

Current GA law RE Recounts and Contests

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Recounts

§ 21-2-495. Procedure for recount or recanvass of votes; losing candidate's right to a recount; rules and regulations

(a) In precincts where paper ballots or scanning ballots have been used, the superintendent may, either of his or her own motion or upon petition of any candidate or political party, order the recount of all the ballots for a particular precinct or precincts for one or more offices in which it shall appear that a discrepancy or error, although not apparent on the face of the returns, has been made. Such recount may be held at any time prior to the certification of the consolidated returns by the superintendent and shall be conducted under the direction of the superintendent. Before making such recount, the superintendent shall give notice in writing to each candidate and to the county or municipal chairperson of each party or body affected by the recount. Each such candidate may be present in person or by representative, and each such party or body may send two representatives to be present at such recount. If upon such recount, it shall appear that the original count by the poll officers was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.

(b) In precincts where voting machines have been used, whenever it appears that there is a discrepancy in the returns recorded for any voting machine or machines or that an error, although not apparent on the face of the returns, exists, the superintendent shall, either of his or her own motion or upon the sworn petition of three electors of any precinct, order a recanvass of the votes shown on that particular machine or machines. Such recanvass may be conducted at any time prior to the certification of the consolidated returns by the superintendent. In conducting such recanvass, the superintendent shall summon the poll officers of the precinct; and such officers, in the presence of the superintendent, shall make a record of the number of the seal upon the voting machine or machines and the number of the protective counter or other device; shall make visible the registering counters of each such machine; and, without unlocking the machine against voting, shall recanvass the vote thereon. Before making such recanvass, the superintendent shall give notice in writing to the custodian of voting machines, to each candidate, and to the county or municipal chairperson of each party or body affected by the recanvass. Each such candidate may be present in person or by representative, and each of such parties or bodies may send two representatives to be present at such recanvass. If, upon such recanvass, it shall be found that the original

canvass of the returns has been correctly made from the machine and that the discrepancy still remains unaccounted for, the superintendent, with the assistance of the custodian, in the presence of the poll officers and the authorized candidates and representatives, shall unlock the voting and counting mechanism of the machine and shall proceed thoroughly to examine and test the machine to determine and reveal the true cause or causes, if any, of the discrepancy in returns from such machine. Each counter shall be reset at zero before it is tested, after which it shall be operated at least 100 times. After the completion of such examination and test, the custodian shall then and there prepare a statement, in writing, giving in detail the result of the examination and test; and such statement shall be witnessed by the persons present and shall be filed with the superintendent. If, upon such recanvass, it shall appear that the original canvass of the returns by the poll officers was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly; provided, however, that in the case of returns from any precinct wherein the primary or election was held by the use of a voting machine equipped with a mechanism for printing paper proof sheets, such proof sheets, if mutually consistent, shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and there shall not be considered to be any discrepancy or error in the returns from any such precinct, such as to require a recanvass of the vote, if all available proof sheets, from the voting machine used therein, identified to the satisfaction of the superintendent and shown to his or her satisfaction to have been produced from proper custody, shall be mutually consistent; and, if the general and duplicate returns, or either of such returns from such precincts shall not correspond with such proof sheets, they and all other papers being prepared by the superintendent shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent by the weight of the evidence; and only in such case shall the vote of such precinct be recanvassed under this Code section.

(c)

(1) Whenever the difference between the number of votes received by a candidate who has been declared nominated for an office in a primary election or who has been declared elected to an office in an election or who has been declared eligible for a run-off primary or election and the number of votes received by any other candidate or candidates not declared so nominated or elected or eligible for a runoff shall be not more than one-half of 1 percent of the total votes which were cast for such office therein, any such candidate or candidates receiving a sufficient number of votes so that the difference between his or her vote and that of a candidate declared nominated, elected, or eligible for a runoff is not more than one-half of 1 percent of the total votes cast, within a period of two business days following the certification of the election results, shall have the right to a recount of the votes cast, if such request is made in writing by the losing candidate. If the office sought is a federal or state office voted upon by the electors of more than one county, the request shall be made to the Secretary of State who shall direct that the recount be performed in all counties in which electors voted for such office and notify the superintendents of the several

counties involved of the request. In all other cases, the request shall be made to the superintendent. The superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(2) Whenever the difference between the number of votes for approval or rejection of a constitutional amendment or binding referendum question shall be not more than one-half of 1 percent of the total votes which were cast on such amendment or question therein, within a period of two business days following the certification of the election results, the Constitutional Amendments Publication Board shall be authorized in its discretion to call for a recount of the votes cast with regard to such amendment or question. In the case of a constitutional amendment or state-wide referendum question or a question voted upon by the electors of more than one county, the board shall direct the Secretary of State to cause a recount to be performed with regard to such amendment or question in all counties involved and notify the superintendents of the recount. In the case of questions voted upon by the electors of only one county or municipality, the board shall direct the Secretary of State to cause a recount to be conducted by the county or municipality involved and the Secretary of State shall notify the superintendent involved of the recount. Upon notification, the superintendent or superintendents shall order a recount of such votes to be made immediately. If, upon such recount, it is determined that the original count was incorrect, the returns and all papers prepared by the superintendent, the superintendents, or the Secretary of State shall be corrected accordingly and the results recertified.

(d) Any other provision of this Code section to the contrary notwithstanding, a candidate for a federal or state office voted upon by the electors of more than one county may petition the Secretary of State for a recount or recanvass of votes, as appropriate, when it appears that a discrepancy or error, although not apparent on the face of the returns, has been made. The recount or recanvass may be ordered in the discretion of the Secretary of State in any and all counties in which electors voted for such office, and said recount or recanvass may be held at any time prior to the certification of the consolidated returns by the Secretary of State. A recount or recanvass shall be conducted by the appropriate superintendent or superintendents in the manner and pursuant to the procedures otherwise provided in this Code section for a recount or recanvass, as appropriate. The petition pursuant to this Code section shall be in writing and signed by the person or persons requesting the recount or recanvass. A petition shall set forth the discrepancies or errors and any evidence in support of the petitioner's request for a recount or recanvass and shall be verified. The Secretary of State may require the petitioner or other persons to furnish additional information concerning the apparent discrepancies or errors in the counting or canvassing of votes.

(e) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provisions of this Code section.

Ga. L. 2019, p. 7, § 41/HB 316.

§ 21-2-493. Computation, canvassing, and tabulation of returns; investigation of discrepancies in vote counts; recount procedure; certification of returns; change in returns

(a) The superintendent shall, at or before 12:00 Noon on the day following the primary or election, at his or her office or at some other convenient public place at the county seat or in the municipality, of which due notice shall have been given as provided by Code Section 21-2-492, publicly commence the computation and canvassing of the returns and continue the same from day to day until completed. For this purpose the superintendent may organize his or her assistants into sections, each of which may simultaneously proceed with the computation and canvassing of the returns from various precincts of the county or municipality in the manner provided by this Code section. Upon the completion of such computation and canvassing, the superintendent shall tabulate the figures for the entire county or municipality and sign, announce, and attest the same, as required by this Code section.

