

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DEMOCRATIC PARTY OF GEORGIA,
et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State of
Georgia, *et al.*,

Defendants.

Civil Action File No.

1:19-cv-05028-WMR

MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Secretary of State Brad Raffensperger and State Election Board Members David J. Worley, Rebecca N. Sullivan, Anh Le, and Seth Harp (“State Defendants”) move to dismiss the Amended Complaint filed by Plaintiffs Democratic Party of Georgia, Inc. (“DPG”), Democratic Senatorial Campaign Committee (“DSCC”), and Democratic Congressional Campaign Committee (“DCCC”). The Amended Complaint must be dismissed for three independent reasons.

1. Plaintiffs challenges in Counts I-V of the Amended Complaint to the statutory requirement that county elections officials promptly notify an elector whose mail-in absentee ballot is rejected are moot. The State Election

Board (“SEB”) promulgated Rule 183-1-14-.13, which sets forth specific and standard notification procedures that all counties must follow when a timely submitted mail-in absentee ballot is rejected. Under the current SEB rule, county elections officials must send written notice of the rejection no later than the close of business on the third business day after receiving the mail-in absentee ballot unless the absentee ballot is rejected after the close of the advance voting period, in which case county elections officials must attempt to notify the elector by email and telephone (if available in the elector’s voter registration record) and mail written notice to the elector no later than 3:00 PM on the next business day. Ga. Comp. R. & Regs. 183-1-14-.13 (adopted January 22, 2020).

The SEB has proposed an amendment to Rule 183-1-14-.13 that would require county elections officials to attempt to notify every elector by email and telephone in addition to sending written notice, and for any timely submitted mail-in absentee ballot rejected on or after the second Friday prior to Election Day, it would require county elections officials to send written notice, and attempt to contact the elector by email and telephone, no later than the close of business on the next business day. *See* Notice of Proposed Rule 183-1-14-.13 (published January 24, 2020). The proposed amendment to Rule 183-1-14-.14 will be considered by the SEB for adoption on February 28,

2020. *Id.* Because specific and standard notification procedures exist that all counties must follow when a timely submitted mail-in absentee ballot is rejected, Plaintiffs claims challenging the prompt notification requirement in O.C.G.A. § 21-2-386(a)(1)(C) are now moot.

2. Plaintiffs' claims are facial challenges; however, in the event the Court treats them as as-applied challenges, those claims are not ripe, because Plaintiffs present no allegations that pertain to currently applicable Georgia law—amended in 2019—or the revised SEB rule on the subject. They therefore are not justiciable, and the Court, were it to review these claims as as-applied challenges, should not consider them. *Texas v. U.S.*, 523 U.S. 296, 300 (1998); *Wollschlaeger v. Governor*, 848 F.3d 1293, 1304 (11th Cir. 2017) (en banc).

3. Plaintiffs' challenges to the signature review requirement in O.C.G.A. § 21-2-386(a)(1)(B)-(C) and the prompt notification requirement in O.C.G.A. § 21-2-386(a)(1)(C) should be dismissed for failure to adequately establish Article III standing under the United States Constitution. Plaintiffs each rely on an organizational standing theory, and Plaintiff DPG also claims standing based on an associational standing theory. Plaintiffs have failed to allege sufficient facts to demonstrate that they have (1) suffered an injury in fact; (2) that is fairly traceable to the challenged conduct of State Defendants;

and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1548 (2016). Additionally, Plaintiff DPG has failed to establish associational standing because the Amended Complaint does not contain any specific allegations establishing that at least one identified member of DPG has suffered or will suffer harm. *See Ga. Republican Party v. SEC*, 888 F.3d 1198, 1203 (11th Cir. 2018).

4. Plaintiffs fail to state claims for relief in Counts III, IV, and V challenging the prompt notification requirement under O.C.G.A. § 21-2-386(a)(1)(C). The Amended Complaint ignores amendments to relevant statutes and rules, and Plaintiffs identify no unconstitutional application of O.C.G.A. § 21-2-386(a)(1)(C) since that Code section was amended to provide electors with an opportunity to cure a rejected mail-in absentee ballot. Plaintiffs have further failed to allege a discriminatory animus or intent to support their claim in Count IV of the Amended Complaint. Finally, Plaintiffs claims are facial challenges, and Plaintiffs cannot establish that no set of circumstances exists under which the challenged laws would be valid. *J.R. v. Hansen*, 803 F. 3d 1315, 1320 (11th Cir. 2015) (*Hansen II*) (“A plaintiff challenging a law as facially unconstitutional ‘must establish that no set of circumstances exists under which the [law] would be valid.’”). Accordingly, the Amended Complaint should be dismissed for failure to state a claim.

5. Plaintiffs' procedural due process claim is not sufficiently pled and must be dismissed for failure to state a claim. Procedural due process violations require the state to refuse to provide due process, *McKinney*, 20 F.3d at 1562, but Plaintiffs have ignored the import of SEB Rule 183-1-14-.13 and the statutory cure provision enacted in 2019, codified at O.C.G.A. § 21-2-386(a)(1)(C). The availability of a state remedy necessarily prevents Plaintiffs from maintaining a procedural due process claim as a matter of law. *See Horton v. Bd. of Cty. Comm'rs*, 202 F.3d 1297, 1300 (2000). As such, Plaintiffs' procedural due process claim should be dismissed.

In light of the foregoing, and as more fully set forth in the attached memorandum, State Defendants respectfully request that this Court dismiss Plaintiffs' Amended Complaint in their entirety, with prejudice, as to State Defendants and grant such other relief as this Court deems just and proper.

