



## OFFICIAL ELECTION BULLETIN

November 12, 2018

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**TO: County Election Officials and County Registrars**

**FROM: Robyn Crittenden, Secretary of State**

**RE: Post-Election Instructions Re: Absentee and Provisional Ballots**

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Secretary of State Robyn Crittenden issues the following information to all county election officials regarding state law governing absentee ballot verification and the provisional ballot determination period.

**1. Absentee Ballot Verification.** Absentee ballot verification in Georgia is governed by O.C.G.A. § 21-2-386(a)(1)(C), as interpreted by *Jones v. Jesup*, 279 Ga. 531 (2005). The statute states:

If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years.

O.C.G.A. § 21-2-386(a)(1)(C). The Georgia Supreme Court found in *Jones v. Jesup*, 279 Ga. 531 (2005), that O.C.G.A. § 21-2-386 does not mandate the automatic rejection of any absentee ballot lacking the elector's place and/or date of birth." *Jones*, 279 Ga. at 533, n5. *See also* 1974 Op. Atty. Gen. 54, 110, 112(3). In that case, the Court found that when two voters "incorrectly wrote down the month and date they voted the absentee ballot rather than their month and date of birth," the registrar did not have to reject the ballots "because the ballots cast by these witnesses substantially complied with all of the essential requirements of the form." *Id.* The Attorney General's office has provided advice to the Secretary of State and the State Election Board that, in conjunction with state and federal law, what is required is the signature of the voter and any additional information needed for the county election official to verify the identity of the voter. "Therefore, an election official *does not* violate O.C.G.A. § 21-2-386(a)(1)(C) when they accept an absentee ballot despite the omission of a day and month of birth [or year of birth under current form] and/or an address, *if* the election official can verify the identity of the voter with the voter's signature and whatever other required information is provided that is sufficient to

the registrar to confirm the identity of the voter.” Advice from Attorney General to State Election Board in Telfair County Case # 2012-31.

**2. Provisional Ballot Determination Period.** The provisional ballot determination period in Georgia is governed by O.C.G.A. § 21-2-419(c), which states:

(1) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person casting the provisional ballot timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall notify the election superintendent and the provisional ballot shall be counted and included in the county's or municipality's certified election results.

(2) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person voting the provisional ballot timely registered and was eligible and entitled to vote in the primary or election but voted in the wrong precinct, then the board of registrars shall notify the election superintendent. The superintendent shall count such person's votes which were cast for candidates in those races for which the person was entitled to vote but shall not count the votes cast for candidates in those races in which such person was not entitled to vote. The superintendent shall order the proper election official at the tabulating center or precinct to prepare an accurate duplicate ballot containing only those votes cast by such person in those races in which such person was entitled to vote for processing at the tabulating center or precinct, which shall be verified in the presence of a witness. Such duplicate ballot shall be clearly labeled with the word "Duplicate," shall bear the designation of the polling place, and shall be given the same serial number as the original ballot. The original ballot shall be retained.

(3) If the registrars determine that the person casting the provisional ballot did not timely register to vote or was not eligible or entitled to vote in such primary or election or shall be unable to determine within three days following such primary or election whether such person timely registered to vote and was eligible and entitled to vote in such primary or election, the registrars shall so notify the election superintendent and such ballot shall not be counted. The election superintendent shall mark or otherwise document that such ballot was not counted and shall deliver and store such ballots with all other ballots and election materials as provided in Code Section 21-2-500.

O.C.G.A. § 21-2-419. For the November 6, 2018 general election, the determination period ended on Friday, November 9, 2018.<sup>1</sup>

If you have any additional questions, you can contact our office or your local county attorney.

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<sup>1</sup> The only exception is provisional absentee ballots rejected due to a non-matched signature, which can be verified until county certification pursuant to a court order from District Judge Leigh Martin May.