(b) The superintendent, before computing the votes cast in any precinct, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had. Such excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession. The superintendent shall then examine all the registration and primary or election documents whatever relating to such precinct in the presence of representatives of each party, body, and interested candidate. Such examination may, if the superintendent deems it necessary, include a recount or recanvass of the votes of that precinct and a report of the facts of the case to the district attorney where such action appears to be warranted.

(c) In precincts in which paper ballots have been used, the superintendent may require the production of the ballot box and the recount of the ballots contained in such ballot box, either generally or respecting

the particular office, nomination, or question as to which the excess exists, in the discretion of the superintendent, and may require the correction of the returns in accordance with the result of such recount. If the ballot box is found to contain more ballots than there are electors registered in such precinct or more ballots than the number of voters who voted in such precinct at such primary or election, the superintendent may, in his or her discretion, exclude the poll of that precinct, either as to all offices, candidates, questions, or parties and bodies or as to any particular offices, candidates, questions, or parties and bodies, as to which such excess exists.

(d) In precincts in which voting machines have been used, the superintendent may require a recanvass of the votes recorded on the machines used in the precinct, as provided in Code Section 21-2-495.

(e) In precincts in which paper ballots have been used, the general returns made by the poll officers from the various precincts shall be read one after another in the usual order, slowly and audibly, by one of the assistants who shall, in each case of a return from a precinct in which ballots were used, read therefrom the number of ballots issued, spoiled, canceled, and cast, respectively, whereupon the assistant having charge of the records of the superintendent showing the number of ballots furnished for each precinct, including the number of stubs and unused ballots and spoiled and canceled ballots returned, shall publicly announce the number of the same respectively; and, unless it appears by such number or calculations therefrom that such records and such general return correspond, no further returns shall be read from the latter until all discrepancies are explained to the satisfaction of the superintendent.

(f) In precincts in which voting machines have been used, there shall be read from the general return the identifying number or other designation of each voting machine used and the numbers registered on the protective counter or device on each machine prior to the opening of the polls and immediately after the close of the same, whereupon the assistant having charge of the records of the superintendent showing the number registered on the protective counter or device of each voting machine prior to delivery at the polling place shall publicly announce the numbers so registered; and, unless it appears that such records and such general return correspond, no further returns shall be read from the latter until any and all discrepancies are explained to the satisfaction of the superintendent.

(g) In precincts in which paper ballots have been used, when the records agree with such returns regarding the number of ballots and the number of votes recorded for each candidate, such votes for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return which has been returned unsealed; and the figures announced shall be compared by other assistants with the general return which has been returned sealed. The figures announced for all precincts shall be compared by one of the assistants with the tally papers from the respective precincts. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, tally papers, and other papers in his or her possession relating to the same precinct. If the tally papers and sealed general return sheet agree, the unsealed general return shall be immediately corrected to conform thereto. In every other case

the superintendent shall immediately cause the ballot box of the precinct to be opened and the vote therein to be recounted in the presence of interested candidates or their representatives; and, if the recount shall not be sufficient to correct the error, the superintendent may summon the poll officers to appear immediately with all election papers in their possession.

(h) In precincts in which voting machines have been used, when the records agree with the returns regarding the number registered on the voting machine, the votes recorded for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return sheet which has been returned unsealed; and the figures announced shall be compared by other assistants with the duplicate return sheet which has been returned sealed. If the voting machine is of the type equipped with a mechanism for printing paper proof sheets, such general and duplicate return sheets shall also be compared with such proof sheets, which have been returned as aforesaid. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, proof sheets, and other papers in his or her possession relating to the same precinct. Such proof sheets shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and, if the proper proof sheets, properly identified, shall be mutually consistent and if the general and duplicate returns or either of such returns from such precinct shall not correspond with such proof sheets, they shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent.

(i) If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.

(j) The superintendent shall see that the votes shown by each absentee ballot are added to the return received from the precinct of the elector casting such ballot.

(k) As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns shall then be certified by the superintendent in the manner required by this chapter. Such returns shall be certified by the superintendent not later than 5:00 P.M. on the second Friday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State; provided, however, that such certification date may be extended by the Secretary of State in his or her discretion if necessary to complete a precertification audit as provided in Code Section 21-2-498.

(l) In such case where the results of an election contest change the returns so certified, a corrected return shall be certified and filed by the superintendent which makes such corrections as the court orders.

Ga. L. 2019, p. 7, § 40/HB 316

§ 21-2-379.23. Requirements for ballot display; role of Secretary of State; printed paper ballot controls during recount

(a) The ballot display information and appearance on an electronic ballot marker shall conform as nearly as practicable to Code Sections 21-2-379.4 and 21-2-379.5.

(b) The form and arrangement of ballots marked and printed by an electronic ballot marker shall be prescribed by the Secretary of State.

(c) Notwithstanding any other law to the contrary, ballots marked and printed by an electronic ballot marker shall, at a minimum, contain:

(1) The words "OFFICIAL BALLOT";

(2) The name and date of the election;

(3) The titles of the respective offices for which the elector is eligible to vote;

(4) Words identifying the proposed constitutional amendments or other questions for which the elector is eligible to vote;

(5) The name of the candidate and, for partisan offices, indication of the candidate's political party or political body affiliation, or the answer to the proposed constitutional amendment or other question for which the elector intends to vote; and

(6) Clear indication that the elector has not marked a vote for any particular office, constitutional amendment, or other question.

(d) The paper ballot marked and printed by the electronic ballot marker shall constitute the official ballot and shall be used for, and govern the result in, any recount conducted pursuant to Code Section 21-2-495 and any audit conducted pursuant to Code Section 21-2-498.

Ga. L. 2019, p. 7, § 26/HB 316.

§ 21-2-498. Precertification tabulation audits

(a) As used in this Code section, the term:

(1) "Incorrect outcome" is when the winner of a contest or the answer to a proposed constitutional amendment or question would be different from the results found in a manual recount of paper official ballots.

(2) "Risk limit" means the largest statistical probability that an incorrect outcome is not detected or corrected in a risk-limiting audit.

(3) "Risk-limiting audit" means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.

(b) As soon as possible, but no later than the November, 2020, general election, the local election superintendents shall conduct precertification tabulation audits for any federal or state general election in accordance with requirements set forth by rule or regulation of the State Election Board. Audits performed under this Code section shall be conducted by manual inspection of random samples of the paper official ballots.

(c) In conducting each audit, the local election superintendents shall:

(1) Complete the audit prior to final certification of the contest;

(2) Ensure that all types of ballots are included in the audit, whether cast in person, by absentee ballot, advance voting, provisional ballot, or otherwise;

(3) Provide a report of the unofficial final tabulated vote results for the contest to the public prior to conducting the audit;

(4) Complete the audit in public view; and

(5) Provide details of the audit to the public within 48 hours of completion.

(d) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provisions of this Code section. The procedures prescribed by the State

Election Board shall include security procedures to ensure that collection of validly cast ballots is complete, accurate, and trustworthy throughout the audit.

