C.G.A. § 21-2-568(a) (2019 & Supp. 2021)).

281. § 21-2-568(a)(3).

282. *Id.* § 21-2-568(a)(5).

283. 2021 Ga. Laws 14, § 48, at 73 (codified at O.C.G.A. § 21-2-568.1(a) (Supp. 2021)).

284. § 21-2-568.1(b).

285. O.C.G.A. § 21-2-568.2(a) (Supp. 2021).

286. *Id.* § 21-2-568.2(b).

Section 49

Section 49 of the Act revises subsection (a) of Code section 36-35-4.1, which relates to reapportionment of election districts for municipal elections.²⁸⁷ The revised subsection makes reapportionment of districts effective for any subsequent special election and the subsequent general municipal election if the publication of the decennial census “occurs within 120 days of the next general or special municipal election.”²⁸⁸

Section 50

Section 50 of the Act revises subsection (b) of Code section 50-13-4, which relates to procedural requirements for adoption, amendment, or repeal of rules, emergency rules, limitation on action to contest a rule, and legislative override.²⁸⁹ The revised subsection provides that any public health emergency rule “adopted relative to a state of emergency by the State Election Board shall be submitted as soon as practicable but not later than 20 days prior to the rule taking effect.”²⁹⁰ Further, “[a]ny emergency rule adopted by the State Election Board pursuant to the provisions of this subsection may be suspended upon the majority vote of the House of Representatives or Senate Committees on Judiciary within ten days of the receipt of such rule by the committees.”²⁹¹

Section 51

Section 51 of the Act amends Code section 50-18-71, which relates to the right of access to public records, timing, fees, denial of requests, and impact of electronic records, by adding a new subsection.²⁹² Subsection (k) deems any scanned ballot images created by a voting

287. 2021 Ga. Laws 14, § 49, at 74 (codified at O.C.G.A. § 36-35-4.1 (2019 & Supp. 2021)).

288. § 36-35-4.1(a).

289. 2021 Ga. Laws 14, § 50, at 74 (codified at O.C.G.A. § 50-13-4(b) (2019 & Supp. 2021)).

290. § 50-13-4(b).

291. *Id.*

292. 2021 Ga. Laws 14, § 51, at 75 (codified at O.C.G.A. § 50-18-71 (Supp. 2021)).

system and authorized by Chapter 2 of Title 21 as public record, subject to disclosure under this article.²⁹³

Section 52

Section 52 of this Act provides that “Section 21, 23, 25, 27, 28, and 29 of this Act shall become effective on July 1, 2021.”²⁹⁴ The section further provides that “[a]ll other sections of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.”²⁹⁵

Analysis

Current Legal Challenges to SB 202

As of August 11, 2021, there are eight lawsuits challenging the constitutionality of SB 202.²⁹⁶ Nonprofits have initiated seven of these lawsuits against Georgia government officials, and the U.S. Department of Justice has initiated the remaining lawsuit against the State of Georgia.²⁹⁷ All eight lawsuits allege that the bill discriminately affects people of color and violates Section 2 of the Voting Rights Act, the U.S. Constitution, or both.²⁹⁸

Most of the following cases allege SB 202 violates Section 2 of the Voting Rights Act of 1965, which states:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a

293. § 50-18-71(k).

294. 2021 Ga. Laws 14, § 52, at 75.

295. *Id.*

296. Stephen Fowler, *Here Are All the Lawsuits Challenging Georgia's New Voting Law*, GA. PUB. BROAD., <https://www.gpb.org/news/2021/05/19/here-are-all-the-lawsuits-challenging-georgias-new-voting-law> [https://perma.cc/38TM-ZKJK] (June 25, 2021, 3:52 PM).