Respectfully submitted this 31st day of January, 2020.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing STATE DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMOPLAINT has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Vincent R. Russo

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1:19-cv-05028-WMR

**BRIEF IN SUPPORT OF STATE DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' AMENDED COMPLAINT**

Secretary of State Brad Raffensperger and State Election Board
Members David J. Worley, Rebecca N. Sullivan, Anh Le, and Seth Harp
("State Defendants") submit this brief in support of their Motion to Dismiss
Plaintiffs' Amended Complaint.

INTRODUCTION

Plaintiffs, a state political party and two national political party
committees, challenge Georgia statutes that enhance ballot security, namely
the requirements that county election officials (1) confirm the validity of a
voter's signature on a mail-in absentee ballot; and (2) "promptly notify" the
voter if the mail-in absentee ballot is rejected. [Doc. 30 ¶¶ 80-95].

Setting aside that Plaintiffs' requested relief would leave election officials defenseless against some types of voter fraud, Plaintiffs sued the wrong parties. Neither the Secretary of State nor the members of the State Election Board ("SEB") review mail-in absentee ballots or have the authority to accept or reject them. *See* O.C.G.A. § 21-2-386. Those duties lie exclusively with the county elections officials, who (with the exception of the Gwinnett Defendants) are not parties to this action. *See* O.C.G.A. § 21-2-50 (duties of Secretary of State); O.C.G.A. § 21-2-31 (duties of the SEB); and § 21-2-381(b) and § 21-2-386 (duties of county election boards and clerks with respect to absentee ballot applications and absentee ballots respectively).

In addition, Plaintiffs seek relief for simply engaging in the kinds of activities for which they were formed: elect Democrats. This does not confer standing in the Eleventh Circuit. Finally, Plaintiffs' complaint is dated and based on 2018 election results instead of 2019 legislation and 2020 SEB rules. This Court should dismiss the Complaint.

FACTS

When a Georgia voter requests an absentee ballot, county officials fulfill the request. *See* O.C.G.A. §§ 21-2-381, *et seq.* When the voter completes the absentee ballot, he or she must sign it and return it to the local election board. O.C.G.A. § 21-2-385(a). Upon receipt, a county registrar or absentee

ballot clerk compares the voter's signature on the mail-in absentee ballot with the voter's information and signature on file in the county elections office and the elector's signature on the absentee ballot application. *See* O.C.G.A. § 21-2-386(a)(1)(B). If the signature appears to be valid, and the other information is correct, the county official certifies the ballot. *Id.*

If, however, the voter's signature or other information appears to be invalid, the local official rejects it and must "promptly notify the elector of such rejection." O.C.G.A. § 21-2-386(a)(1)(C). The voter then has until three days after Election Day to cure the problem by submitting an affidavit and form of identification to the local election board. *Id.* If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot is counted. *Id.*

Plaintiffs filed a facial challenge to these statutes. [Doc. 30 at ¶¶ 68-95]. They did not, however, identify a single voter whose ballot was improperly rejected. On the other end of the spectrum, they have failed to show any systemic problem. For example, "Fulton County, the most populous county in Georgia[,] rejected just 1 out of the 23,201 absentee ballots cast for a mismatched signature." [Doc. 30 at ¶ 52]. Given this limitation, Plaintiffs are forced to speculate—about ballots being improperly rejected in the past (including in the 2019 municipal elections, which were governed by new laws

that became effective in July 2019) and about ballots being improperly rejected in the future.

More specifically, the Amended Complaint raises five counts against the State Defendants. It complains that the signature match policy violates the Equal Protection Clause of the Fourteenth Amendment (Count I) and First Amendment (Count II) to the United States Constitution [Doc. 30 ¶¶ 68-79]. Count III raises a procedural due process challenge to the cure period. *Id.* at ¶¶ 80-84. Plaintiffs also claim that the “promptly notify” language in Code Section 21-2-386(a)(1)(C) violates the guarantee of Equal Protection (Count IV) and the First Amendment (Count V). *Id.* at 85-95.

Based on these allegations, Plaintiffs seek a federal court order declaring O.C.G.A. § 21-2-386(a)(1)(C) unconstitutional, and a mandatory injunction that requires the State Defendants to “instruct County Election Officials to notify voters of missing or mismatched signatures by telephone, email, and/or text message within one day of receiving the ballot,” regardless of whether the county election officials actually have that information. [Doc. 30, *Ad Damnum Clause* (g)]. They also seek an injunction prohibiting the State Defendants from enforcing the requirement to reject ballots for signature mismatches. [*Id.*, *Ad Damnum Clause* (h)]. Finally, Plaintiffs seek attorneys’ fees. [*Id.* *Ad Damnum Clause* (j)].

ARGUMENT AND CITATION TO AUTHORITY

This Court should dismiss the Amended Complaint, because (1) Plaintiffs lack standing to bring their claims; (2) Counts I-V are either moot or not yet ripe and therefore not justiciable; and (3) Counts III-V fail to state substantive claims of constitutional violations of Georgia’s absentee-ballot-verification process. When considering these arguments, this Court must accept Plaintiffs’ facially plausible facts as true, but it owes no deference to Plaintiffs’ conclusory statements or conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).

I. Plaintiffs lack standing.

Standing is a threshold jurisdictional question the Court must address prior to and independent of the merits of a party’s claims. *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005). “The party invoking federal jurisdiction bears the burden of proving standing.” *Bischoff v. Osceola County, Fla.*, 222 F.3d 874, 878 (11th Cir. 2000).

In order to establish standing, Article III of the United States Constitution requires a plaintiff to show three things: (1) a “concrete and particularized” injury, (2) caused by an act of the Defendants, and (3) redressable by a favorable order. *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1159 (11th Cir. 2008). Plaintiffs have not alleged facts that

suggest an imminent and non-hypothetical prospect of injury, nor have they alleged that the State Defendants have caused any injury. This case must therefore be dismissed for lack of standing.

