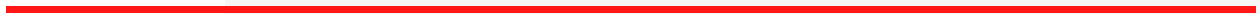


COMMON CAUSE GEORGIA



2023 MUNICIPAL ELECTIONS



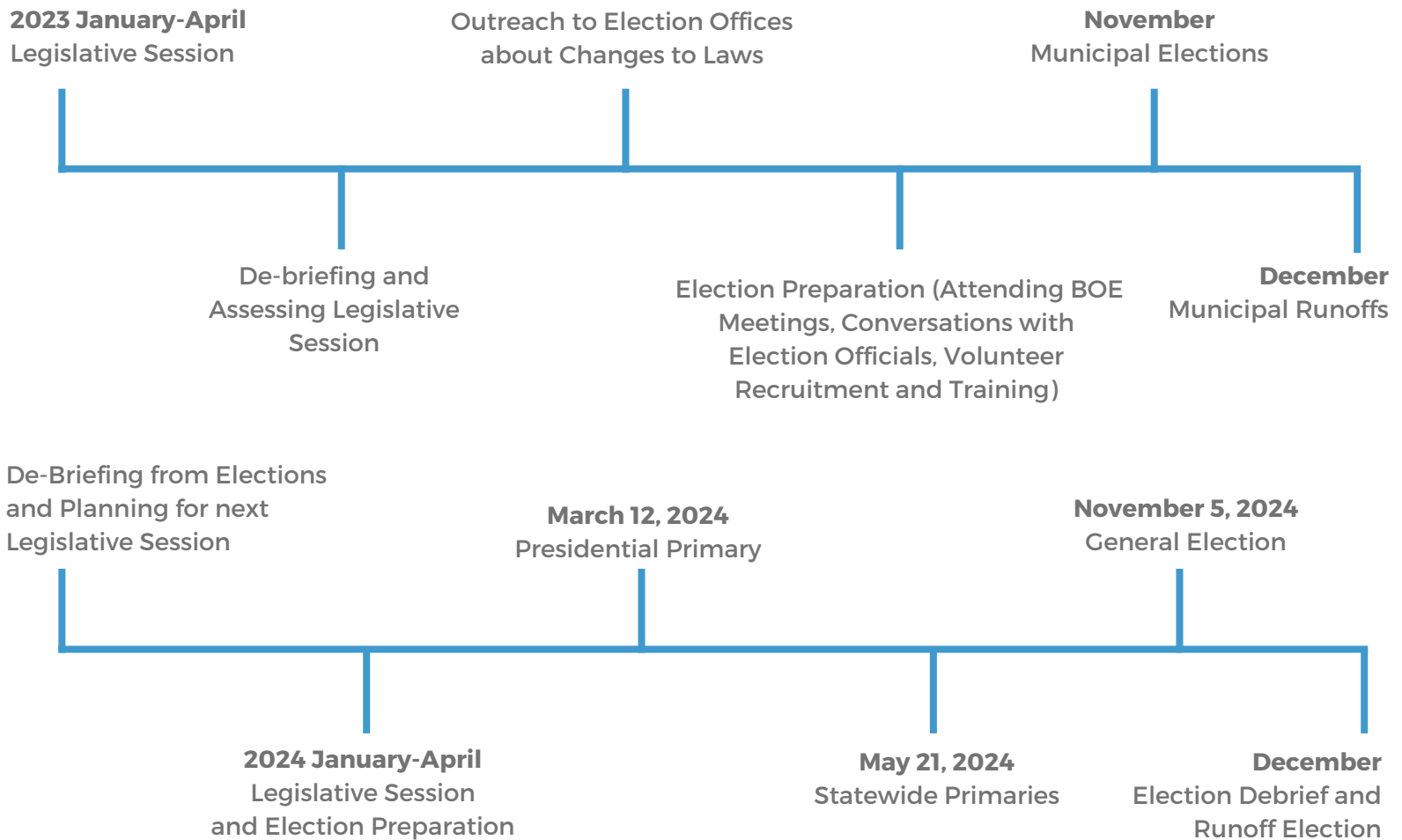


Common Cause Georgia is a non-profit, non-partisan advocacy organization that works to strengthen public participation in our democracy and ensure that public officials and public institutions are accountable and responsive to citizens. We believe that voting should be free, fair and accessible for every eligible citizen, which is why we persevere in these efforts to protect and strengthen voting rights for all Georgians. We look for ways not only to defend and protect the right to vote, but to go on offense making sure people have the access and information they need. We seek to **EDUCATE** the public about voting challenges and what they can do to **MITIGATE** harmful consequences, and preserve information to **LITIGATE** when necessary.

2023 Elections

Every year is an election year in Georgia. Even without, statewide elections, in 2023 there were several municipal races throughout the state, from mayoral contests to school board seats to changes to special-purpose local-option sales tax (SPLOST). While much smaller scale and with lower turnout, these off-year contests offer a glimpse of issues we can expect entering the 2024 election cycle.

2023-2024 ELECTION CYCLE



Election Administration 365

The work around elections in Georgia happens year-round. There has been increased focus on election laws during legislative session in recent years and the primaries are the first opportunity to see the effects of new laws passed on actual voters. It is also when election officials discover challenges in enacting certain provisions or lack of clarity in how the laws should be interpreted. Common Cause Georgia prioritizes making time outside the peaks of election season to have conversations with election offices and learn more about what they see from their perspective, what aspects of the law do and do not work in practice, and learning about their unmet needs from resources to sufficient guidance from the state on the application of new election laws.

VOTER CHALLENGES