297. *Id.*

298. *Id.*

denial or abridgement of the right of any citizen of the United States to vote on account of race or color[.]²⁹⁹

To determine if a violation exists, a court looks to the totality of the circumstances to see if election practices were “not equally open to participation by members of a class of citizens”³⁰⁰

In *New Georgia Project v. Raffensperger*, the New Georgia Project, Black Voters Matter Fund, and Rise, Inc. sued the Georgia Secretary of State and Chair of the Georgia State Election Board, along with members of various county election boards, for declaratory and injunctive relief.³⁰¹ In the complaint, the plaintiffs focus on the difficulties the bill places on citizens’ ability to vote.³⁰² The plaintiffs refer to SB 202 as the “Voter Suppression Bill.”³⁰³ The complaint alleges that the bill relies on unsubstantiated attacks against the integrity of Georgia’s election process, and although these claims were rebuked by judges and state and local election officials, the bill was necessary to advance election integrity.³⁰⁴ The plaintiffs allege that if the bill does anything, it discriminates against Georgia voters, particularly Georgia voters of color, and has “an impermissible goal of restricting voting.”³⁰⁵ Ultimately, the complaint states that the implemented measures will complicate the ability to vote and will:

[I]ndividually and cumulatively operate to impose unconstitutional burdens on the right to vote, to deny or abridge the voting rights of Black Georgians, and to deny Black voters in Georgia an equal opportunity to participate

299. Voting Rights Act of 1965 § 2, 52 U.S.C. § 10301(a).

300. *Id.* § 10301(b).

301. Complaint at 1, *New Ga. Project v. Raffensperger*, No. 21-cv-01229 (N.D. Ga. filed Mar. 25, 2021)[hereinafter Complaint, *New Ga. Project*]. The New Georgia Project is a nonprofit focused on registering and engaging Georgia voters. *Id.* at 7. Black Voters Matter Fund is a civic organization aimed at advocating for black voters. *Id.* at 8. Rise, Inc. is a nonprofit focused on college student voter turnout. *Id.* at 8–9.

302. *Id.* at 3.

303. *Id.*

304. *Id.* at 4–5.

305. *Id.* at 5.

in the electoral process and elect candidates of their choice in violation of Section 2 of the Voting Rights Act.³⁰⁶

To support this allegation, the plaintiffs provide racial voting statistics and factual findings from the 2020 election, including that Black Georgians voted through absentee ballots more than White Georgians, that long voting lines were a greater problem in majority Black communities, and that the 2020 election showed a high voter turnout rate among Black Georgians.³⁰⁷ The plaintiffs allege SB 202 enacts provisions that will negatively affect Black voter turnout.³⁰⁸

In *Georgia State Conference of the NAACP v. Raffensperger*, the Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., League of Women Voters of Georgia, Inc., and other minority nonprofit organizations sued the Georgia Secretary of State and members of the State Election Board for injunctive and declaratory relief.³⁰⁹ The complaint also alleges violations of Section 2 of the Voting Rights Act, in addition to violations of the First, Fourteenth, and Fifteenth Amendments.³¹⁰ The plaintiffs allege “[t]he burdens of SB 202 are intended to, and will have, the effect of disproportionately and adversely affecting the right to vote of Black voters and other voters of color,” thus, violating Section 2 of the Voting Rights Act.³¹¹ In support of this conclusion, the complaint points out that the bill’s identification requirements, prohibitions on unsolicited absentee ballots, criminalization of “line-warming,” and other named requirements will directly affect voters of color because these things increase their ability to vote.³¹²

In contrast to the *New Georgia Project* complaint, the *Georgia State Conference of the NAACP* complaint alleges more directly that “SB 202 is the culmination of a concerted effort to suppress the

306. *Id.* at 5–6.

307. Complaint, *New Ga. Project*, *supra* note 301, at 11–14.

308. *Id.* at 17–20.

309. Complaint at 1, *Ga. State Conf. of the NAACP v. Raffensperger*, No. 21-cv-01259 (N.D. Ga. filed Mar. 28, 2021). The plaintiffs consist of five nonprofit organizations, whose goals are to help minority voting efforts, and one Native American Tribe. *Id.* at 1, 5–6, 9–10, 13–14, 15–16, 17–18, 19.

310. *Id.* at 40, 45, 49.

311. *Id.* at 42.