A. Plaintiffs lack standing because they have not alleged a sufficiently concrete injury-in-fact.

An injury in fact must be “concrete and particularized and . . . actual or imminent, not conjectural or hypothetical.” *Friends of the Earth, Inc.*, 528 U.S. 167, 180. Instead, an alleged injury must be “*certainly impending*” and not based on “allegations of *possible* future injury.” *Ga. Republican Party*, 888 F.3d 1198, 1202 (11th Cir. 2018) (quotation omitted). Further, the Supreme Court has “been reluctant” to find standing where an alleged injury requires “guesswork as to how independent decisionmakers will exercise their judgment.” *Clapper*, 568 U.S. at 413.

Here, Plaintiffs are not voters and, further, are not voters alleging the law has been applied to them in an unconstitutional manner; instead, Plaintiffs assert standing based on organizational and associational theories. First, all Plaintiffs assert organizational standing in the Amended Complaint. [Doc. 30 at ¶¶ 21, 22, 25, 27]. When an alleged injury is prospective, organizational plaintiffs may satisfy the injury requirement by showing “imminent harm.” *Browning*, 522 F.3d at 1160–61. Here, Plaintiffs

suggest that imminent harm is met under a “diversion of resources” theory, see [Doc. 30 at ¶¶ 22–27], which requires the threatened future injury be a “realistic danger” that is not “merely hypothetical or conjectural.” *Id.* at 1161.

Plaintiffs may not, however, satisfy the injury requirement of standing by merely continuing their organizational mission as they do here. Plaintiffs’ claim that they will have to divert resources from their regular activities to provide support for absentee voters, while, at the same time, acknowledging their pre-existing “robust absentee voter contact program” that informs voters of their ability to cast absentee ballots and educates voters about the rules and deadlines is insufficient. [Doc. 30 ¶ 22]. Moreover, Plaintiffs apparently engage in this effort to support voter turnout among absentee voters who “have disproportionately voted for Democratic candidates.” *Id.* Plaintiffs will not be diverting resources, and instead will simply continue their existing efforts in absentee voter outreach and education. This is a stark distinction from cases in this Circuit that confer standing under an organizational diversion of resources theory. See, e.g., *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009) (plaintiffs had to stop regular “get out the vote” activities to help voters obtain photo identification required by new law); *Ga. Latino Alliance for Human Rights v.*

Governor of Ga., 691 F. 3d 1250, 1260 (11th Cir. 2012) (organization cancelled citizenship classes to address inquiries about new immigration law).

Similarly, Plaintiff Democratic Party of Georgia, Inc. (“DPG”), lacks standing under an associational theory. Only DPG alleges associational standing, alleging that members of the DPG “risk” having their right to vote burdened or denied. [Doc. 30 at ¶ 21]. However, “[t]o establish standing under this theory, an organization must ‘make specific allegations establishing that at least one identified member ha[s] suffered or [will] suffer harm.’” *Ga. Republican Party v. SEC*, 888 F.3d 1198, 1203 (11th Cir. 2018) (quoting *Summers v. Earth Land Institute*, 555 U.S. 488 (2009)). No such specific allegations are pled here, and generic descriptions of DPG members’ alleged harm is insufficient to confer standing under this theory.

In any event, under either an organizational or associational theory, Plaintiffs’ claimed injury is too speculative to confer standing. A “threatened injury must be *certainly impending* to constitute injury in fact, and . . . allegations of *possible* future injury are not sufficient.” *Clapper v. Amnesty, Intl USA*, 568 U.S. 398, 409 (2013) (citations, internal quotation marks, and brackets omitted). Plaintiffs here have pled precisely the type of speculative injury *Clapper* forbids. Indeed, Plaintiffs’ alleged injuries only arise if: (1) an

elector casts an absentee ballot in a 2020 election;¹ (2) local elections officials wrongly reject that ballot based on signature verification; and/or (3) local elections officials inconsistently apply the law and reject ballots without providing an opportunity to cure. This leap in logic further strains credulity when considered in light of *an entirely new cure process* enacted in 2019 that Plaintiffs have not alleged deprived anyone of their constitutional rights, as applied. *See* O.C.G.A. § 21-2-386(a)(1)(C). These steps show an “open-ended[] number of independent events [that] cast the injury into the realm of conjecture and speculation.” *Browning*, 522 F.3d at 1162 (citation omitted). Standing is not established by such “conjecture” about third parties’ intentional conduct or “unavoidable human errors.” *Id* at 1163-64.

B. Plaintiffs’ challenges to signature verification are not traceable to the State Defendants.

Whatever the substantive merits of Plaintiffs’ arguments in Counts I and II, they are directed at the wrong parties: neither the Secretary nor the SEB implement the handwriting security efforts. The challenged portion of Code Section 21-2-386 provides:

If the elector[’s] signature does not appear to be valid . . . the registrar or clerk shall write across the face of the envelope “Rejected,” giving the reason therefor. The board of registrars or

¹ Notably, for DPG to satisfy associational standing, this elector would necessarily have to be an unnamed member.

absentee ballot clerk shall promptly notify the elector of such rejection Such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot.²

O.C.G.A. § 21-2-386(a)(1)(C). The statutory text reveals the fatal flaw with Plaintiffs’ claims against the State Defendants on signature match: neither the Secretary nor the SEB are mentioned in the challenged statute, and neither exercises any of the discretion about which Plaintiffs complain. *See, e.g.*, [Doc. 30 at ¶ 9 (describing local election officials being “left to their own devices”); ¶ 45 (discussing review of absentee ballots); ¶ 49 (addressing “election officials” empowered to reject ballots for different handwriting); ¶ 66 (comparing handwriting-based rejections in different counties)].