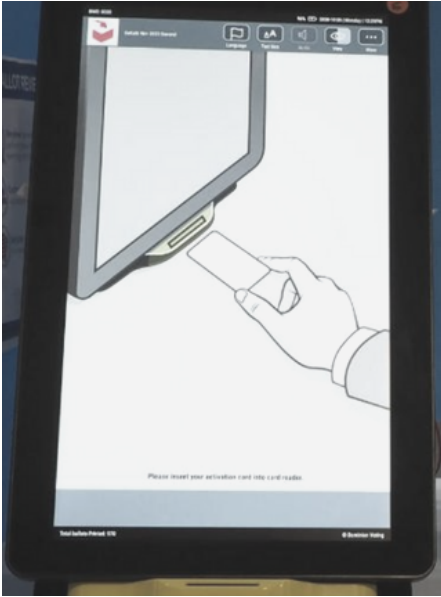
The increase in challenges brought against individual voters continues to be a problem. Challenges used to be made only by individuals with personal knowledge, but changes to the law in S.B. 202 opened the door for lists of mass challenges based on criteria like the National Change of Address database and other similar information. We have seen growing numbers of individuals bringing mass challenges across the state and it appears to be concerted strategy for far-right groups. Dealing with challenges has also created burdens for election staff, requiring them to devote significant time to addressing them. In Fulton County, an individual who brought over 9,000 of the county’s voter challenges was nominated for the Board of Registration and Elections. Common Cause and others advocated against this appointment to the Board and he ultimately was not appointed, but we remain cautious of attempts to place challengers on election boards. There are two types of challenges brought under Georgia law, those falling under statute subsection 229 and those under subsection 230.

229 Challenges	230 Challenges
Aims to cancel a voter’s registration entirely	Challenges a voter’s eligibility for the current/upcoming election
Election boards must notify the voter, hold a hearing, adjudicate challenge within 20 days	To be resolved “immediately” per statute, no clear guidelines about what that means
The NVRA bars systematic removals of voters from the rolls within 90 days of an election	Less clear if subject to the 90-day limitation of the NVRA, we believe it still is, but some counties have taken the position these challenges are not

Our position is that the two types of challenges in many ways are a distinction without a difference and neither escapes the requirements of the National Voting Rights Act. We continue to advocate to county election officials and the State Elections Board for clearer guidance when it comes to voter challenges, establishing a standard for probable cause, and preserving the due process rights of challenged voters. We also have concerns about the use of AI programs to generate mass challenges.

