

Cherokee Board of Elections  
Frequently Asked Questions

1. Does the law permit the Board to use hand-marked ballots instead of the machines?  
Only in *extraordinary* circumstances.
  - a. Under normal circumstances, NO:
    - i. O.C.G.A. § 21-2-300, which states that all voting be done uniformly across the state on ballot marking devices.
    - ii. Cost of providing paper ballots for every combination of ballot is prohibitive, especially in a primary. O.C.G.A. § 21-2-290 would require enough ballots for every active registered voter.
  - b. In *emergency* situations, the superintendent may switch to paper ballots, but it is a *very* high bar. O.C.G.A. § 21-2-379 (“not possible,” “impracticable” to use voting machines.) Athens-Clarke County attempted to use this statute to use hand-marked ballots when they felt that the BMDs did not provide enough privacy. The State Election Board issued them a \$2500.00 fine.  
<https://www.gpb.org/news/2020/03/11/athens-clarke-ordered-stop-using-hand-marked-paper-ballots-immediately>
2. Does the law permit ballots to be hand-counted at the precincts? NO.
  - a. O.C.G.A § 21-2-420 states that poll workers post the number of ballots cast at a precinct on the door of the precinct and then “immediately deliver all required documentation and election materials to the election superintendent” who shall then count the votes.
  - b. O.C.G.A. § 21-2- 483, 485 states that the ballots shall be tabulated using machines. Potentially could count the ballots at precincts but must use machines.
  - c. State Election Board Rule 183-1-12-.12, which provides specific instructions for poll managers after polls close, including extensive chain of custody requirements. Does not provide for hand count of ballots. Does not provide for tabulation of ballots at precincts.
3. Does the QR Code comport with Georgia law requiring that the voter be able to read their choices? YES. See Voter Ga. v. State of Georgia, Georgia Court of Appeals, A23A0004, June 13, 2023.

4. Can county boards of commissioners change the machines? The commissioners can purchase other BMDs. O.C.G.A. § 21-2-300(a)(3) requires the state to furnish a uniform system of electronic ballot markers and ballot scanners for each county. The provision further states that the county commissioners may acquire *additional* electronic ballot markers and ballot scanners *of the type furnished by the state*, at its own expense; see also O.C.G.A. § 21-2-366 (“optical scanning voting systems conforming to the requirements of this part”).
5. How often are audits required? Pre-certification audit of one contest in any election, primary, or runoff in which a federal or state-wide contest appears on the ballot. O.C.G.A. § 21-2-498 (amended by SB 129 (2023)).
6. Who has the authority to change the law? The General Assembly.
7. What could happen if the Cherokee BOER ignored/violated the law?
  - a. State Election Board could impose fines of up to \$5000/violation (see Athens-Clarke example, above). O.C.G.A. §21-2-33.1(a)(2).
  - b. Infraction could count towards a “takeover” of Board down the road. O.C.G.A. § 21-2-33.2(c).
  - c. Depending on type of violation, could be subject to criminal charges as well.
8. What happens if I think a Board member is not qualified to sit on the Board?
  - a. Board of Elections has no independent authority to remove a member. HB 642 (2023); HB 803 (1991).
  - b. Only a superior court judge can remove a member for cause, after notice and hearing. HB 642, §3(c), O.C.G.A. § 21-2-212(a).
  - c. Citizen could also file a quo warranto action in Superior Court.
  - d. However, once a Board member has taken the oath, all votes remain valid as long as he or she remain on the Board, even if an intervening factor would give rise for their removal. See Gates v. Taylor County School District, 346 Ga. App. 248 (2018); O.C.G.A. §45-2-1.

FAQ: Why doesn't the Cherokee BOER hand-count ballots at the precinct on election night, per O.C.G.A. § 21-2-437(a)?

Answer: Code Section 21-2-437 is found in Article 11, Part 2 of the Georgia Election Code, subtitled "Precincts Using Paper Ballots." It was originally written decades ago, when voters marked paper ballots by hand, without the aid of any technology. Besides requiring election officials to hand-count the votes at the precinct on election night, it also states that "any ballot marked by anything but pen or pencil shall be void and not counted." O.C.G.A. § 21-2-437(d).