(e) The Secretary of State shall conduct a risk-limiting audit pilot program with a risk limit of not greater than 10 percent in one or more counties by December 31, 2021. The Secretary of State shall review the results of the pilot program and, within 90 days following the election in which such pilot program is used, shall provide the members of the General Assembly with a comprehensive report, including a plan on how to implement risk-limiting audits state wide. If such risk-limiting audit is successful in achieving the specified confidence level within five business days following the election for which it was conducted, then all audits performed pursuant to this Code section shall be similarly conducted, beginning not later than November 1, 2024.

Ga. L. 2019, p. 7, § 42/HB 316.

§ 21-2-266. Polling places -- Use of public buildings; use of portable or movable facilities; unrestricted access to residential communities

(a) In selecting polling places, the superintendent of a county or the governing authority of a municipality shall select, wherever practicable and consistent with subsection (d) of Code Section 21-2-265, schoolhouses, municipal buildings or rooms, or other public buildings for that purpose. In selecting polling places, the superintendent of a county or the governing authority of a municipality shall give consideration to the comfort and convenience those places to be selected will provide to both electors and poll officers. School, county, municipal, or other governmental authorities, upon request of the superintendent of a county or the governing authority of a municipality, shall make arrangements for the use of their property for polling places; provided, however, that such use shall not substantially interfere with the use of such property for the purposes for which it is primarily intended.

(b) The superintendent of a county or the governing authority of a municipality shall have discretion to procure and provide portable or movable polling facilities of adequate size for any precinct.

(c) When the boundaries of a restricted access residential community are used as the boundaries for a precinct and a polling place is established within such restricted access residential community for the use of the voters in such precinct, such restricted access community and polling place shall be open to full and complete access by the public when such polling place is in use on the day of a general or special primary or general or special election, including the time while poll officers are setting up the polling place prior to the opening of the polls, the time while the polls are open, and the time while the poll officers are completing the tabulation of the votes, election paperwork, and similar functions after the close of the polls. Such restricted access community and polling place shall also be open to full and complete access by the election superintendent, investigators of the State Election Board, all affected candidates and their representatives, and the public in the event of a recount or recanvass of the votes cast in any primary or

election involving such precinct and polling place conducted at such precinct and polling place. In addition, in the event of a contest or challenge to the results of any primary or election involving such precinct and polling place, the election superintendent, upon reasonable notice and at reasonable times, may require such restricted access community and polling place to be open to full and complete access by the election superintendent, investigators of the State Election Board, and all affected candidates and their representatives for the purpose of determining the issues involved in such contest or challenge.

Contests

Note the only legislative change to a section in Contest code in past decade or longer in Title 21 Election Code is highlighted in RED below

§ 21-2-503. Issuance of commission to person whose election is contested; procedure upon finding that person to whom commission was issued was not legally elected; swearing into office of person whose election is contested

(a) A commission which is to be issued, as provided for by this chapter, to any person elected to any office shall be issued notwithstanding the fact that the election of such person to any such office may be contested in the manner provided by this chapter. Whenever it shall appear, by the final judgment of the proper tribunal having jurisdiction of a contested election, that the person to whom such commission shall have been issued has not been elected legally to the office for which he or she has been commissioned, then a commission shall be issued to the person who shall appear to be elected legally to such office. The issuing of such commission shall nullify the commission already issued; and all power and authority first issued under such commission shall thereupon cease.

(b) Upon the certification of the results of the election, a person elected to a municipal office may be sworn into office notwithstanding that the election of such person may be contested in the manner provided by this chapter. Upon the final judgment of the proper tribunal having jurisdiction of a contested election which orders a second election or declares that another person was legally elected to the office, the person sworn into municipal office shall cease to hold the office and shall cease to exercise the powers, duties, and privileges of the office immediately.

(c) Upon the certification of the results of the election, a person elected to a federal, state, or county office may be sworn into office notwithstanding that the election of such person may be contested in the manner provided by this chapter. Upon the final judgment of the proper tribunal having jurisdiction of a contested election which orders a second election or declares that another person was legally elected to the office, the person sworn into such office shall cease to hold the office and shall cease to exercise the powers, duties, and privileges of the office immediately.

§ 21-2-521. Primaries and elections which are subject to contest; persons who may bring contest
The nomination of any person who is declared nominated at a primary as a candidate for any federal, state, county, or municipal office; the election of any person who is declared elected to any such office (except when otherwise prescribed by the federal Constitution or the Constitution of Georgia); the eligibility of any person declared eligible to seek any such nomination or office in a run-off primary or election; or the approval or disapproval of any question submitted to electors at an election may be contested by any person who was a candidate at such primary or election for such nomination or office, or by any aggrieved elector who was entitled to vote for such person or for or against such question.

§ 21-2-524. Filing and allegations of petition to contest primary or election; service of petition; verification; notice of proceedings to answer petition; service of special process; amendment

(a) A petition to contest the result of a primary or election shall be filed in the office of the clerk of the superior court having jurisdiction within five days after the official consolidation of the returns of that particular office or question and certification thereof by the election official having responsibility for taking such action under this chapter or within five days after the official consolidation and certification of the returns of that particular office or question by the election official having responsibility for taking such action under this chapter following a recount pursuant to Code Section 21-2-495 and shall allege:

- (1) The contestant's qualification to institute the contest;
- (2) The contestant's desire to contest the result of such primary or election and the name of the nomination, office, or question involved in the contest;
- (3) The name of the defendant;
- (4) The name of each person who was a candidate at such primary or election for such nomination or office in the case of a contest involving same;
- (5) Each ground of contest;
- (6) The date of the official declaration of the result in dispute;
- (7) The relief sought; and
- (8) Such other facts as are necessary to provide a full, particular, and explicit statement of the cause of contest.

(b) The State Election Board shall be served with a copy of the petition, as provided in subsection (a) of this Code section, by serving the same on the chairperson thereof, by mailing a copy to the chairperson by certified or registered mail or statutory overnight delivery; and a certificate that such service has been made shall be filed by the plaintiff or his or her attorney.

(c) When an error in the counting of votes is alleged as a ground of contest, it is sufficient for the contestant to state generally that he or she believes that error was committed in the counting of the votes cast for the filling of the nomination or office in dispute, or for or against the question in dispute, in one or

more specified precincts; and it shall not be necessary for the contestant to offer evidence to substantiate such allegation. If a recount of the votes cast in any precinct or precincts shall change the result in dispute, any aggrieved litigant may require a recount of the votes affecting such result, which were cast in any other precinct or precincts, by amending his or her pleadings and requesting such relief.

(d) The petition shall be verified by the affidavit of each contestant. Such affidavit shall be taken and subscribed before some person authorized by law to administer oaths and shall state that the contestant believes the facts alleged therein are true, that according to the best of his or her knowledge and belief the contested result of the primary or election is illegal and the return thereof incorrect, and that the petition to contest the same is made in good faith.

(e) A statement of the grounds of contest shall not be rejected, nor the proceedings dismissed by any court, for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which the primary or election is contested.