OTHER ISSUES

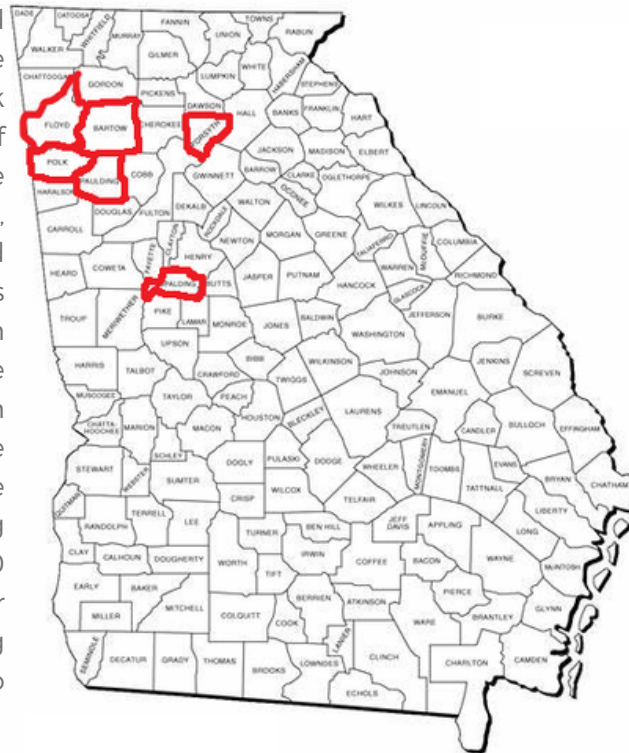
GARViS:



The new Georgia Registered Voter Information System was rolled out to replace the previous ENet system. The new system was implemented in a handful of counties during the municipal elections as a test and other counties have begun working with the database, but we have heard reports that there have been functionality errors and many counties have concerns about the state’s ability to have it functioning properly by the 2024 elections. Several counties have raised their concerns in letters to the Secretary of State’s office, which is purportedly working to troubleshoot issues. Between the concerns from election officials and the fact that maps were recently redrawn in the legislative special session, Common Cause joined with a number of other organizations in asking for additional dedicated funding to secure adequate personnel to make the database fully functional for 2024 and support the \$87,000 funding request for Redistricting Quality Control and any needed additional staff (see Appendix). We will continue talking with county election officials about their experience with the system and if they feel issues are adequately resolved before heading into next year’s primaries and elections.

HAND RECOUNTS VS. AUDITS:

We did see some counties this cycle opted to conduct hand counts of their election results. It is important that we distinguish these from formal audits, and particularly Risk Limiting Audits, that are conducted after certification of elections and enhance confidence in results. Instead, the hand counts conducted Spalding, Polk, Paulding, Forsyth, Floyd, and Bartow counties, were automatically held following the election with the goal of comparing the totals reached by voting tabulation machines prior to certification of the election results. These hand counts are less accurate than machine tabulation, create more work for election staff, are more costly, slow results, and are based on false narratives about the reliability of voting machines. The hand count in Spalding involved several teams of counting ballots and took over eight hours to count around 2,500 ballots. This likely will not be sustainable with the number of ballots for the 2024 election. In contrast, risk limiting audits involve the review of a manageable sample size to confirm the accuracy of the election results.



SPOTLIGHT: COLUMBIA COUNTY and EAGLE AI



Most states use the Electronic Registration Information Center (ERIC) to help maintain voter rolls and ensure people are not registered in more than one state. A recent trend amongst election deniers has been to advocate against ERIC and a number of states have withdrawn from the system. While Georgia still uses ERIC, Columbia County, Georgia recently opted to utilize a purported alternative, the EagleAINETwork. Eagle AI draws data from various public sources and can auto-fill voter challenge forms with supporting materials and submit challenges en masse. The system is not actually using artificial intelligence and is far less reliable than the ERIC system. It uses unverified data, lacks voter protections, and is duplicative of the list maintenance already occurring. Eagle AI can also be used to fuel the false voting fraud narratives and misleading information about ineligible voters on the rolls. We will be watching Columbia County to see how use of this system plays out there. listening to the public reactions to it, and will to continue to advocate against other counties adopting the system.