Over the years, Georgia has adopted different technologies to aid its elections, and the Georgia Code has been updated accordingly. See, e.g., O.C.G.A. §§ 21-2-310 – 21-2-379.26. Unfortunately, some of the old language, such as O.C.G.A. § 21-2-437, remains in the Code. This is a common problem and the courts handle it by giving precedence to statutes which are more specific or newer. The following statutes supercede O.C.G.A. § 21-2-437's requirement that votes be hand-counted at the precinct:

1. O.C.G.A. § 21-2-300 requires that all county, state, and federal elections must be held on ballot marking devices and tabulated "using ballot scanners." O.C.G.A. § 21-2-300(b). (The only exceptions are municipal elections and certain special county elections. See O.C.G.A. § 21-2-300(f).) Therefore, there can be no hand-counting of votes at the precinct on election night in elections using the BMDs.
2. O.C.G.A. § 21-2-420, enacted as part of SB 202 in 2021, requires the poll manager to "immediately" deliver all "election material" to the superintendent, who "shall" count and tabulate the votes as soon as possible. It does not permit poll managers to hand count votes at the precinct.
3. O.C.G.A. §21-2-493 requires that the votes be computed at the elections office or "some other convenient place"; it does not permit poll managers to hand count votes at the precinct.

### **Cherokee County Elections & Voter Registration Incident Response**

- The poll manager or other poll worker, if necessary, will determine if the safety of the voters or poll workers is at risk. If the situation warrants, the poll manager or other poll worker will call 911. When it is safe the poll worker will then notify the elections office of the incident.
- Any incident that brings concern to a poll worker or voter, whether it is deemed an emergency or not, is documented on a Cherokee County Elections Office Witness Form. This form contains the following information:
  - Incident Date
  - Incident Time
  - Position (if applicable)
  - Incident Location (polling location)
  - Detailed description of situation by the witness
  - Signature of Witness
  - Date of Signature
- After completion of the witness statements, they are given to the Elections Director.
- The Elections Director will then carry out her administrative duty by forwarding the documents to the Cherokee County Elections and Voter Registration five-member board via email. The board may also be notified via telephone.
- The Cherokee County Elections and Voter Registration Board will determine whether the complaint should be forwarded to the Office of the Secretary of State Investigators.
- Depending on the Board's decision, the Elections Director will then carry out her administrative duty to either send for investigation or file with the election records for retention.
- The state investigators will contact all parties involved in the incident, investigate, and make a recommendation to the Georgia State Election Board. Cases are presented to the Georgia State Election Board in the following categories:
  - Cases for Possible Dismissal
  - Cases for Possible Violation
- Neither the Cherokee County Elections and Voter Registration Board nor the elections staff "bring charges" against the respondent. This is the sole duty of the Georgia State Election Board.
- The Georgia State Election Board may choose to dismiss, issue a letter of instruction, issue a letter of reprimand, send to the attorney general, or to the district attorney. Cases referred to the attorney general do not end in criminal charges, even if the Election Code section involved is classified as a misdemeanor or a felony. Cases referred to the attorney general are prosecuted administratively, and respondents may pay a fine.

## POLL MANAGER

### POLLING PLACE INCIDENT REPORT FORM

#### 1. Basic Information

- Polling Location Name: \_\_\_\_\_
  - Address: \_\_\_\_\_
  - City/State/ZIP: \_\_\_\_\_
  - Date of Incident: \_\_\_ / \_\_\_ / \_\_\_ Time of Incident: \_\_\_\_\_ AM / PM
  - Reported By (Name & Role): \_\_\_\_\_
  - Contact Information: \_\_\_\_\_
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#### 2. Type of Incident (Check all that apply)

- Voter intimidation
  - Disruptive behavior
  - Campaigning within restricted area
  - Suspicious activity
  - Medical emergency
  - Security threat
  - Other (describe): \_\_\_\_\_
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#### 3. Description of Incident

(Provide a detailed factual description. Include who, what, when, where, and how. Avoid opinions.)

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#### 4. Individuals Involved

Name Role (Voter/Worker/Observer/etc.) Contact Info (if available)

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**5. Witnesses – Use Witness Statement Form if multiple witnesses.**

**Name Contact Information Statement Collected? (Y/N)**

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**6. Actions Taken**

- Verbal warning issued
- Individual removed from premises
- Law enforcement contacted
- Incident escalated to election office
- Other: \_\_\_\_\_

**Detailed explanation of actions taken:**

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**7. Law Enforcement (If Applicable)**

- **Agency Name:** \_\_\_\_\_
  - **Officer Name & Badge #:** \_\_\_\_\_
  - **Case/Report Number:** \_\_\_\_\_
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**8. Follow-Up Required?**

- Yes
- No

If yes, describe required follow-up:

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**10. Certification** I certify that the above information is accurate to the best of my knowledge.

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Date:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