(f) Upon such petition being filed, the clerk of the superior court shall issue notice, in the form of special process directed to the sheriff of such county, requiring the defendant and any other person named in such petition as a candidate for such nomination or office, if any, to appear and answer such petition, on a day to be fixed in such notice, not more than ten days nor less than five days after the service of such notice. Such notice, with a copy of the petition attached, shall be served by the sheriff upon the defendant and any other person named therein in the same manner as petitions and process are served in other civil cases. On or before the day fixed in such notice, unless for good cause shown the presiding judge shall extend the time therefor, the defendant shall appear and answer such petition and may set up by way of answer or cross action any right of interest he or she may have or claim in such proceeding. Any other person who was a candidate at such primary or election for the nomination or office involved and upon whom notice was served as provided in this subsection shall be deemed a litigant to such proceeding and may set up by way of answer or cross action any right of interest or claim he or she may have.

(g) After filing, any petition, cross action, or answer may be amended with leave of the court so as to include the specification of additional grounds of contest, other relevant facts, or prayer for further relief. After each amendment, a reasonable time to respond shall be given by the court to any opposing litigant.

§ 21-2-524. Filing and allegations of petition to contest primary or election; service of petition; verification; notice of proceedings to answer petition; service of special process; amendment

(a) A petition to contest the result of a primary or election shall be filed in the office of the clerk of the superior court having jurisdiction within five days after the official consolidation of the returns of that particular office or question and certification thereof by the election official having responsibility for taking such action under this chapter or within five days after the official consolidation and certification of the returns of that particular office or question by the election official having responsibility for taking such action under this chapter following a recount pursuant to Code Section 21-2-495 and shall allege:

- (1) The contestant's qualification to institute the contest;
- (2) The contestant's desire to contest the result of such primary or election and the name of the nomination, office, or question involved in the contest;
- (3) The name of the defendant;
- (4) The name of each person who was a candidate at such primary or election for such nomination or office in the case of a contest involving same;
- (5) Each ground of contest;
- (6) The date of the official declaration of the result in dispute;
- (7) The relief sought; and
- (8) Such other facts as are necessary to provide a full, particular, and explicit statement of the cause of contest.

(b) The State Election Board shall be served with a copy of the petition, as provided in subsection (a) of this Code section, by serving the same on the chairperson thereof, by mailing a copy to the chairperson by certified or registered mail or statutory overnight delivery; and a certificate that such service has been made shall be filed by the plaintiff or his or her attorney.

(c) When an error in the counting of votes is alleged as a ground of contest, it is sufficient for the contestant to state generally that he or she believes that error was committed in the counting of the votes cast for the filling of the nomination or office in dispute, or for or against the question in dispute, in one or more specified precincts; and it shall not be necessary for the contestant to offer evidence to substantiate such allegation. If a recount of the votes cast in any precinct or precincts shall change the result in dispute, any aggrieved litigant may require a recount of the votes affecting such result, which were cast in any other precinct or precincts, by amending his or her pleadings and requesting such relief.

(d) The petition shall be verified by the affidavit of each contestant. Such affidavit shall be taken and subscribed before some person authorized by law to administer oaths and shall state that the contestant believes the facts alleged therein are true, that according to the best of his or her knowledge and belief the contested result of the primary or election is illegal and the return thereof incorrect, and that the petition to contest the same is made in good faith.

(e) A statement of the grounds of contest shall not be rejected, nor the proceedings dismissed by any court, for want of form, if the grounds of contest are alleged with such certainty as will advise the defendant of the particular proceeding or cause for which the primary or election is contested.

(f) Upon such petition being filed, the clerk of the superior court shall issue notice, in the form of special process directed to the sheriff of such county, requiring the defendant and any other person named in such petition as a candidate for such nomination or office, if any, to appear and answer such petition, on a day to be fixed in such notice, not more than ten days nor less than five days after the service of such notice. Such notice, with a copy of the petition attached, shall be served by the sheriff upon the defendant and any other person named therein in the same manner as petitions and process are served in other civil cases. On or before the day fixed in such notice, unless for good cause shown the presiding judge shall extend the time therefor, the defendant shall appear and answer such petition and may set up by way of

answer or cross action any right of interest he or she may have or claim in such proceeding. Any other person who was a candidate at such primary or election for the nomination or office involved and upon whom notice was served as provided in this subsection shall be deemed a litigant to such proceeding and may set up by way of answer or cross action any right of interest or claim he or she may have.

(g) After filing, any petition, cross action, or answer may be amended with leave of the court so as to include the specification of additional grounds of contest, other relevant facts, or prayer for further relief. After each amendment, a reasonable time to respond shall be given by the court to any opposing litigant.

§ 21-2-522. Grounds for contest

A result of a primary or election may be contested on one or more of the following grounds:

- (1) Misconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;
- (2) When the defendant is ineligible for the nomination or office in dispute;
- (3) When illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;
- (4) For any error in counting the votes or declaring the result of the primary or election, if such error would change the result; or
- (5) For any other cause which shows that another was the person legally nominated, elected, or eligible to compete in a run-off primary or election.

§ 21-2-522.1. Rebuttable presumption of legal vote in contested election

Notwithstanding any other provisions of this chapter, for the purposes of election contests, a vote cast by a person who has been listed on the official list of electors for a period of ten years or longer shall be rebuttably presumed to be a legal vote despite an unsigned voter registration card, so long as that person continues to meet the eligibility requirements of Code Section 21-2-216. For such a voter, there shall be a rebuttable presumption that the voter has taken the oath and that the voter registration card is a replacement of the original voter registration card.

§ 21-2-528. Appeals from court's determination on contest petition

An appeal from the final determination of the court may be taken within ten days from the

supersedeas. The appellant may apply to the appellate court for a stay or supersedeas, and such court shall consider applications for stays or supersedeas in such cases without regard to whether any notice of appeal has been filed or the record docketed in such cases.

§ 21-2-526. Trial by jury

(a) All issues of a contest shall be fully tried and determined by the court without the aid and intervention of a jury, unless a litigant to the contest shall demand a trial by jury at any time prior to the call of the case; and the court shall determine that it is an issue which under other laws of this state the litigant is entitled to have tried by a jury. Upon such determination, a jury shall be impaneled and the cause shall proceed according to the practice and procedure of the court in jury cases.

(b) In a case contesting the result of a primary or election held in two or more counties, each issue to be tried by a jury shall be tried by a jury impaneled in the county where such issue or a part thereof arose. Such jury shall be impaneled by the superior court of the county in which the jury trial is to be conducted; such trial shall be presided over by the judge as described in Code Section 21-2-523; and such trial shall proceed, insofar as practicable, as though it were being conducted in the county of the superior court having jurisdiction of the contest.

(c) In a case contesting the result of a primary or election held within a single county, the court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In a case contesting the result of a primary or election held in two or more counties, the court shall require each jury impaneled to return only a special verdict in the form of a special written finding upon each issue of fact. In a case where a special verdict is to be rendered, the court shall submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If, in so doing, the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his or her right to a trial by jury of the issue so omitted unless before the jury retires he or she demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

§ 21-2-498. Precertification tabulation audits

(a) As used in this Code section, the term:

(1) "Incorrect outcome" is when the winner of a contest or the answer to a proposed constitutional amendment or question would be different from the results found in a manual recount of paper official ballots.