TARGETED ELECTION EFFORTS

Recruitment and Mobilization:

We continued to build a voter protection volunteer network across the state to mobilize communities through phases of activation from early voting through the ballot certification period. We focused on expanding coverage to new parts of the state and coordinating with other existing groups and networks who already have a presence in their communities.

Fighting Mis- and Dis-information:

Voter education is always an important part of our work at Common Cause and we want to arm the citizens of Georgia with correct information about their voting rights. We also monitor the spread of harmful disinformation, and we will be hypervigilant on this front heading into 2024, working to dispel persisting false claims about election fraud.

Open Records Requests:

Common Cause Georgia diligently gathers documents from county election offices to ensure the retention of relevant election records. We send Open Records Requests to a targeted list of counties after each election to capture information about provisional ballots, challenge ballots, the numbers of election workers at precincts, rejected absentee ballots, incidents at the polls, and voter machine malfunctions.

Certification Period:

Our work does not stop with Election Day. Given the recent climate, and challenges made as to the integrity or validity of the results of elections and certain changes in Georgia law, we had an increased concern about the potential for bad actors to interfere at this stage of the process. In 2023, we saw an increased number of counties performing hand recounts *before* certification this cycle and in a couple of counties board members voted against certification of election results.

LOOKING AHEAD

Legislative Session:

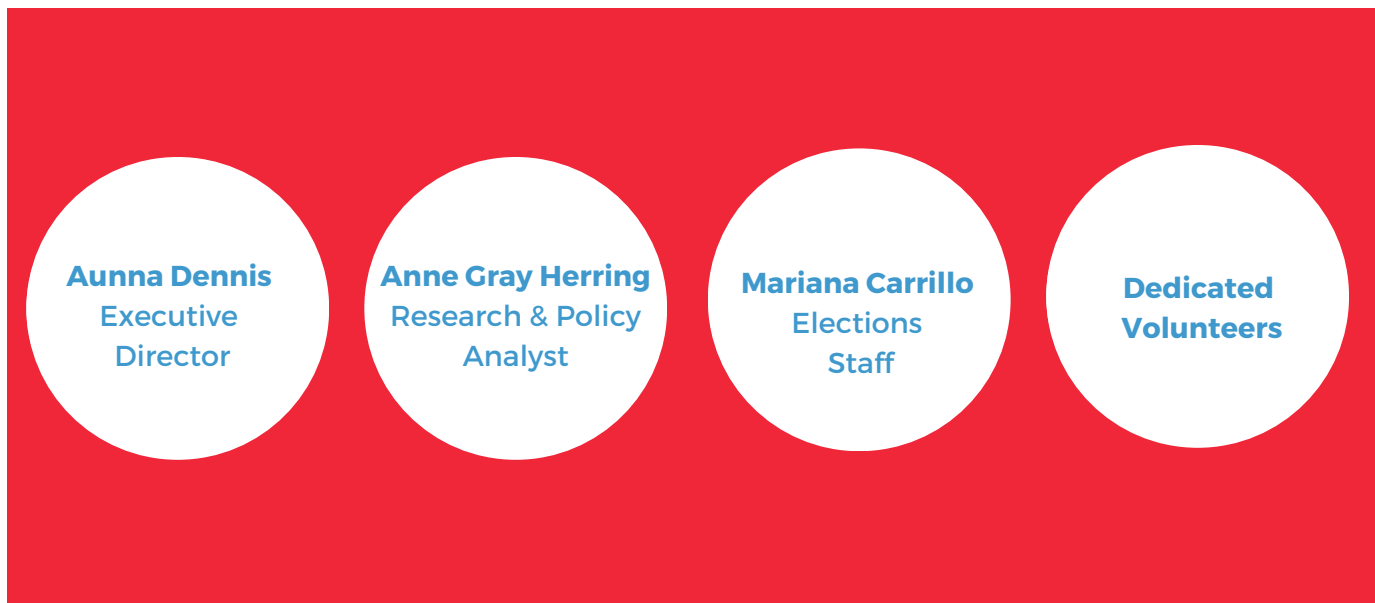
Common Cause Georgia will be actively engaged in the upcoming legislative session. The Georgia General Assembly will convene from January - April of 2024 and any election bills will be of even greater consequence given the short time frame in which to implement them before the 2024 elections. We will be paying particular attention to efforts to revive an omnibus bill that did not pass last session, the paper ballot initiative, and ranked choice voting.