312. *Id.* at 42–43.

participation of Black voters and other voters of color by the Republican State Senate, State House, and Governor.”³¹³ The complaint points out how the bill discriminately affects voters, namely Black and Brown voters, by prohibiting food and drink handouts that normally target longer voting lines found in Black communities, regulating the voting time period, and other prohibitions.³¹⁴

The Sixth District of the African Methodist Episcopal Church, Georgia Muslim Voter Project, and other minority organizations filed a complaint for injunctive and declaratory relief against Governor Brian Kemp (R) and many others alleging that SB 202 violates Section 2 of the Voting Rights Act and the First, Fourteenth, and Fifteenth Amendments.³¹⁵ The complaint alleges that SB 202 violates the Voting Rights Act because the bill’s “provisions deny voters of color a full and equal opportunity to participate in the political process.”³¹⁶ It alleges the bill violates the First Amendment because it prevents individuals from handing out food and water, a form of “political speech.”³¹⁷ The complaint also alleges the bill violates the Fourteenth Amendment because it challenges “the right to vote of *all* Georgia voters.”³¹⁸ Finally, it alleges the bill violates the Fifteenth Amendment because it discriminates against people of color by disrupting voting practices that help minorities vote.³¹⁹

Asian Americans Advancing Justice-Atlanta filed suit against the Georgia Secretary of State and others for injunctive and declaratory relief specifically alleging that the bill will negatively affect Asian American and Pacific Islander voters in violation of the Voting Rights Act.³²⁰ The plaintiffs state that “SB 202 violates Section 2 of the [Voting Rights Act] because the challenged provisions were adopted for the purpose of denying voters of color full and equal access to the

313. *Id.* at 2.

314. *Id.* at 25–26.

315. Complaint at 1, 79–85, Sixth Dist. of the Afr. Methodist Episcopal Church, v. Kemp, No. 21-cv-01284 (N.D. Ga. filed Mar. 29, 2021).

316. *Id.* at 7.

317. *Id.* at 8 (quoting *Meyer v. Grant*, 486 U.S. 414, 422–23 (1988)).

318. *Id.* at 7.

319. *Id.* at 7–8.

320. Complaint at 1–2, Asian Ams. Advancing Just.-Atlanta v. Raffensperger, No. 21-cv-01333 (N.D. Ga. filed Apr. 1, 2021) [hereinafter Complaint, Asian Ams. Advancing Just.].

political process.”³²¹ They also state that “SB 202 interacts with historical, socioeconomic, and other electoral conditions in Georgia to prevent voters of color . . . from having an equal opportunity to participate in the political process on account of their race or color.”³²²

The plaintiffs further explain that Asian American and Pacific Islander voter turnout in 2020 reached an all-time high because of the availability of absentee ballots.³²³ The complaint alleges that Georgia passed the bill soon after the election as a response to the voter turnout in diverse communities, citing to “Georgia’s long history of racially discriminatory election procedures.”³²⁴ It also underscored Asian American and Pacific Islander’s fear of going in public after the COVID-19 pandemic created a spike in hate crimes against the Asian American and Pacific Islander community.³²⁵ The complaint further alleges that the bill violates the First, Fourteenth, and Fifteenth Amendments.³²⁶

VoteAmerica, Voter Participation Center, and Center for Voter Information also filed suit against the Georgia Secretary of State and others for declaratory and injunctive relief, alleging that the bill’s regulation of third-party distribution of absentee ballots violates the First Amendment and the right to Due Process.³²⁷ Citing to the restrictions on filling out and distributing absentee ballots, the plaintiffs allege the bill’s requirements are:

[N]ot only costly and burdensome on nonprofit organizations who work to encourage political participation and facilitate access to absentee voting for Georgians—in some cases they are impossible to comply with or would present such prohibitively expensive financial burdens that

321. *Id.* at 25.

322. *Id.*

323. *Id.* at 2.

324. *Id.*

325. *Id.* at 3–4.

