

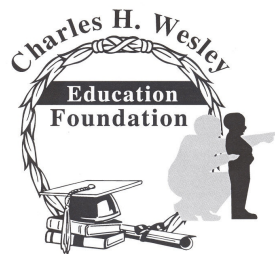
PROPOSED ADMINISTRATIVE RULES
FOR THE
STATE ELECTION BOARD
RELATED TO THE
NATIONAL VOTER REGISTRATION ACT OF 1993

Submitted by:

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**RULES
OF
STATE ELECTION BOARD**

**CHAPTER 183-3
NATIONAL VOTER REGISTRATION ACT OF 1993 PROVISIONS**

TABLE OF CONTENTS

183-3-.01	Intent and Purpose; Definitions
183-3-.02	Designation of Voter Registration Agencies
183-3-.03	Acceptance of Mail Voter Registration Applications
183-3-.04	Participation in Organized Voter Registration Activity by Non-Authorized Private Entities
183-3-.05	Administrative Complaint Procedure

183-3-.01 Intent and Purpose; Definitions.

(1) These rules are promulgated pursuant to the authority granted to the State Election Board (“Board”) and the Secretary of State (“Secretary”) by the Georgia Election Code (O.C.G.A. §§ 21-2-1 *et seq.*) and the National Voter Registration Act of 1993 (42 U.S.C. §§ 1973gg *et seq.*) (“NVRA”). It is the intent and purpose of the Secretary (as the state’s chief election official) and the Board (as the body charged with the responsibility to establish rules and regulations conducive to the orderly conduct of primaries and elections – including the registration of voters) to establish reasonable, necessary, and uniform rules and regulations to carry out the state’s responsibilities with respect to the registration of voters for elections for federal office pursuant to the NVRA. At the same time, the Secretary and the Board also intend and purpose, by promulgating these rules, to provide reasonable and constitutionally permissible means by which electoral integrity and voter confidentiality can be enhanced and opportunities for voter registration fraud can be minimized.

(2) The NVRA requires states to establish specified voter registration procedures with respect to federal elections, notwithstanding any other federal or state law and in addition to any other methods of voter registration provided for under state law. (42 U.S.C. § 1973gg-2(a)). Accordingly, to the extent that there exists a conflict between these rules and any other rules promulgated by the Board or any other agency, related to the registration of voters for federal elections pursuant to the NVRA, it is the intent of the Board that these rules shall control.

(3) To the extent that any provision of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the Board that the offensive provisions be modified or excluded to the minimum

extent necessary to achieve validity and enforceability, and that the remainder of the provisions in this chapter will remain in tact and in effect to the maximum extent possible.

(4) As used in this chapter, unless otherwise noted –

(a) the term “Board” shall mean the State Election Board;

(b) the term “non-authorized private entity” or “NAPE” shall mean a private, non-governmental individual or entity that is not otherwise authorized by state law to receive voter registration applications in person; and

(c) the term “Secretary” shall mean the Secretary of State of Georgia.

Authority O.C.G.A. §§ 21-2-31, 21-2-50, 21-2-210, 45-13-20; 42 U.S.C. §§ 1973gg-2, 1973gg-8.

History. Original Rule entitled “Intent and Purpose; Definitions” adopted _____; eff. _____.

183-3-.02 Designation of Voter Registration Agencies.

(1) At least quarterly, the Secretary shall publish and make available for inspection and copying (including on the Secretary’s website), an updated list of all federal, state, local, and non-governmental offices designated as voter registration agencies pursuant to 42 U.S.C. § 1973gg-5 and O.C.G.A. § 21-2-222.

(2) The Board shall be one of the agencies designated as a voter registration agency pursuant to 42 U.S.C. § 1973gg-5(a)(3) and O.C.G.A. § 21-2-222(c). All employees of the Elections Division of the Office of Secretary of State and any duly authorized Georgia county registrar or deputy registrar shall be authorized to offer the following voter registration services on behalf of the Board or any other designated voter registration agency (with the permission of that agency) at any location within the State that is open to and accessible by the public: distributing mail voter registration applications, assisting applicants in completing voter registration applications, and accepting completed voter registration application forms for transmittal to an appropriate state or local election official pursuant to 42 U.S.C. § 1973gg-5(a)(4)(A).

(3) Nothing in this chapter shall be construed to prohibit non-authorized private entities from conducting organized voter registration programs and assisting eligible citizens with voter registration, including the distribution, collection, and transmittal of mail voter registration applications to an appropriate state or local election official. However, any mail voter registration application received from a NAPE shall be processed as an application by mail pursuant to 42 U.S.C. §§ 1973gg-2(a)(2) and 1973gg-6(a)(1)(B), and not as an application made

in person at a designated voter registration agency pursuant to 42 U.S.C. §§ 1973gg-2(a)(3)(B) and 1973gg-6(a)(1)(C).