Elections:

We are also gearing up for a big election year. The presidential contest means additional primaries, higher turnout, and increased focus on our state given the ongoing investigation into Donald Trump's election subversion in 2020. We will also see the effects of changes to election laws that have occurred in the last four years play out on a larger scale.

Staff & Team Members



We are a growing team, working to expand our efforts in Georgia. In addition to our in-state staff members, dedicated interns and fellows, contractors, and volunteers on the ground, we also have the resources of Common Cause's national organization, including a communications team, voting and elections staff, and a network of offices across the country so we can compare the laws and trends of Georgia to that of other states.

APPENDIX

December 11, 2023

Chairman Matt Hatchett
245 State Capitol
Atlanta, GA 30334

Chairman Blake Tillery
234 State Capitol
Atlanta, GA 30334

Chairman Hatchett and Chairman Tillery:

We the undersigned organizations would like to encourage your committee to include additional funding in the supplement budget for FY 2024 for additional dedicated GARViS staff for the State Election Division.

As you and your committee members may be aware, GARViS (the Georgia Registered Voter Information System) has proven to have a series of errors affecting functionality. Our organizations have received reports that multiple counties, if not all counties across the state, have concerns about this database and the ability of the state election office to have it functioning for the 2024 election year.

Georgia Association of Voter Registration and Election Officials (GAVREO) Region 3 – Cobb, DeKalb, Douglas, Fulton, Gwinnett and Henry counties election offices – comprising 40% of all voters in the state of Georgia, highlighted their concerns in a letter to the Secretary of State’s Office dated November 2, 2023. Dawson, Cherokee, Rabun, Union and White county election offices also submitted similar concerns in a letter dated October 12, 2023.

The functionality of the Redistricting module within GARViS seems limited. As Georgia is currently redrawing the district maps at three levels, our election offices need additional support to be prepared to carry out their duties to voters for the many upcoming elections in 2024.

It is clear from these incidents and concerns of the county election offices that the State Election Office must have additional funding to secure adequate personnel to make this database functional for our county election offices. We are supportive of the additional funding request for \$87,000 for Redistricting Quality Control and increased staffing for this important state office. We hope your committees will assist in providing these counties much needed relief.

Georgia is poised to have the largest voter turnout ever in the history of our state next year. We must avert incidents like we witnessed in the 2023 municipal elections, or risk mistrust in our elections and local election officials that will only grow. Our counties need, and the voters deserve, a voter registration database that works.

All Voting is Local Action

Coalition for the People’s Agenda

Common Cause Georgia

Fair Fight

New Georgia Project

Represent Georgia Action Network

APPENDIX

Secretary of State Brad Raffensperger
Office of the Secretary of State
214 State Capitol
Atlanta, GA 30334

Blake Evans, Georgia Elections Director
Office of the Secretary of State
214 State Capitol
Atlanta, GA 30334

State Election Board
2 MLK Jr. Drive
Suite 802 Floyd West Tower
Atlanta, Georgia 30334

Dear Secretary Raffensperger Director Evans, and Members of the Georgia State Election Board:

We write to you on behalf of several organizations to express our deep concern regarding the potential use of the EagleAI NETWORK and EagleAI's "Voter Integrity Software" within our state's counties. Specifically, this letter was prompted by the plans of the Columbia County Board of Elections [Columbia BOE] to consider contracting with EagleAI NETWORK to use its "Voter Integrity" software for voter list maintenance on **October 17, 2023, beginning at 10:30 a.m.** Hannah Litterer, *Columbia County Board of Elections interested in using AI software to help voter roll maintenance*, News Center 6, wjbf.com, September 23, 2023, available at this link: <https://www.wjbf.com/news/columbia-county-board-of-elections-interested-in-using-ai-software-to-help-voter-roll-maintenance/> (last accessed 10/16/23).