Finding nothing in the challenged statute to support their claims, Plaintiffs assert an attenuated and generalized theory of causation by the State Defendants. The Amended Complaint states that as “the chief elections officer of the State [the Secretary] is responsible for the administration of the state laws affecting voting.” [Doc. 30 ¶ 28]. Plaintiffs’ attack on the SEB is even weaker; they do not challenge an SEB rule and appear to argue that the general authority to enact rules somehow causes them harm. *Id.* at ¶ 29.

² The Amended Complaint does not challenge the means of curing the absentee ballot rejection or other bases to reject a ballot.

Finally, the lawsuit blames State Defendants for the acts of local officials by claiming – without citation – that the executive branch is authorized to “direct the [election] officials in each county.” *Id.* at ¶ 30.

A very charitable reading of the Amended Complaint would be that Plaintiffs are allegedly injured when State Defendants enforce the challenged statutes. The problem with this theory, however, is that Plaintiffs have not alleged that State Defendants have taken any action (or that any such action is imminent) to enforce the handwriting requirement (or not to enforce the pending rule on prompt notice). Nor have Plaintiffs alleged that any mail-in absentee ballots were improperly rejected by local officials; that any such voter appealed their cases to the SEB; or that any organization filed any complaints with the SEB. *See generally*, [Doc. 30 at ¶¶ 1-95]. Finally, Plaintiffs have not alleged that the Secretary alone possesses the authority to sanction local officials for violations of the Election Code.

These omissions raise three inescapable problems for Plaintiffs’ Amended Complaint. First, standing must be based on alleged harms that are “‘fairly . . . trace[able]’ to the **defendant’s conduct**, as opposed to the action of an absent third party.” *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1296 (11th Cir. 2019) (citation omitted) (emphasis added). The “specter” of enforcement does not establish standing. *Lewis*, 944 F.3d at 1298. This

analysis must take place **before** a consideration of the merits, “no matter how weighty.” *Id.* Second, the absence of a statute commanding State Defendants to affirmatively enforce the handwriting requirement weighs strongly against Plaintiffs’ claims. *Id.* at 1299-1300.³

Third, binding precedent dictates if alleged injuries arise from a defendant’s insufficient regulation of someone other than the plaintiff, “much more” is needed to demonstrate standing than typically is necessary in cases in which the plaintiff is the direct regulatory target. *Lewis*, 944 F.3d at 1304–05 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). This is particularly true when claims rest on “the response of the regulated (or regulable) third party to the government action or inaction – and perhaps on the response of others as well.” *Id.* Put succinctly by the Supreme Court, when “[t]he existence of one or more of the essential elements of standing depends on the unfettered choices made by independent actors not before the courts . . . standing . . . is ordinarily substantially more difficult to establish.” *Lujan*, 504 U.S. at 560 (1992) (internal quotation marks omitted). Because

³ To be sure, Plaintiffs are not without remedy. They have brought an action against Gwinnett County election officials to challenge the handwriting requirement, which local election officials unquestionably implement. *See* [Doc. 30 at ¶¶ 96-103]. State Defendants express no further opinion on the viability of any claim against local election officials.

Plaintiffs have not alleged that an injury traceable to State Defendants, they cannot establish the type of causation required to confer standing.⁴

II. Plaintiffs' claims against State Defendants are not justiciable.

Setting aside Plaintiffs' lack of standing, the Court does not have jurisdiction over a "case or controversy" here because Counts I through V are either moot (because of the SEB's recent rulemaking) or, to the extent Plaintiffs allege an as-applied challenge in Counts III through V, are not ripe.

⁴ Any reliance on *Grizzle v. Kemp*, 634 F.3d 1314 (11th Cir. 2011), would be misplaced and dated. *Grizzle* was decided well before *Lewis*, and the latter sharpens the Eleventh Circuit's analysis on how state actors are constrained by state law. *Lewis* considered specific aspects of state law and rejected an approach that relied on general statements about the powers of the Alabama Attorney General that are similar to those raised by the Plaintiffs about the authority of State Defendants. 944 F.3d at 1300. In addition, questions on the limitations of the Secretary's and the SEB's authority are based in state law. And, neither the Court in *Grizzle* nor the Plaintiffs cite any Georgia court's decision on the meaning of the phrase "chief election officer" in two statutes. *Id.* [Doc. 30 ¶ 28]. Thus, at the very least, this Court should certify the question of the meaning of the phrase "chief election officer" in Code Section 21-2-50(b) to the Supreme Court of Georgia to opine on whether the Secretary is responsible for every act of every local election official or whether the multitude of statutes that empower local officials to act mean what they say. *See Looney v. Moore*, 861 F.3d 1303, 1314 (11th Cir. 2017) ("When substantial doubt exists about the answer to a material state law question upon which the case turns, a federal court should certify that question to the state supreme court in order to avoid making unnecessary state law guesses and to offer the state court the opportunity to explicate state law.").

A. Plaintiffs' claims are moot.

Plaintiffs challenge the notification procedure afforded to voters with rejected mail-in absentee ballots. They claim the statutory phrase “promptly notify” in O.C.G.A. § 21-2-386(a)(1)(C) is vague and allows for different interpretations in different counties. Plaintiffs allege that this diversity of interpretation fails to satisfy the First Amendment, procedural due process, and Equal Protection. [Doc. 30 at ¶¶ 80-95]. The SEB’s adoption of Rule 183-1-14-.13 and additional proposed amendment to that rule moot these claims.