326. Complaint, Asian Ams. Advancing Just., *supra* note 320, at 4.

327. Complaint at 1, 5, *VoteAmerica v. Raffensperger*, No. 21-cv-01390 (N.D. Ga. filed Apr. 7, 2021).

some groups . . . may have no choice but to cease their operations in Georgia altogether.³²⁸

In *Concerned Black Clergy of Metropolitan Atlanta, Inc. v. Raffensperger*, the Concerned Black Clergy, the Justice Initiative, Inc., and other religious organizations filed suit against the Georgia Secretary of State and others for declaratory and injunctive relief.³²⁹ The plaintiffs' complaint alleges that SB 202 "is a surgical attempt to cut Black, Latinx and Asian voters from the voting process."³³⁰ Citing to the increase in minority voter turnout due to the availability of absentee ballots, the plaintiffs allege that the bill violates Section 2 of the Voting Rights Act, as well as the First, Fourteenth, and Fifteenth Amendments.³³¹ The plaintiffs claim the bill stems from false claims of voter fraud and that the identification requirements, voting period, and other restrictions will disenfranchise many voters.³³²

In *Coalition for Good Governance v. Raffensperger*, the Coalition for Good Governance, Georgia Advancing Progress PAC, and other individuals sued the Georgia Secretary of State and others for declaratory and injunctive relief.³³³ The complaint alleges that SB 202 violates Due Process, Equal Protection, the First Amendment, 42 U.S.C. § 1983, and the Voting Rights Act.³³⁴ Unlike the other complaints, the plaintiffs focus more broadly on the bill's effect on all voters, rather than minority voters.³³⁵ It alleges, like the other lawsuits, that the new absentee ballot restrictions negatively affect Georgia voters in their political freedom.³³⁶ The complaint also alleges, among other things, that "Senate Bill 202 destroys . . . components of the

328. *Id.* at 4.

329. Complaint at 1, *Concerned Black Clergy of Metro. Atlanta, Inc. v. Raffensperger*, No. 21-cv-01728 (N.D. Ga. filed Apr. 27, 2021).

330. *Id.* at 6.

331. *Id.* at 4–5, 62–63.

332. *Id.* at 5–6.

333. Complaint at 1, *Coal. for Good Governance v. Raffensperger*, No. 21-cv-02070 (N.D. Ga. filed May 17, 2021).

334. *Id.* at 13–20.

335. *Id.* at 1.

336. *Id.* at 8.

state's regime of separated powers by eliminating them as safeguards for the administration of Georgia's elections."³³⁷

In addition to citing to the same issues as the previously discussed cases, the U.S. Department of Justice sued the State of Georgia, the Georgia State Election Board, and the Georgia Secretary of State in *United States v. Georgia*, also directly alleging that "the Georgia General Assembly intended to deny or abridge the right of Black Georgians to vote"³³⁸ The U.S. Department of Justice points to statistics on the growth in Black voters, Georgia's history of discrimination against Black voters, and the positive effect absentee ballots had on Black voter participation.³³⁹ Among the SB 202 provisions challenged by the complaint are the identification requirements, drop box restrictions, and food and drink distribution restrictions.³⁴⁰ The complaint alleges violations of Section 2 of the Voting Rights Act because "[t]he challenged provisions of SB 202 were adopted with the purpose of denying or abridging Black citizens' equal access to the political process."³⁴¹ The complaint cited to the bill's provisions that described fines on third-party absentee ballot distribution, shorter deadlines, and less ballot drop boxes.³⁴²

Comparison to Other States

Before the Act's passage, most Georgia counties permitted voters to request ballots up until the Friday before Election Day.³⁴³ By passing SB 202, however, Georgia became one of eleven states requiring voters to request ballots at least eleven days in advance of Election Day.³⁴⁴ In contrast, thirteen states have the application deadline set at

337. *Id.* at 4.

338. Complaint at 3, *United States v. Georgia*, No. 21-cv-02575 (N.D. Ga. filed June 25, 2021).

339. *Id.* at 4–10.

340. *Id.* at 10–22.

341. *Id.* at 42.

342. *Id.* at 42–43.