Authority O.C.G.A. §§ 21-2-31, 21-2-50, 21-2-210, 21-2-222, 45-13-20; 42 U.S.C. §§ 1973gg-2, 1973gg-5, 1973gg-8. **History.** Original Rule entitled “Designation of Voter Registration Agencies” adopted _____; eff. _____.

183-3-.03 Acceptance of Mail Voter Registration Applications.

(1) Any validly completed mail voter registration application postmarked or received by an appropriate state or local election official within the time frames provided by law (O.C.G.A. § 21-2-224; 42 U.S.C. § 1973gg-6(a)(1)) must be accepted and processed, without regard to whether such application was received via mail or otherwise, submitted singularly or in a bundle, or submitted by a registrar, deputy registrar, or other authorized official. No state or local election official is authorized to reject or refuse to process a validly completed mail voter registration application on the basis of how or by whom it was submitted, so long as the application is, in fact, timely received.

(2) Nothing in this chapter shall be construed to prohibit or in any way restrict the right of any state or local election official, or any other authorized person, to investigate and address suspected instances of voter registration fraud, or to challenge, examine, or determine the qualifications of persons applying to register.

Authority O.C.G.A. §§ 21-2-31, 21-2-50, 21-2-210, 45-13-20; 42 U.S.C. §§ 1973gg-2, 1973gg-6, 1973gg-8; *Charles H. Wesley Educ. Found. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004), *aff’d*, 408 F.3d 1349 (11th Cir. 2005). **History.** Original Rule entitled “Acceptance of Mail Voter Registration Applications” adopted _____; eff. _____.

183-3-.04 Participation in Organized Voter Registration Activity by Non-Authorized Private Entities.

(1) Introduction and Background.

(a) The Board recognizes that the NVRA allows and encourages private entities (including natural persons) to conduct organized voter registration programs and to assist eligible citizens with voter registration (including the distribution, collection, and transmittal of mail voter registration applications to an appropriate state or local election official), as a means of facilitating registration by mail by eligible citizens. At the same time, the Board has found that the mass facilitation of voter registration by untrained and unknown private entities has increased the instances of incomplete, illegible, untimely submitted,

and potentially fraudulent voter registration applications being submitted to election officials within the state.

(b) For the benefit and protection of those citizens who choose to entrust their completed voter registration applications to non-authorized private entities, as well as for the benefit and protection of the public and the fair administration of the electoral process, the Board has promulgated this rule. In crafting this rule, the Board has taken deliberate care not to burden unduly or unreasonably infringe upon the right of private entities to engage in organized voter registration activity, as provided in the NVRA.

(2) Instruction and Training to be Provided. Instruction and training in volunteer voter registration activity pursuant to this rule shall be offered and provided by the Board or by its authorized designees, including county registrars. The Board shall ensure that such instruction is offered and provided on a non-discriminatory basis throughout the state, in such locations, at such times, and with such frequency as is necessary to train non-authorized private entities seeking to participate in voter registration activities.

(b) **Scope of Instruction.** At a minimum, every NAPE who so requests shall be instructed in the following:

(i) how to complete the national and statewide mail voter registration applications authorized for use in Georgia pursuant to 42 U.S.C. § 1973gg-4(a), so as to ensure, to the extent possible, that such applications are completed accurately by voter registration applicants;

(ii) the proper security of completed registration applications and the protection of the integrity of the registration process;

(iii) the time frames within which completed voter registration applications are required to be transmitted to the relevant state or local election official pursuant to 42 U.S.C. § 1973gg-6(a)(1)(B), O.C.G.A. § 21-2-224, and this rule;

(iv) the identification requirements for voting at polling places within the state; and

(v) the required and prohibited activities of NAPEs, as provided in this rule.

(c) **Instructional Materials and Training Guides.** The Board shall design, distribute and make widely available to NAPEs appropriate instructional and reference materials that include easy-to-understand information on the rules and procedures for the proper conduct of private voter registration activity under the

NVRA and these rules. Such materials shall, to the extent practicable, be made available at no or minimal cost, in print and electronic form, and via interactive web-based and CD-ROM programs.