(2) "Risk limit" means the largest statistical probability that an incorrect outcome is not detected or corrected in a risk-limiting audit.

(3) "Risk-limiting audit" means an audit protocol that makes use of statistical methods and is designed to limit to acceptable levels the risk of certifying a preliminary election outcome that constitutes an incorrect outcome.

(b) As soon as possible, but no later than the November, 2020, general election, the local election superintendents shall conduct precertification tabulation audits for any federal or state general election in accordance with requirements set forth by rule or regulation of the State Election Board. Audits performed under this Code section shall be conducted by manual inspection of random samples of the paper official ballots.

(c) In conducting each audit, the local election superintendents shall:

(1) Complete the audit prior to final certification of the contest;

(2) Ensure that all types of ballots are included in the audit, whether cast in person, by absentee ballot, advance voting, provisional ballot, or otherwise;

(3) Provide a report of the unofficial final tabulated vote results for the contest to the public prior to conducting the audit;

(4) Complete the audit in public view; and

(5) Provide details of the audit to the public within 48 hours of completion.

(d) The State Election Board shall be authorized to promulgate rules, regulations, and procedures to implement and administer the provisions of this Code section. The procedures prescribed by the State Election Board shall include security procedures to ensure that collection of validly cast ballots is complete, accurate, and trustworthy throughout the audit.

(e) The Secretary of State shall conduct a risk-limiting audit pilot program with a risk limit of not greater than 10 percent in one or more counties by December 31, 2021. The Secretary of State shall review the results of the pilot program and, within 90 days following the election in which such pilot program is used, shall provide the members of the General Assembly with a comprehensive report, including a plan on how to implement risk-limiting audits state wide. If such risk-limiting audit is successful in achieving the specified confidence level within five business days following the election for which it was conducted, then all audits performed pursuant to this Code section shall be similarly conducted, beginning not later than November 1, 2024.

Ga. L. 2019, p. 7, § 42/HB 316.

§ 21-2-527. Pronouncement of judgment; effect of finding of misconduct by poll officers; calling of second primary, election, or runoff by court upon finding of defects

(a) After hearing the allegations and evidence in the contest, the court shall declare as nominated, elected, or as eligible to compete in a run-off primary or election that qualified candidate who received the requisite number of votes and shall pronounce judgment accordingly; and the clerk of the superior court shall certify such determination to the proper authority. In the case of a contest involving a question

submitted to electors at an election, the court shall pronounce judgment as to whether the same was approved or disapproved; and the clerk of the superior court shall certify such determination to the defendant.

(b) When a defendant who has received the requisite number of votes for nomination, election, or to compete in a run-off primary or election is determined to be ineligible for the nomination or office sought, the court shall pronounce judgment declaring the primary or election invalid with regard to such nomination or office and shall call a second primary or election to fill such nomination or office and shall set the date for such second primary or election.

(c) If misconduct is complained of on the part of the poll officers of any precinct, it shall not be held sufficient to set aside the contested result unless the rejection of the vote of such precinct would change such result.

(d) Whenever the court trying a contest shall determine that the primary, election, or runoff is so defective as to the nomination, office, or eligibility in contest as to place in doubt the result of the entire primary, election, or runoff for such nomination, office, or eligibility, such court shall declare the primary, election, or runoff to be invalid with regard to such nomination, office, or eligibility and shall call for a second primary, election, or runoff to be conducted among all of the same candidates who participated in the primary, election, or runoff to fill such nomination or office which was declared invalid and shall set the date for such second primary, election, or runoff.

§ 21-2-500. Delivery of voting materials; presentation to grand jury in certain cases; preservation and destruction; destruction of unused ballots

(a) Immediately upon completing the returns required by this article, in the case of elections other than municipal elections, the superintendent shall deliver in sealed containers to the clerk of the superior court or, if designated by the clerk of the superior court, to the county records manager or other office or officer under the jurisdiction of a county governing authority which maintains or is responsible for records, as provided in Code Section 50-18-99, the used and void ballots and the stubs of all ballots used; one copy of the oaths of poll officers; and one copy of each numbered list of voters, tally paper, voting machine paper proof sheet, and return sheet involved in the primary or election. In addition, the superintendent shall deliver copies of the voting machine ballot labels, computer chips containing ballot tabulation programs, copies of computer records of ballot design, and similar items or an electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, and which is stored on some alternative medium such as a CD-ROM or floppy disk simultaneously with the programming of the PROM or other memory storage device. The clerk, county records manager, or the office or officer designated by the clerk shall hold such ballots and other documents under seal, unless otherwise directed by the superior court, for at least 24 months, after which time they shall be presented to the grand jury for inspection at its next meeting. Such ballots and other documents shall be preserved in the office of the

clerk, county records manager, or officer designated by the clerk until the adjournment of such grand jury, and then they may be destroyed, unless otherwise provided by order of the superior court.

(b) The superintendent shall retain all unused ballots for 30 days after the election or primary and, if no challenge or contest is filed prior to or during that period that could require future use of such ballots, may thereafter destroy such unused ballots. If a challenge or contest is filed during that period that could require the use of such ballots, they shall be retained until the final disposition of the challenge or contest and, if remaining unused, may thereafter be destroyed.

(c) Immediately upon completing the returns required by this article, the municipal superintendent shall deliver in sealed containers to the city clerk the used and void ballots and the stubs of all ballots used; one copy of the oaths of poll officers; and one copy of each numbered list of voters, tally paper, voting machine paper proof sheet, and return sheet involved in the primary or election. In addition, the municipal superintendent shall deliver copies of the voting machine ballot labels, computer chips containing ballot tabulation programs, copies of computer records of ballot design, and similar items or an electronic record of the program by which votes are to be recorded or tabulated, which is captured prior to the election, and which is stored on some alternative medium such as a CD-ROM or floppy disk simultaneously with the programming of the PROM or other memory storage device. Such ballots and other documents shall be preserved under seal in the office of the city clerk for at least 24 months; and then they may be destroyed unless otherwise provided by order of the mayor and council if a contest has been filed or by court order, provided that the electors list, voter's certificates, and duplicate oaths of assisted electors shall be immediately returned by the superintendent to the county registrar.

§ 21-2-541. Holding of special primary or election at time of general primary or election; inclusion of candidates and questions in special primary or election on ballot

(a) A special primary or election may be held at the time of a general primary or election.

(b) If the times specified for the closing of the registration list for a special primary or election are the same as those for a general primary or election, the candidates and questions in such special primary or election shall be included on the ballot for such general primary or election. In such an instance, the name of the office and the candidates in such special election shall appear on the ballot in the position where such names would ordinarily appear if such contest was a general primary or election.

§ 21-2-525. Hearing; powers of court generally

(a) Within 20 days after the return day fixed in the notice as provided in subsection (a) of Code Section 21-2-524 to the defendant, the presiding judge shall fix a place and time for the hearing of the contest proceeding. Such judge may fix additional hearings at such other times and places as are necessary to decide the contest promptly.