SEB Rule 183-1-14-.13 sets forth specific and standard notification procedures that all counties must follow after rejection of a timely mail-in absentee ballot.⁵ The SEB’s additional proposed amendment to Rule 183-1-14-.13 will further expand the methods and timing of notices under the current rule:

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector’s voter

⁵ A copy of the current Rule 183-1-14-.13, together with other rules the SEB adopted at the same time, is attached hereto as Exhibit A. When considering a motion to dismiss, a court may take judicial notice of the public record because the accuracy of such documents may be readily determined by looking to sources whose accuracy cannot reasonably be questioned. See *Bryant v. Avado Brands Inc.*, 187 F.3d 1271, 1279–80 (11th Cir. 1999).

registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.⁶

In addition to addressing the timing in which county election officials must send notice to voters whose absentee ballots are rejected, O.C.G.A. § 21-2-386(a)(1)(C) requires county elections officials to give voters an opportunity to cure a rejected mail-in absentee ballot up to three days after the election.

Mootness is a jurisdictional defense. *Friends of the Earth, Inc.*, 528 U.S. at 168. A claim can become moot at any time. *See Arizonans for Official English v. Arizona*, 520 U.S. 43, 45 (1997). And, a case must be dismissed when the issues presented “are no longer ‘live.’” *De La Teja v. U.S.*, 321 F.3d 1357, 1362 (11th Cir. 2003). This can occur when, as here, there is a change in the law. *United States v. Georgia*, 778 F.3d 1202, 1205 (11th Cir. 2015). When that occurs, plaintiffs must present affirmative evidence that their

⁶ A copy of the SEB's notice of proposed amendment to Rule 183-1-14-.13, which includes another rule, is attached hereto as Exhibit B. According to the notice, the SEB will consider the proposed amendment on February 28, 2020.

claims remain viable. *See National Advertising Co. v. City of Miami*, 402 F.3d 1329, 1334 (11th Cir. 2005).

The approval of Rule 183-1-14-.14 addresses Plaintiffs' concerns about uniformity and moots the claims against State Defendants.

B. In the alternative, Plaintiffs' claims are not otherwise ripe.

"Ripeness . . . is a 'justiciability doctrine designed to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.'" *Wollschlaeger v. Governor*, 848 F.3d 1293, 1304 (11th Cir. 2017) (en banc) (quoting *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 807 (2003)). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. U.S.*, 523 U.S. 296, 300 (1998) (internal quotations omitted). Here, if the Court determines that Plaintiffs' claims in Counts III, IV, and V are not moot, the claims are not ripe—Plaintiffs have alleged no unconstitutional application of the law since its 2019 amendment, nor have they done so in light of the SEB's Proposed Rule.

First, Plaintiffs' procedural due process claim (Count III) is not yet ripe. The Eleventh Circuit has confirmed that "a procedural due process violation is not complete 'unless and until the state fails to provide due process.'" *McKinney v. Pate*, 20 F.3d 1550, 1557 (11th Cir. 1994) (quoting *Zinerman v.*

Burch, 494 U.S. 113, 126 (1990)). *See also Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 199-200 (1985) (due process claim not ripe until after application of regulation at issue). Plaintiffs' inability to allege any deprivation of process is fatal to their claim.

Counts IV and V, alleging violations of equal protection, are also not ripe because Plaintiffs cannot show any "hardship" in withholding judicial consideration of the claims until after the new regulation has become effective. *U.S. v. Rivera*, 613 F.3d 1046, 1050 (11th Cir. 2010). Any other conclusion is impermissibly based on speculation.

III. Plaintiffs have failed to state a claim for which relief can be granted for Counts III, IV, and V.

In addition to the Plaintiffs' lack of standing to bring Counts III through V, the Amended Complaint fails to state a substantive claim of constitutional violations in the absentee ballot verification process. Despite numerous elections in 2019 (under the new law), Plaintiffs have failed to identify any voter deprived of his or her constitutional rights by the administration of Georgia's absentee ballot laws. In fact, Plaintiffs identify no application, let alone an unconstitutional one, of the statutes since the cure period found in O.C.G.A. § 21-2-386(a)(1)(C) was enacted. Accordingly, Plaintiffs are presenting a facial challenge—disfavored by the courts.

A. Plaintiffs' claims are facial challenges and Plaintiffs therefore must show that the law is unconstitutional under any set of circumstances.

Plaintiffs' claims in Counts III through V are facial challenges to Georgia's requirement that voters be "promptly notif[ied]" their absentee ballot was rejected. *See* [Doc. 30 at ¶¶ 82, 87, 93]. "A facial challenge is one that seeks to invalidate a law 'even though [the law's] application in the case under consideration may be constitutionally unobjectionable.'" *Jacobs v. The Fla. Bar*, 50 F.3d 901, 905-906 (11th Cir. 1995) (citations omitted). The claims here are brought by third parties who fail to identify a single voter whose constitutional rights were deprived by applying the promptly notify statute.

Even more confounding, Plaintiffs do not identify any unconstitutional application of the statute—even in the abstract—after enactment of the cure provision, which operates in tandem with the prompt notice requirement. O.C.G.A. § 21-2-386(a)(1)(C). And as discussed, there are no allegations about the new SEB rule. Rather than seeking to challenge the law's application since its amendment in 2019, Plaintiffs cite only pre-2019 application of the law as a basis for their claims.

Plaintiffs' framing of the issue impermissibly asks this Court to ignore changes in the same statutory provision that set a deadline to cure an

absentee ballot. *See* O.C.G.A. § 21-2-386(a)(1)(C) (“such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot.”). And, Plaintiffs’ alleged facts are about statutory text that no longer exists after it was signed into law in April 2019. This renders Plaintiffs’ challenges to the “prompt notification” provisions facial in nature.