(3) **Required Activities.** While engaging in organized voter registration activity within this state, as permitted under the NVRA, a non-authorized private entity shall:

(a) wear a name badge or otherwise display identification that states the full name of the person and the organizational entity (if any) on whose behalf the person is conducting voter registration activity, so that such information is readily visible to and ascertainable by any voter registration applicant, and, upon the request of the applicant, provide the applicant with the NAPE's name, mailing address, and telephone number;

(b) advise each applicant that he or she has the option either to personally return his or her own application to the appropriate election official, or to permit the NAPE to return it on the applicant's behalf, and that if the applicant elects to have the NAPE return the application, the applicant shall be deemed to have given his or her consent for the NAPE to retain and collect information on the applicant in the manner described in paragraph (6) of this rule;

(c) inform all applicants that they are not officially registered to vote until their application has been approved by the appropriate county board of registrars (or other local elections authority) and that, if they have not received their voter registration cards within three to four weeks of registration, that they should follow up with the board of registrars (or other local election authority) or with the chief state election official to determine whether they have been registered to vote and placed on the list of electors;

(d) inform all applicants that, if they are registering to vote by mail or with the assistance of a NAPE for the first time in the jurisdiction, they may be required to supply additional identification information to election officials at the time of voting;

(f) inform all Georgia applicants of the availability of an online poll locator service on the Secretary's website and encourage all applicants to access it in advance of election day, to verify their correct polling place; and

(g) inform all applicants of their right, under certain circumstances, to cast a provisional ballot in the event they do not appear on the official list of electors at their polling place.

For purposes of compliance with the notice provisions provided in subparagraphs (b) through (g) of this paragraph, it shall be sufficient for the

NAPE either to post such notices in a conspicuous location at any fixed registration site or to provide such notices in written form to the applicant in a brochure, flyer, or other similar manner at the time of application. The Board shall design and make available to NAPEs an appropriate model form that includes all required notices pursuant to subparagraphs (b) through (g) of this paragraph.

(4) **Prohibited Activities.** While engaging in organized voter registration activity within this state, as permitted under the NVRA, a non-authorized private entity shall not:

(a) represent to any person that the NAPE is a county or state election official authorized by state law to receive applications in person;

(b) make any statement to an applicant or take any action the purpose or reasonably foreseeable effect of which is to discourage the applicant from applying to register to vote;

(c) refuse to accept and transmit a properly completed voter registration application from any qualified individual; or

(d) be inebriated or otherwise unduly impaired by drugs, alcohol, or other substances.

(5) **Transmittal of Completed Voter Registration Applications.**

(a) A NAPE shall promptly transmit all completed voter registration applications to the appropriate state election official within the time frames set out in 42 U.S.C. § 1973gg-6(a)(1)(B), O.C.G.A. § 21-2-224, and this rule.

1. If a NAPE receives a completed application more than 14 days before the last day for registration to vote in an election, the NAPE shall transmit the application to the appropriate state election official within 10 days after the date of the execution of the form.

2. If a NAPE receives a completed application within 6 to 14 days of the last day for registration to vote in an election, the NAPE shall transmit the application to the appropriate state election official within 72 hours of the date of execution of the form.

3. If a NAPE receives a completed application within 2 to 5 days of the last day for registration to vote in an election, the NAPE shall personally deliver the application to the appropriate state election official, or to a United States Post Office or a guaranteed overnight delivery commercial courier, by midnight of the date following the date of execution of the form.

4. If a NAPE receives a completed application on the day before the last day for registration to vote in an election, or on the last day for registration to vote in an election, the NAPE shall personally deliver the application to the appropriate state election official, or to a United States Post Office and into the hands of an authorized postal worker for official postmarking, by midnight of the date of execution of the form.

(b) Except as otherwise provided in subparagraph (5)(a) of this rule, transmittal of completed voter registration applications may be accomplished by in-person delivery, mail, commercial courier, or any other form of delivery reasonably calculated to secure the confidential delivery and receipt of said materials by the appropriate election official within three (3) business days of transmittal and within the time frames required by law.

(c) Along with each transmittal of completed voter registration applications, a NAPE shall include a summary sheet, in a form to be determined by the Board, which includes: the submitting individual's name; the name of the sponsoring private entity (if any); the submitting individual's residence or business street address (not a PO box) and daytime and evening telephone numbers; the total number of applications submitted; and the date(s) on which applications were completed by the applicants.

1. If the NAPE includes a copy of the transmittal summary sheet along with a self-addressed postage prepaid first-class mail envelope, the receiving election official shall sign and stamp the copy of the transmittal summary sheet with the date and time of receipt, the name and title of the receiving election official, and the name of the receiving election authority (i.e., "Secretary of State," "_____ County Board of Registrars," etc.), and shall promptly return the same to the NAPE via first-class mail.