(b) The court having jurisdiction of the action shall have plenary power, throughout the area in which the contested primary or election was conducted, to make, issue, and enforce all necessary orders, rules, processes, and decrees for a full and proper understanding and final determination and enforcement of the decision of every such case, according to the course of practice in other civil cases under the laws of this state, or which may be necessary and proper to carry out this chapter. The court shall have authority to subpoena and to compel the attendance of any officer of the primary or election complained of and of any person capable of testifying concerning the same; to compel the production of evidence which may be required at such hearing, in like manner and to the same extent as in other civil cases litigated before such court; to take testimony; and to proceed without delay to the hearing and determination of such contest, postponing for the purpose, if necessary, all other business.

(c) The court may, in its discretion, limit the time to be consumed in taking testimony, dividing such time equitably among all litigants concerned, with a view therein to the circumstances of the matter and to the proximity of the next succeeding primary or election.

§ 21-2-527.1. Right of parties to object to settlement; court approval

No settlement of any case under this article shall become effective unless:

- (1) All parties to such case have been given an opportunity to object to such settlement before the court; and
- (2) The court has approved such settlement.

§ 21-2-266. Polling places -- Use of public buildings; use of portable or movable facilities; unrestricted access to residential communities

(a) In selecting polling places, the superintendent of a county or the governing authority of a municipality shall select, wherever practicable and consistent with subsection (d) of Code Section 21-2-265, schoolhouses, municipal buildings or rooms, or other public buildings for that purpose. In selecting polling places, the superintendent of a county or the governing authority of a municipality shall give consideration to the comfort and convenience those places to be selected will provide to both electors and poll officers. School, county, municipal, or other governmental authorities, upon request of the superintendent of a county or the governing authority of a municipality, shall make arrangements for the use of their property for polling places; provided, however, that such use shall not substantially interfere with the use of such property for the purposes for which it is primarily intended.

(b) The superintendent of a county or the governing authority of a municipality shall have discretion to procure and provide portable or movable polling facilities of adequate size for any precinct.

(c) When the boundaries of a restricted access residential community are used as the boundaries for a precinct and a polling place is established within such restricted access residential community for the use

of the voters in such precinct, such restricted access community and polling place shall be open to full and complete access by the public when such polling place is in use on the day of a general or special primary or general or special election, including the time while poll officers are setting up the polling place prior to the opening of the polls, the time while the polls are open, and the time while the poll officers are completing the tabulation of the votes, election paperwork, and similar functions after the close of the polls. Such restricted access community and polling place shall also be open to full and complete access by the election superintendent, investigators of the State Election Board, all affected candidates and their representatives, and the public in the event of a recount or recanvass of the votes cast in any primary or election involving such precinct and polling place conducted at such precinct and polling place. In addition, in the event of a contest or challenge to the results of any primary or election involving such precinct and polling place, the election superintendent, upon reasonable notice and at reasonable times, may require such restricted access community and polling place to be open to full and complete access by the election superintendent, investigators of the State Election Board, and all affected candidates and their representatives for the purpose of determining the issues involved in such contest or challenge.

§ 21-2-438. Ballots identifying voter, not marked, or improperly marked declared void

(a) Any ballot marked so as to identify the voter shall be void and not counted, except a ballot cast by a challenged elector whose name appears on the electors list; such challenged vote shall be counted as prima facie valid but may be voided in the event of an election contest. Any ballot marked by anything but pen or pencil shall be void and not counted. Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. If an elector shall mark his or her ballot for more persons for any nomination or office than there are candidates to be voted for such nomination or office, or if, for any reason, it may be impossible to determine his or her choice for any nomination or office, his or her ballot shall not be counted for such nomination or office; but the ballot shall be counted for all nominations or offices for which it is properly marked. Ballots not marked or improperly or defectively marked so that the whole ballot is void, shall be set aside and shall be preserved with the other ballots. In primaries, votes cast for candidates who have died, withdrawn, or been disqualified shall be void and shall not be counted. In elections, votes for candidates who have died or been disqualified shall be void and shall not be counted.

(b) At elections, any ballot marked by any other mark than a cross (X) or check ([checkmark]) mark in the spaces provided for that purpose shall be void and not counted; provided, however, that no vote recorded thereon shall be declared void because a cross (X) or check ([checkmark]) mark thereon is irregular in form. A cross (X) or check ([checkmark]) mark in the square opposite the names of the nominees of a political party or body for the offices of President and Vice President shall be counted as a vote for every candidate of that party or body for the offices of presidential electors. Any ballot indicating a write-in for

any person whose name is not printed on the ballot and who properly gave notice of intent to run as a write-in candidate pursuant to Code Section 21-2-133 shall be counted as a vote for such person, if written in the proper space or spaces provided for that purpose, whether or not a cross (X) or check ([checkmark]) mark is placed before the name of such person.

(c) Notwithstanding any other provisions of this chapter to the contrary and in accordance with the rules and regulations of the State Election Board promulgated pursuant to paragraph (7) of Code Section 21-2-31, if the elector has marked his or her ballot in such a manner that he or she has indicated clearly and without question the candidate for whom he or she desires to cast his or her vote, his or her ballot shall be counted and such candidate shall receive his or her vote, notwithstanding the fact that the elector in indicating his or her choice may have marked his or her ballot in a manner other than as prescribed by this chapter.

§ 21-2-523. Jurisdiction and general pretrial proceedings; notification of proceedings; selecting administrative judge; compensation of presiding judge

(a) A contest case governed by this article shall be tried and determined by the superior court of the county where the defendant resides, except that a municipal contest case shall be tried and determined by the superior court of the county where the city hall is located. A contest case challenging the eligibility of the two defendants declared as eligible to compete with each other in a run-off primary or election shall be tried and determined by the superior court of the county where the defendant who received the highest number of votes resides.

(b) The superior court having jurisdiction of a contest case governed by this article shall be presided over by a superior court judge or senior judge. The superior court judge or senior judge who presides over the contest shall be selected as set out in subsection (c) of this Code section.

(c) Upon the filing of a contest petition, the clerk of the superior court having jurisdiction shall immediately notify the administrative judge for the judicial administrative district in which that county lies, or the district court administrator, who shall immediately notify the administrative judge, of the institution of proceedings under this article. If the county in which the proceedings were instituted is not in the circuit of the administrative judge, the administrative judge shall select a superior court judge from within the district, but not from the circuit in which the proceeding was instituted, or a senior judge not a resident of the circuit in which the proceeding was instituted, to preside over the contest.

(d) If the administrative judge is a member of the circuit in which the proceeding was filed, or if the other judges of the district are unable or are unwilling to preside over the proceeding, or if the other judges of the district are judges of the circuit in which the proceeding was filed, then the administrative judge shall select an administrative judge of an adjoining district to select a superior court judge from that district, or a superior court judge from the district in which the proceeding was filed, but not the circuit in which the proceeding was filed, or a senior judge who is not a resident of the circuit wherein the proceeding was filed.