As you may recall, the former Chair of the Georgia State Election Board, William S. Duffey, sent a letter to the Columbia BOE on May 11, 2023 raising concerns that its use of the EagleAI "Voter Integrity Software" could implicate Georgia laws and urged the Columbia BOE to discuss this matter with the Georgia Director of Elections, Blake Evans. See, May 11, 2023 letter from William S. Duffey, Jr. to members of the Columbia BOE, available at this link: <https://documented.net/media/georgia-state-election-board-may-11-2023-letter-to-columbia-county> (last accessed on 10/16/23).

Subsequently, Director of Elections, Blake Evans, was quoted in an August 14, 2023 Atlanta Journal Constitution report about Eagle AI and its efforts to contract with Georgia counties to use its "Voter Integrity" software, as follows:

"EagleAI data offers zero additional value to Georgia's existing list maintenance procedures... [w]e already utilize the most accurate death data through our Department of Public Health and the Social Security death master list. We already check for duplicates."

residents hold dear. Thank you for your dedicated service to our great state, and we look forward to your leadership on this important matter.

Sincerely,

[Organizational signatures]

Cc:
Columbia County Board of Elections
610 Ronald Reagan Drive, Bldg. G3
Evans, GA 30809

Mark Niese, *Georgia Company Pursues Multistate Voter Registration Cancellations*, Atlanta Journal Constitution, August 14, 2023 [pdf copy attached].

In an August 17, 2023 report by NBC News about EagleAI and its software, Director Evans was quoted as stating:

"EagleAI presentations that I have seen are confused and seem to steer counties towards improper list maintenance activities...EagleAI draws inaccurate conclusions and then presents them as if they are evidence of wrongdoing."

Jane C. Timm, *Inside the Right's Effort to Build a Voter Fraud Hunting Tool*, NBC News, August 17, 2023, available at this link: <https://www.nbcnews.com/politics/2024-election/conservatives-voter-fraud-hunting-tool-eagleai-deta-mitchell-rcna97327> (last accessed 10/16/23).

A Brennan Center for Justice report about EagleAI and its efforts to sell its software tool in Georgia and elsewhere raises serious concerns that its use could prompt large scale efforts to challenge and purge eligible voters from Georgia's voter registration rolls based upon often inaccurate and outdated information on the internet. Alice Clapman and Andrew Gardner, *A New Antidemocracy Tool*, Brennan Center for Justice, September 5, 2023, available at this link: <https://www.brennancenter.org/our-work/analysis-opinion/new-antidemocracy-tool> (last accessed 10/16/23).

EagleAI's reliance on publicly available data, lack of precise matching capabilities, and the potential for mass, amateur-led challenges pose significant risks to the accuracy of our voter rolls and, by extension, the integrity of our elections. EagleAI appears to have the same flaws as the previously failed Interstate Voter Registration Crosscheck program, if not even more. State election officials like yourselves must put the integrity of our elections ahead of politics founded in conspiracy theories. We implore you to make a clear and resolute statement opposing its use. By doing so, you can help protect our state's electoral processes from undue disruptions and ensure that only legitimate, legal actions are taken to maintain voter registration accuracy.

The use of EagleAI also possibly threatens to violate the National Voter Registration Act by unlawfully purging voters who are eligible to vote and should not be removed from the voter rolls. Because you have a responsibility as Georgia election officials to coordinate activities under the NVRA and to comply with the federal law in addition to Georgia law, we urge you to also issue guidance and confirmations that counties must comply with the NVRA's requirements as well as state law before removing any voters' registrations.