Facial challenges are generally disfavored by courts for several reasons. First, “they raise the risk of ‘premature interpretation of statutes on the basis of factually barebones records.’” *Wash. State Grange v. Wash. State Republican Party*, 552, U.S. 442, 450 (2008) (citation omitted). Second, they wrongly require courts to “anticipate a question of constitutional law.” *Id.* at 450–51 (quoting *Ashwander v. TVA*, 297 U.S. 288, 346–347 (Brandeis, J., concurring)). Third, “facial challenges threaten to short circuit the democratic process,” because “a ruling of unconstitutionality frustrates the intent” of representatives elected by the people and laws embodying the will of the people. *Id.* at 451 (quoting *Ayotte v. Planned Parenthood of No. New Eng.*, 546 U.S. 320, 329 (2006) and *Regan v. Time, Inc.*, 468 U.S. 641, 652 (1984)).

Plaintiffs’ challenge here implicates all three of these concerns. Plaintiffs’ Complaint leaves no room to consider a full factual record, ignoring the change in Georgia’s statutes and rules. Further, Plaintiffs seek to

invalidate Georgia law based only on application of the prior version of the statute (and no clarifying rule)—asking this Court to determine a hypothetical question of constitutional law and hold invalid the will of the General Assembly without any firm basis of unconstitutional application. Accordingly, Plaintiffs must be held to the standard required of facial challenges: “[a] plaintiff challenging a law as facially unconstitutional ‘must establish that no set of circumstances exists under which the [law] would be valid.’” *J.R. v. Hansen*, 803 F. 3d 1315, 1320 (11th Cir. 2015) (*Hansen II*) (citation omitted).

B. Plaintiffs’ Procedural Due Process claim (Count III) fails to state a claim and must be dismissed.

Plaintiffs’ procedural due process challenge to the “prompt notification” contains three elements: “(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process.” *Grayden v. Rhodes*, 345 F.3d 1225, 1232 (11th Cir. 2003) (citation omitted). *See* [Doc. 30 at ¶¶ 82–84]. However, Plaintiffs’ assertion ignores the import of the adopted SEB rule and the proposed amendment, and, in any event, fails to account for the cure provision enacted in 2019.

When determining a facial challenge to the constitutional adequacy of process, courts in the Eleventh Circuit “look[] to the statute as written,” not a

party's description of how it might operate. *J.R. v. Hansen*, 736 F.3d 959, 966 (11th Cir. 2013) (*Hansen I*). In so doing, courts consider a number of factors “to determine what process is due,” including: the private interest affected; the risk of erroneous deprivation through the procedures used; the probative value of additional or substitute procedural safeguards; and the Government's interest, including fiscal and administrative burdens of additional process.” *Id.*, 736 F.3d at 966 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

O.C.G.A. § 21-2-386(a)(1)(C) satisfies these requirements. Local officials “shall promptly notify” the voter of the rejection. *Id.* Any voter whose absentee ballot is rejected has until the end of the period for verifying provisional ballots (three days after the election) to cure the problem resulting in the ballot's rejection. *Id.* Thus, any absentee voter with a missing or mismatched signature, or whose mail-in absentee ballot is rejected for missing information or the voter is otherwise found to be disqualified, receives both notice and an opportunity to be heard. O.C.G.A. § 21-2-386(a)(1)(C).

Plaintiffs take issue with the promptness of notification provided for in Georgia law, but fail to recognize the impact of the statutory cure provision or the new SEB Rule establishing a specified time by which “prompt

notification” must be provided to the voter. In other words, Plaintiffs have not sufficiently pled degradation of Procedural Due Process in light of these important changes. At the very least, Plaintiffs have not shown, and cannot show, that “no set of circumstances exist in which the [law] would be valid.” *Hansen II*, 272 F.3d at 1329. In fact, Plaintiffs themselves suggest that the law provides notice and opportunity to be heard, so long as the notice is sufficiently prompt. [Doc. 30 at ¶ 56]. Because of the facial nature of Plaintiffs’ claims, this is fatal.

C. Plaintiffs’ allegations in Counts IV and V fail to state a claim and must be dismissed.

Plaintiffs also assert that State Defendants failed to ensure equal protection and the First Amendment rights of absentee voters across county lines because of varied county interpretations of “promptly notify.” However, Plaintiffs have failed to state a claim in their Count Four since equal protection claims generally require discriminatory intent. Even if discriminatory intent were not required for Count IV, Plaintiffs’ facial challenges still fail here and for Count V.

1. Count IV fails to state a claim and must be dismissed.

Plaintiffs’ claim in Count Four is for Equal Protection and is predicated upon the alleged differing standards for counties “promptly notify[ing]”

absentee voters of problems with their signature. [Doc. 30, ¶¶ 85–90]. This claim is different from those premised on an undue burden on the right to vote, as it requires Plaintiffs to show discriminatory intent. They have not even alleged it.

“A facially-neutral law violates the Equal Protection Clause if adopted with the intent to discriminate against a racial group.” *Johnson v. Governor of Fla.*, 405 F.3d 1214, 1222 (11th Cir. 2005). Such a claim is “cognizable in the voting context if the plaintiff alleges that discriminatory animus motivated the legislature to enact a voting law.” *Democratic Exec. Cmte. of Fla. v. Lee*, 915 F.3d 1312, 1319 n.9 (11th Cir. 2019) (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977)).⁷ Because Plaintiffs have failed to allege a discriminatory animus or intent, their allegations in Count IV fail to state a claim and must be dismissed.