(e) After a judge has agreed to preside over the case, the administrative judge who selected the judge to hear the matter shall enter an order in the superior court of the county where the proceeding was filed appointing such judge, and such judge shall promptly begin presiding over such proceedings in such court and shall determine same as soon as practicable. Such judge shall be reimbursed for his or her actual expenses for food and lodging and shall receive the same mileage as any other state officials and employees. Senior judges shall be entitled to compensation and reimbursement as the law provides for senior judge service.

§ 21-2-437. Procedure as to count and return of votes generally; void ballots

(a) After the polls close and as soon as all the ballots have been properly accounted for and those outside the ballot box as well as the voter's certificates, numbered list of voters, and electors list have been sealed, the poll officers shall open the ballot box and take therefrom all ballots contained therein. In primaries in which more than one ballot box is used, any ballots or stubs belonging to another party holding its primary in the same polling place shall be returned to the ballot box for the party for which they were issued. In primaries, separate tally and return sheets shall be prepared for each party, and separate poll officers shall be designated by the chief manager to count and tally each party's ballot. Where the same ballot box is being used by one or more parties, the ballots and stubs shall first be divided by party before being tallied and counted. The ballots shall then be counted one by one and a record made of the total number. Then the chief manager, together with such assistant managers and other poll officers as the chief manager may designate, under the scrutiny of one of the assistant managers and in the presence of the other poll officers, shall read aloud the names of the candidates marked or written upon each ballot, together with the office for which the person named is a candidate, and the answers contained on the ballots to the questions submitted, if any; and the other assistant manager and clerks shall carefully enter each vote as read and keep account of the same in ink on a sufficient number of tally papers, all of which shall be made at the same time. All ballots, after being removed from the box, shall be kept within the unobstructed view of all persons in the voting room until replaced in the box. No person, while handling the ballots, shall have in his or her hand any pencil, pen, stamp, or other means of marking or spoiling any ballot. The poll officers shall immediately proceed to canvass and compute the votes cast and shall not adjourn or postpone the canvass or computation until it shall have been fully completed, except that, in the discretion of the superintendent, the poll officers may stop the counting after all contested races and questions are counted, provided that the results of these contested races and questions are posted for the information of the public outside the polling place and the ballots are returned to the ballot box and deposited with the superintendent until counting is resumed on the following day.

(b) When the vote cast for the different persons named upon the ballots and upon the questions, if any, appearing thereon, shall have been fully recorded in the tally papers and counted, the poll officers shall duly certify to the number of votes cast for each person and question and shall prepare in ink a sufficient

number of general returns. The general returns shall show, in addition to the entries made thereon as aforesaid, the total number of ballots received from the superintendent, the number of ballots cast, the number of ballots declared void, the number of ballots spoiled and canceled, and any blank ballots cast, as well as the votes cast for each candidate. At elections, the number of votes cast for each candidate by each political party or body of which such candidate is a nominee shall be separately stated.

(c) In returning any votes cast for any person whose name is not printed on the ballot, the poll officers shall record any such names exactly as they were written on the ballot.

(d) Any ballot marked so as to identify the voter shall be void and not counted, except a ballot cast by a challenged elector whose name appears on the electors list; such challenged vote shall be counted as prima facie valid but may be voided in the event of an election contest. Any ballot marked by anything but pen or pencil shall be void and not counted. Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if otherwise properly marked. If an elector shall mark his or her ballot for more persons for any nomination or office than there are candidates to be voted for such nomination or office, or if, for any reason, it may be impossible to determine his or her choice for any nomination or office, his or her ballot shall not be counted for such nomination or office; but the ballot shall be counted for all nominations or offices for which it is properly marked. Unmarked ballots or ballots improperly or defectively marked so that the whole ballot is void shall be set aside and shall be preserved with other ballots. In primaries, votes cast for candidates who have died, withdrawn, or been disqualified shall be void and shall not be counted. In elections, votes for candidates who have died or been disqualified shall be void and shall not be counted.

(e) Any ballot marked by any other mark than a cross (X) or check ([checkmark]) mark in the spaces provided for that purpose shall be void and not counted; provided, however, that no vote recorded thereon shall be declared void because a cross (X) or check ([checkmark]) mark thereon is irregular in form. Notwithstanding any other provisions of this chapter to the contrary, if the voter has marked his or her ballot in such a manner that he or she has indicated clearly and without question the candidate which he or she desires to receive his or her vote, his or her ballot shall be counted and such candidate shall receive his vote.

(f) At elections, a ballot indicating a write-in vote for any person whose name is not printed on the ballot and who properly gave notice of intent to run as a write-in candidate pursuant to Code Section 21-2-133 shall be counted as a vote for such person, if written in the proper space or spaces provided for that purpose, whether or not a cross (X) or check ([checkmark]) mark is placed before the name of such person.

§ 21-2-520. Definitions

As used in this article, the term:

(1) "Contestant" means any person or persons entitled under Code Section 21-2-521 to contest the result of any primary or election.

(2) "Defendant" means:

(A) The person whose nomination or election is contested;

(B) The person or persons whose eligibility to seek any nomination or office in a run-off primary or election is contested;

(C) The election superintendent or superintendents who conducted the contested primary or election; or

(D) The public officer who formally declared the number of votes for and against any question submitted to electors at an election.

§ 21-2-457. Removal, storage, and examination of voting machines after completion of vote count

As soon as possible after the completion of the count in precincts in which voting machines are used, the superintendent shall have the voting machines removed to the place of storage provided for in this chapter. The voting machines shall remain locked against voting for the period of ten days next following each primary and election, and as much longer as may be necessary or advisable because of any existing or threatened contest over the result of the primary or election, with due regard for the date of the next following primary or election, except that they may be opened and all the data and figures therein examined under this chapter, by order of any superior court of competent jurisdiction, or by direction of any legislative committee to investigate and report upon contested primaries or elections affected by the use of such machines. Such data and such figures shall be examined by such committee in the presence of the officer having the custody of such machines.

§ 21-2-33.1. Enforcement of chapter

(a) The State Election Board is vested with the power to issue orders, after the completion of appropriate proceedings, directing compliance with this chapter or prohibiting the actual or threatened commission of any conduct constituting a violation, which order may include a provision requiring the violator:

(1) To cease and desist from committing further violations;

(2) To pay a civil penalty not to exceed \$5,000.00 for each violation of this chapter or for each failure to comply with any provision of this chapter or of any rule or regulation promulgated under this chapter.

Such penalty may be assessed against any violator as the State Election Board deems appropriate;

(3) To publicly reprimand any violator found to have committed a violation;

(4) To require that restitution be paid by any violator to a state, county, or city governing authority when it has suffered a monetary loss or damage as the result of a violation;

(5) To require violators to attend training as specified by the board; and

(6) To assess investigative costs incurred by the board against any violator found to have committed a violation.

(b) A civil penalty shall not be assessed against any violator except after notice and hearing as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." In addition to the State Election Board, any contested case may be held before any representative of such board who has been selected and appointed by such board for such purpose. The amount of any civil penalty finally assessed shall be recoverable by a civil action brought in the name of the State Election Board. All moneys recovered pursuant to this Code section shall be deposited in the state treasury.