343. David Wickert, *Voting Laws: How Georgia Compares to Other States*, ATLANTA J.-CONST. (Apr. 3, 2021), <https://www.ajc.com/politics/georgia-state-legislature/election-laws-how-georgia-stacks-up/KYO7CBZVFAC5HFUT4XHZURKWI/> [<https://perma.cc/8RD2-SQZM>].

344. *Id.*

seven days before an election, and twenty-two states accept voter absentee ballot applications less than seven days before an election.³⁴⁵

SB 202 also placed Georgia among three other states—Kansas, Minnesota, and Ohio—that require voters to submit a driver’s license number or other identification number to verify the identity of the voter.³⁴⁶ On the other hand, thirty states match voter signatures on absentee ballots with signatures already on file, six states require but do not verify signatures, eight states require both the voter’s signature and a witness’s signature, three states require notarization of the ballot envelopes, and two states require voters submit a copy of some form of identification.³⁴⁷

Although all states allow voters to return absentee ballots by mail, eleven states, including Georgia, permit ballot return to other locations such as early voting sites.³⁴⁸ SB 202, however, limited the number of drop boxes by allowing them only inside early voting sites and during regular voting hours.³⁴⁹

Comparing SB 202 to other similar state bills, certain provisions provide stricter requirements while others are more lenient. For example, after the 2020 elections, Texas lawmakers introduced SB 7 and HB 6 to reform and amend voting laws.³⁵⁰ SB 7 would bar voting after 9:00 P.M. compared to SB 202’s 7:00 P.M. restriction.³⁵¹ Neither SB 7 nor HB 6 introduce new voting identification requirements like SB 202’s required absentee voting I.D. requirement; however, existing laws require a photo I.D. with certain exceptions.³⁵² Further, neither Texas bill addresses giving gifts of “food and water” in voting lines like SB 202.³⁵³ Unlike Georgia’s SB 202 opponents, Democrats have

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. Wickert, *supra* note 343.

350. Jeremy Wallace & Austin Bureau, *Texas Voting Bills Target Democratic Strongholds, Just like Georgia’s New Laws*, HOUS. CHRON., <https://www.houstonchronicle.com/politics/texas/article/texas-voting-laws-georgia-bills-democrat-16104283.php> [<https://perma.cc/5QKA-9639>] (Apr. 15, 2021, 2:36 PM).

351. *Id.*

352. *Id.*

353. *Id.*

temporarily blocked this new bill touching “many of the same voting policies that drew wide notice in Georgia”³⁵⁴

Florida Governor Ron DeSantis signed a new voting bill into law on May 6, 2021.³⁵⁵ Both Florida and Georgia now prohibit food and water distribution within 150 feet of polling places, but Georgia extends the restriction to within twenty-five feet of any voter standing in line.³⁵⁶ Florida also restricts election offices from receiving private funding from private organizations.³⁵⁷ Although SB 202 prohibits election offices from directly receiving funding, it permits receiving funding from third parties.³⁵⁸ The 2020 elections ignited a wave of these bills changing current voting laws with everyone’s eyes on Georgia.

Conclusion

The Election Integrity Act sparked much controversy among not only Georgians but also the entire country. It initiated a surge of sweeping elections bills and lawsuits that remain a force in the media. Whether considered voter suppression or election integrity, SB 202’s substantial amendments sent a shockwave throughout Georgia’s Election Code.

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354. Zach Montellaro & Daniel Payne, *Republicans Want to Change State Election Laws. Here’s How They’re Doing It.*, POLITICO (June 5, 2021, 7:00 AM), <https://www.politico.com/news/2021/06/05/republican-texas-georgia-election-laws-491808> [<https://perma.cc/6JRK-KEUM>].

355. Blaise Gainey, *Florida & Georgia’s New Elections Law Compared*, WFSU (May 7, 2021, 7:03 PM), <https://news.wfsu.org/state-news/2021-05-07/florida-georgias-new-elections-law-compared> [<https://perma.cc/BJ9H-K37C>].

356. *Id.*

357. *Id.*

358. *Id.*