Even if the Court determines Plaintiffs’ Count IV has stated a cognizable claim under Equal Protection, it still fails. The first step in any equal protection claim is to establish that a recognizable distinct class is singled out for different treatment under the laws as written or as applied.

⁷ This is different than a claim that also alleges an unconstitutional burden on the right to vote, as Plaintiffs do in Count Five. That claim is subject to the *Anderson-Burdick* framework. *Lee*, 915 F.3d at 1319, n.9.

Castaneda v. Partida, 430 U.S. 482, 494 (1977). Here, Plaintiffs also fail this first step. Plaintiffs’ complaint is not that the statute itself singles out any specific group for disparate treatment; it is that a local elections official in one county *might* discharge their duties more effectively than another.

However, the statute charges all responsible officials with the same command. There is nothing inherent in the statute that would disadvantage any particular elector or group of electors. And where, as here, there are no allegations that Plaintiffs are members of a suspect or quasi-suspect class, “[t]he general rule is that [the state action] is presumed to be valid and will be sustained if the classification drawn by the [state action] is rationally related to a legitimate state interest.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

Finally, Plaintiffs’ Equal Protection is still a facial one and Plaintiffs cannot establish that no set of circumstances exists under which the [law] would be valid.” *Hansen II*, 803 F. 3d at 1320 (quoting *Horton*, 272 F. 3d at 1329). Instead, the law in light of the SEB’s Proposed Rule indicates quite the opposite—that all local election officials will be subject to a uniform standard under which they are to “promptly notify” a voter of a missing or mismatched signature, rather than allowing counties to vary in their interpretation of

prompt notification. [Doc. 30 at ¶ 87]. Accordingly, Plaintiffs' Equal Protection Claim fails to state a claim.

2. Count V fails to state a claim and must be dismissed.

In Count V, Plaintiffs allege that Georgia's absentee ballot laws impose an undue burden on the right to vote in violation of the First and Fourteenth Amendments. [Doc. 30 at ¶¶ 91–95]. Again, however, Plaintiffs have ignored the import of the SEB's Proposed Rule and any conduct deviating from the standard contained therein would be traceable to local election officials, not the State Defendants.

IV. Conclusion.

The Court should dismiss Plaintiffs' Amended Complaint, because Plaintiffs lack standing; their claims are not justiciable; and they have failed to state claims for relief against State Defendants.

This 31st of January, 2020.

By: /s/ Vincent R. Russo

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing BRIEF IN SUPPORT OF STATE DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMOPLAINT has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Vincent R. Russo
Vincent R. Russo

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EXHIBIT A

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**RULES
OF
THE STATE ELECTION BOARD**

**CHAPTER 183-1
GEORGIA ELECTION CODE**

**SUBJECT 183-1-14
ABSENTEE VOTING**

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183-1-14-.02 Advance Voting

(1) Counties and municipalities shall use electronic markers and ballot scanners for in-person absentee voting during the advance voting period. As used in this rule, the term "registrar" or "registrars" means a county board of registrars, a county board of elections and registration, a joint county-municipal board of elections and registration, a municipal absentee ballot clerk, a municipal registrar, or the designee of a board of registrars, board of elections and registration, or joint county-municipal board of elections and registration.

(2) The registrar shall publish the times, dates, and locations of the availability of advance voting in their jurisdiction on a publicly accessible website, or if the registrar does not have a website, in a newspaper of general circulation or by posting in a prominent location in the county, no later than 7 days prior to the beginning of the advance voting period. Any additional advance voting locations added after that deadline shall be published as soon as possible. The registrar shall endeavor not to remove or alter any advance voting locations after they are published, but if emergency or unforeseen circumstances make such a change necessary, the registrar shall publish those changes as soon as possible.

(3) Electronic ballot markers and ballot scanners shall be configured and tested in accordance with the provisions of Rule 183-1-12-.08 prior to use in advance voting. Public notice of the time and place for such configuration and testing of the electronic ballot markers and ballot scanners to be used for advance voting shall be given in accordance with O.C.G.A. § 21-2-374 and 21-2-379.25 and Rule 183-1-12-.08 prior to such configuration and testing.

(4) The electronic ballot markers and ballot scanners to be used for advance voting shall be set up in a manner to assure the privacy of the elector while casting his or her ballot while maintaining the security of such components against tampering, damage, or other improper conduct. In addition, there shall be at least one electronic ballot marker configured for use by physically disabled electors, at each advance voting location.

(5) Voter access cards for use in electronic ballot markers for advance voting may be encoded by use of an electronic poll book or other device approved by the Secretary of State. The registrar may also utilize the correct access code to manually bring up the correct ballot on the touchscreen.

(6) Magnifying devices shall be available at advance voting locations to assist voters in reviewing their paper ballots.

(7) On the first day of the advance voting period, prior to any votes being cast on ballot scanners, the registrars shall verify that the seals for each electronic ballot marker, ballot scanner, and ballot box are intact and that there is no evidence or indication of any tampering with the seal or the component. The registrars shall verify that the number of the seal matches the number of the seal recorded for that component when such component was prepared by the election superintendent for the primary, election, or runoff. If a seal number does not match or if there is any evidence or indication of tampering with the seal or component, the election superintendent shall be immediately notified and such component shall not be used until such matters are resolved by agreement of the election superintendent and the registrars. The set up shall be performed in public and the public may view the set up subject to such reasonable rules and regulations as the registrars may deem appropriate to protect the security of the voting system components and to prevent interference with the duties of the registrars. The registrars and two witnesses sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall run a zero tape on each ballot scanner prior to the beginning of advance voting on those scanners, and the registrar and the two witnesses shall sign the zero tape in the space provided. The registrars shall verify that the electronic ballot markers and ballot scanners all indicate zero counts prior to the opening of the polls. If the tape does not show zero votes prior to the start of voting, the election superintendent shall be immediately notified and such component shall not be used until the component is cleared and the matter is resolved by agreement of the election superintendent and the registrars. The registrar and the same two sworn witnesses who signed the zero tape shall inspect and confirm that the ballot box associated with that scanner is empty and contains no ballots or other unauthorized matter, and shall verify that fact in writing on a form to be developed by the Secretary of State. Such form shall include the date and time it was executed, shall be attached to the zero tape generated by the ballot scanner attached to that ballot box, and shall be returned to the election superintendent at the close of the advance voting period with the other paperwork from the voting location. The registrars shall verify that there is no unauthorized matter affixed to the electronic ballot markers, ballot scanners, or voting booths. The registrars shall affix a card of instructions for voting within each voting booth. Prior to voters entering the voting booth, the registrars may also distribute to such voters a card of instructions for voting that has been approved or provided by the Secretary of State.