(c) The Attorney General of this state shall, upon complaint by the State Election Board, bring an action in the superior court in the name of the State Election Board for a temporary restraining order or other injunctive relief or for civil penalties assessed against any violator of any provision of this chapter or any rule or regulation duly issued by the State Election Board.

(d) Any action brought by the Attorney General to enforce civil penalties assessed against any violator of this chapter or any rule or regulation duly issued by the State Election Board or any order issued by the State Election Board ordering compliance or to cease and desist from further violations shall be brought in the superior court of the county of the residence of the party against whom relief is sought. Service of process shall lie in any jurisdiction within the state. In such actions, the superior court inquiry will be limited to whether notice was given by the State Election Board to the violator in compliance with the Constitution and the rules of procedure of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Upon satisfaction that notice was given and a hearing was held pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the superior court shall enforce the orders of the State Election Board and the civil penalties assessed under this chapter and the superior court shall not make independent inquiry as to whether the violations have occurred.

(e) In any action brought by the Attorney General to enforce any of the provisions of this chapter or of any rule or regulation issued by the State Election Board, the judgment, if in favor of the State Election Board, shall provide that the defendant pay to the State Election Board the costs, including reasonable attorneys' fees, incurred by the State Election Board in the prosecution of such action.

§ 21-2-493. Computation, canvassing, and tabulation of returns; investigation of discrepancies in vote counts; recount procedure; certification of returns; change in returns

(a) The superintendent shall, at or before 12:00 Noon on the day following the primary or election, at his or her office or at some other convenient public place at the county seat or in the municipality, of which due notice shall have been given as provided by Code Section 21-2-492, publicly commence the computation and canvassing of the returns and continue the same from day to day until completed. For this purpose the superintendent may organize his or her assistants into sections, each of which may simultaneously proceed with the computation and canvassing of the returns from various precincts of the county or municipality in the manner provided by this Code section. Upon the completion of such

computation and canvassing, the superintendent shall tabulate the figures for the entire county or municipality and sign, announce, and attest the same, as required by this Code section.

(b) The superintendent, before computing the votes cast in any precinct, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had. Such excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession. The superintendent shall then examine all the registration and primary or election documents whatever relating to such precinct in the presence of representatives of each party, body, and interested candidate. Such examination may, if the superintendent deems it necessary, include a recount or recanvass of the votes of that precinct and a report of the facts of the case to the district attorney where such action appears to be warranted.

(c) In precincts in which paper ballots have been used, the superintendent may require the production of the ballot box and the recount of the ballots contained in such ballot box, either generally or respecting the particular office, nomination, or question as to which the excess exists, in the discretion of the superintendent, and may require the correction of the returns in accordance with the result of such recount. If the ballot box is found to contain more ballots than there are electors registered in such precinct or more ballots than the number of voters who voted in such precinct at such primary or election, the superintendent may, in his or her discretion, exclude the poll of that precinct, either as to all offices, candidates, questions, or parties and bodies or as to any particular offices, candidates, questions, or parties and bodies, as to which such excess exists.

(d) In precincts in which voting machines have been used, the superintendent may require a recanvass of the votes recorded on the machines used in the precinct, as provided in Code Section 21-2-495.

(e) In precincts in which paper ballots have been used, the general returns made by the poll officers from the various precincts shall be read one after another in the usual order, slowly and audibly, by one of the assistants who shall, in each case of a return from a precinct in which ballots were used, read therefrom the number of ballots issued, spoiled, canceled, and cast, respectively, whereupon the assistant having charge of the records of the superintendent showing the number of ballots furnished for each precinct, including the number of stubs and unused ballots and spoiled and canceled ballots returned, shall publicly announce the number of the same respectively; and, unless it appears by such number or calculations therefrom that such records and such general return correspond, no further returns shall be read from the latter until all discrepancies are explained to the satisfaction of the superintendent.

(f) In precincts in which voting machines have been used, there shall be read from the general return the identifying number or other designation of each voting machine used and the numbers registered on the

protective counter or device on each machine prior to the opening of the polls and immediately after the close of the same, whereupon the assistant having charge of the records of the superintendent showing the number registered on the protective counter or device of each voting machine prior to delivery at the polling place shall publicly announce the numbers so registered; and, unless it appears that such records and such general return correspond, no further returns shall be read from the latter until any and all discrepancies are explained to the satisfaction of the superintendent.

(g) In precincts in which paper ballots have been used, when the records agree with such returns regarding the number of ballots and the number of votes recorded for each candidate, such votes for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return which has been returned unsealed; and the figures announced shall be compared by other assistants with the general return which has been returned sealed. The figures announced for all precincts shall be compared by one of the assistants with the tally papers from the respective precincts. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, tally papers, and other papers in his or her possession relating to the same precinct. If the tally papers and sealed general return sheet agree, the unsealed general return shall be immediately corrected to conform thereto. In every other case the superintendent shall immediately cause the ballot box of the precinct to be opened and the vote therein to be recounted in the presence of interested candidates or their representatives; and, if the recount shall not be sufficient to correct the error, the superintendent may summon the poll officers to appear immediately with all election papers in their possession.

(h) In precincts in which voting machines have been used, when the records agree with the returns regarding the number registered on the voting machine, the votes recorded for each candidate shall be read by an assistant slowly, audibly, and in an orderly manner from the general return sheet which has been returned unsealed; and the figures announced shall be compared by other assistants with the duplicate return sheet which has been returned sealed. If the voting machine is of the type equipped with a mechanism for printing paper proof sheets, such general and duplicate return sheets shall also be compared with such proof sheets, which have been returned as aforesaid. If any discrepancies are discovered, the superintendent shall examine all of the return sheets, proof sheets, and other papers in his or her possession relating to the same precinct. Such proof sheets shall be deemed to be prima-facie evidence of the result of the primary or election and to be prima facie accurate; and, if the proper proof sheets, properly identified, shall be mutually consistent and if the general and duplicate returns or either of such returns from such precinct shall not correspond with such proof sheets, they shall be corrected so as to correspond with such proof sheets in the absence of allegation of specific fraud or error proved to the satisfaction of the superintendent.

(i) If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.

(j) The superintendent shall see that the votes shown by each absentee ballot are added to the return received from the precinct of the elector casting such ballot.

(k) As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns shall then be certified by the superintendent in the manner required by this chapter. Such returns shall be certified by the superintendent not later than 5:00 P.M. on the second Friday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State; provided, however, that such certification date may be extended by the Secretary of State in his or her discretion if necessary to complete a precertification audit as provided in Code Section 21-2-498.

(l) In such case where the results of an election contest change the returns so certified, a corrected return shall be certified and filed by the superintendent which makes such corrections as the court orders.

Ga. L. 2019, p. 7, § 40/HB 316

§ 21-2-529. Liability for costs; methods of collecting

The contestant and the defendant shall be liable to the officers and witnesses for the costs made by them, respectively. If the result of the primary or election is confirmed, the petition dismissed, or the prosecution fails, judgment shall be rendered against the contestant for costs; and, if the judgment is against the defendant or the result of the primary or election is set aside, he or she shall pay the costs at the discretion of the court. After entry of judgment, the costs may be collected by attachment or otherwise.