In these times when trust in our democracy is paramount, your public opposition to EagleAI will send a strong message about your commitment to fair and transparent elections. We trust that you will use your position and authority to safeguard the electoral integrity that our state's

APPENDIX

BRENNAN CENTER FOR JUSTICE

October 16, 2023

Dear Chairperson Cushman, Member Duffie, Member Wiggins, and Executive Director Gay,

We understand that you are considering entering into a contract with EagleAI NETWORK, which has created a list-matching database ("EagleAI"). We urge you not to do so. EagleAI would add nothing to the already-active measures the state is taking to update its rolls; since 2019, the state has canceled or made inactive hundreds of thousands of registrants. Not only is EagleAI superfluous, it is flawed and unreliable. Its use may also, in some cases, run afoul of the National Voter Registration Act ("NVRA"), data privacy laws, the Computer Fraud and Abuse Act, and antidiscrimination law, among other potential issues. We urge you not to enter into any agreement with EagleAI and to reject any voter challenge derived from it.

I. EagleAI relies on sources that are not reliable for voter list maintenance.

As an initial matter, EagleAI cannot be trusted to provide reliable information regarding who on the voter rolls is not eligible to remain there. EagleAI relies solely on public information scraped from places like the National Change of Address database, criminal justice records, and property tax records. As we discussed in a prior letter to Georgia county election boards, these sources are insufficient to determine whether someone is still eligible to vote at their place of registration. For example, a military service member may want their mail forwarded while temporarily stationed outside of Georgia and eligible voters may be registered at a house they rent from someone else. Public documents and reporting have not shown that EagleAI has functionality to get around these shortcomings.

Even the voter rolls EagleAI relies on are likely not up to date. EagleAI is reported to be using the Voter Reference Foundation's ("VoteRef") publicly available voter list for its comparison. VoteRef is a snapshot of the voter rolls at the time VoteRef purchased them, so unless EagleAI is constantly buying new copies of the County's voter rolls, these will quickly be out of date. VoteRef also lacks critical data like date of birth, which raises the risk of false matches based on name similarities. And EagleAI's backers have made misleading statements about voter roll maintenance, such as a claim that there are more registered voters than residents in Georgia, which fails to take into account that the state has already moved many of these registrations onto its inactive voter list, where they are already on the path to being removed consistent with the requirements of the NVRA. As summed up by Georgia Elections Director Blake Evans, "EagleAI draws inaccurate conclusions and then presents them as if they are evidence of wrongdoing."

In fact, EagleAI's founder acknowledges that the data on their own do not provide a reliable basis for conducting voter list maintenance, instead claiming that the tool "simply points out

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Additionally, while web scraping is legal, there are limitations on its use. Users of a website may consent to terms of service that prohibit scraping. Other websites may allow scraping but not commercial use of the data, such as selling a packet of information that includes protected IP (e.g., logos or databases). EagleAI would be using its data for a commercial purpose if it sold it to you. In other instances, scraping may scoop up personally identifiable information that is protected from disclosure. And, assuming EagleAI is built on an existing app development tool, it would need to purchase sufficient licenses so that every potential user of the platform is authorized to access it. Without extensive diligence to investigate these issues, this Board could be opening itself up to lawsuits and enforcement actions alongside EagleAI.

IV. The National Voter Registration Act and the Constitution limit when and how election officials may remove voters from the rolls.

In the event you did decide to use EagleAI, such use would need to be consistent with the NVRA, which both requires states (and their subdivisions) to perform voter list maintenance and places restraints on how they may do it.

Under the NVRA, states and their subdivisions can only remove voters in one of five circumstances. First, the voter asks to be removed. Second, if state law requires, for a criminal conviction or mental incapacity. Third, for the death of the voter. Fourth, if the voter confirms a change of residence in writing. Fifth, based on other evidence of a change of residence, but only after the state sends a notice and then the voter both fails to respond and does not appear to vote in the next two federal general elections. There is no exception for removing a voter for a change of residence because the county has used private data or because the voter was challenged.