(6) Confidentiality of Completed Voter Registration Applications.

(a) A NAPE shall keep all completed original voter registration applications in his, her, or its possession in a secure and confidential manner at all times, until such time as such applications are transmitted to the appropriate election official. A NAPE shall also not disclose any such applications to the public; however, a NAPE may collaborate with other affiliated NAPes in the securing of completed voter registration applications that are received during a jointly organized voter registration program.

(b) A NAPE may make one (1) archival copy of the applicant's original voter registration application and retain such copy for a period not to exceed 180 days following the date of the application, for purposes of assisting the applicant with verifying the timely and proper receipt and processing of his/her application by the applicable county board of registrars (or other local election official). At

the expiration of such 180-day period, the NAPE must destroy the archival copy in the manner contemplated by O.C.G.A. § 10-15-2 for the destruction by businesses of records containing personal information.

(c) A NAPE may create and keep a separate record of any information contained on the applicant's voter registration application that could otherwise be made available for public inspection pursuant to O.C.G.A. § 21-2-225(b) if collected and maintained by the Secretary on the list of electors. No such information may be used by the NAPE or any other person for commercial purposes. In addition, whenever such information is discarded by the NAPE, it must be discarded in the manner contemplated by O.C.G.A. § 10-15-2 for the destruction by businesses of records containing personal information.

Authority O.C.G.A. §§ 21-2-31, 21-2-50, 21-2-210, 45-13-20; 42 U.S.C. §§ 1973gg-2, 1973gg-6, 1973gg-8; *Charles H. Wesley Educ. Found. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004), *aff'd*, 408 F.3d 1349 (11th Cir. 2005). **History.** Original Rule entitled "Participation in Organized Voter Registration Activity by Non-Authorized Private Entities" adopted _____; eff. _____.

183-3-.05 Administrative Complaint Procedure.

(1) Any person who believes that a violation of any provision of NVRA or this chapter has occurred, is occurring, or is about to occur may file a complaint with the Secretary of State. Such complaint shall be open to inspection by the public during business hours upon reasonable notice. Nothing in this rule shall be construed to require any complaining party to request an investigation by the Secretary before such party might proceed to seek any other remedy available to that party under this chapter or any other provision of law or regulation.

(2) Such complaint shall be in writing and shall be signed and sworn to by the person making the complaint and shall be properly notarized in accordance with state law. The complaint shall be delivered to and served upon the Secretary of State as the chief state election official in person, by U.S. Mail, or by guaranteed overnight delivery.

(3) The Secretary shall provide any respondents listed in the complaint with notice and a copy of the complaint and shall afford any such respondents with a reasonable amount of time, under the circumstances, to respond to the complaint.

(4) The Secretary or her designee shall investigate the allegations of such complaint. If more than one complaint is filed concerning the same alleged violation, the Secretary may consolidate such complaints for investigation.

(5) If the complainant or any respondent requests, the Board shall conduct a hearing on the allegations of the complaint. Such hearing shall be open to the public; may be conducted by telephone, conference call, or in person; and shall be recorded. All testimony shall be taken under oath. Hearsay testimony may be considered and may be assigned such weight and credibility as is appropriate under the circumstances.

(6) The Secretary or the Board shall make a determination of the validity of the complaint within 90 days following the date on which the complaint is received by and filed with the Secretary, or within such earlier time frame as may be required under 42 U.S.C. § 1973gg-9(b), unless the complainant agrees in writing to an extension of such time period.

(5) If the Secretary or the Board determines, based on the investigatory record, that such complaint is unfounded, the complaint shall be dismissed and the complainant notified of the decision. The results of any investigation into the complaint shall be made available for public inspection during normal business hours upon reasonable notice after the matter has been resolved.

(7) If the Secretary or the Board determines, based on the investigatory record, that such complaint is valid, they shall take all necessary and appropriate actions within their authority to address the violation and, in their discretion, may refer the complaint and the investigation records and recommendations to the district attorney or solicitor-general of the county where the violation occurred or to the appropriate United States Attorney for further investigation and action.

(8) The final determination and order of the Secretary or the Board will be reduced to writing and will be:

(i) mailed to the complainant, each respondent and any other person who requested in writing to be advised of the final resolution;

(ii) posted on the website of the Secretary of State; and

(iii) made available by the Secretary of State, upon request by any interested person.

Authority O.C.G.A. §§ 21-2-31, 21-2-50, 21-2-210, 45-13-20; 42 U.S.C. §§ 1973gg-2, 1973gg-8.

History. Original Rule entitled "Administrative Complaint Procedure" adopted _____; eff. _____.