We additionally caution that the NVRA prohibits the "systematic[]" removal of voters from the rolls within 90 days of a federal election. Voter removals derived from database matching are clearly systematic and therefore prohibited within that time-window.

The process protections in the NVRA exist alongside the constitutional requirement that individuals be afforded a meaningful hearing before being deprived of a protected interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Constitution also prohibits discrimination; the Equal Protection Clause of the Fourteenth Amendment protects against "laws singling out a certain class of citizens for disfavored legal status or general hardships." *Romer v. Evans*, 517 U.S. 620, 633 (1996). EagleAI reportedly flags voters who are registered at homeless shelters or a nursing homes for investigation. These are vulnerable categories of voters and there is no evidence voters registered at these addresses are more likely to be ineligible. If EagleAI's design disproportionately removes these voters from the rolls, it would be very difficult for this Board to deploy it in a way that does not discriminate against those voters.

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voter registrations that need to be reviewed by the election officials." Yet when election boards have investigated similar information, it has proven to be a waste of their time. Last year Gwinnett County received a challenge to 37,000 names from VoterGA that relied on the same kinds of data used by EagleAI and derived from the same network of activists. The Gwinnett Elections Board undertook hundreds of hours of research into the voters. In the end, it did not remove a single voter from the rolls. For all the same reasons, EagleAI should never be used to verify voter registrations or resolve voter challenges; the data it relies on add nothing useful to the more-reliable information the Board already has.

Voter list maintenance is an important function of local elections administrators and we applaud your efforts to improve this process. But EagleAI will not further these goals. It offers nothing new from last year's failed challenge efforts. It will point you towards false positives and waste your staff's time. ERIC, of which Georgia is a member and which uses heavily encrypted, reliable identifying data, remains a far better tool for list maintenance.

II. EagleAI may violate privacy laws.

If this Board were to share data with EagleAI, that would raise data privacy concerns. Former Georgia State Election Board Chair William Duffey raised this issue in his May 11, 2023 letter to this Board, explaining that sharing voter information may violate Georgia law. The election code specifies that "original applications for voter registration [and] copies thereof" are not to be shared with the public, so the County cannot share those forms. And while the voter list is generally a public record, many components of individual entries are not, including bank statements, month and day of birth, social security numbers, emails, driver's licenses, and location of registration.

This very data privacy issue sank the 2017 Presidential Advisory Commission on Election Integrity. The Commission asked states to turn over voter data including birth dates, justice system records, voting histories, and the final four digits of social security numbers. Many states refused to comply with the request, often because it sought non-public information that state law prohibited officials from sharing. Former President Trump – the Commission's strongest backer – admitted that the inability to collect private voter data led to its demise. Contracting with groups like EagleAI is a known dead-end.

III. The Computer Fraud and Abuse Act may prohibit EagleAI from collecting certain data.

Not only would sharing voter information with EagleAI potentially violate privacy laws, but contracting with the group may expose the Board to liability if EagleAI is violating federal law or website terms of service. The Computer Fraud and Abuse Act is a federal law that imposes criminal and civil penalties on anyone who gains unauthorized access to a computer. Federal Courts have said that web scrapers like EagleAI are subject to the Act. In *Craigslis Inc. v. 3Taps Inc.*, 942 F. Supp. 2d 962 (N.D. Cal. 2013), a federal court in California ruled that Craigslis could sue 3Taps for using anonymous proxies to scrape classified ads off Craigslis. The parties agreed to a \$1 million settlement.

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We thank you for considering our position on this pressing issue. We would be happy to speak with you further about the concerns outlined above at your earliest convenience.

Sincerely,


Andrew B. Garber, Counsel

Co-signatories

ACLU of Georgia	All Voting is Local Action
Campaign Legal Center	Coalition for the People's Agenda
New Georgia Project Action Fund	United to Protect Democracy

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