(8) If at the close of voting on any day during the advance voting period, there are more than 1,500 ballots inside any ballot box, the registrar and two sworn witnesses shall unseal the ballot box, remove the paper ballots, and place the ballots in one or more durable, portable, secure, and sealable containers. The registrars shall complete and affix to each container a form identifying the advance voting location, the advance voting dates that the ballots were cast, the ballot scanner serial number, the number assigned to that ballot scanner for that specific election, the count of the ballots from the ballot scanner, and the date and time that the ballot box was

emptied. The container shall be sealed and signed by the registrar and the two witnesses such that it cannot be opened without breaking the seal. The ballot box shall be resealed, and the new seal numbers shall be documented. The registrar and at least one sworn witness shall deliver the ballot container to the election superintendent for secured storage until time for the tabulation of votes, and the election superintendent shall complete a chain of custody form indicating the delivery of the secure container. The form shall be signed by the registrar and any witnesses who travelled with the registrar indicating that no sealed documents were unsealed enroute and have not been tampered with. In the discretion of the registrar, the same procedure for emptying the ballot box may be followed if there are less than 1,500 ballots in the ballot box at the end of any advance voting day, but the ballot box shall not be opened while voting is taking place except as authorized by Rule 183-1-12-.10(5).

(9) At the close of voting each day during the advance voting period, the registrars shall document the election counter number from the ballot scanner on the daily recap sheet. The memory cards shall remain in the ballot scanner at all times during the advance voting period until the polls close on the day of the primary, election, or runoff. Each electronic ballot marker, ballot scanner, ballot box, electronic poll book, paper backup poll book, and voter access cards shall then be secured overnight. If the room where advance voting is taking place cannot be locked and secured overnight in the reasonable judgment of the superintendent, the superintendent shall cause the voting system components to be stored in a locked, secure container that is reasonably affixed to the polling place; be under visual surveillance of an election official or their designee, a licensed security guard, or a law enforcement official; or if, if the previously listed options are not feasible, in another manner that in the reasonable judgment of the superintendent secures and protects the voting system components from unauthorized access. Any electronic visual surveillance used for security when voting is not taking place shall not record, capture, or otherwise compromise the privacy of an elector's ballot.

(10) Each morning during the advance voting period prior to voting beginning, the registrars shall verify the seal numbers on each electronic ballot marker and ballot scanner to be used for advance voting with the number of the seal recorded on the daily recap sheet from the previous day of advance voting and shall verify that the seals do not show any signs of tampering. If the seal number corresponds to the entry on the daily recap sheet and there is no evidence of tampering, the electronic ballot markers and ballot scanners shall be turned on. If the numbers do not match or there is evidence of tampering, the election superintendent shall be notified immediately and the component shall not be used until such discrepancy is resolved to the satisfaction of the election superintendent and the registrars. After turning on the ballot scanners, the registrars shall verify the election counter number with the number recorded on the daily recap sheet from the previous day of advance voting. If the numbers do not match, the election superintendent shall be immediately notified and the component shall not be used until such discrepancy is resolved to the satisfaction of the election superintendent and the registrars. The election counter number shall then be entered onto the daily recap sheet for that day.

(11) Voters who vote absentee ballots in person shall first complete an absentee ballot application and sign an oath, which may be on the same form and may be on paper or digital. After the registrars determine that the voter is eligible to vote, the registrars shall note the voter's registration number and ballot style on the absentee ballot application. Each voter shall be

offered instruction by a registrar in the method of voting on the voting system, including specific instruction to review their printed ballot prior to scanning it. In providing such instruction, the registrar shall not in any manner request, suggest, or seek or persuade or induce any voter to vote any particular ticket or for any particular candidate, or for or against any particular question. The voter shall then be issued a voter access card programmed with the correct ballot style or the registrar shall use the correct access code to manually bring up the correct ballot on the electronic ballot marker. The voter shall then enter the enclosed space in the advance voting location and proceed to vote his or her choices. Upon making his or her selections, the voter shall cause the paper ballot to print, remove his or her printed ballot from the printer, remove the voter access card from the touchscreen unit, review the selections on his or her printed ballot, scan his or her printed ballot into the scanner, and return the voter access card to a poll worker.

(12) The registrars shall cause each advance voting location to be sufficiently staffed and a poll worker is to be stationed at every ballot scanner in use in the polling place while voting is occurring. The poll officer stationed at the ballot scanner shall offer instruction throughout the period while voting is occurring reminding voters to review their printed paper ballots.

(13) At the end of the advance voting period, the registrars shall record the election counter number from each ballot scanner on the daily recap sheet. The ballot scanners shall be shut down and sealed. The registrars shall record the seal numbers on the daily recap sheet. The registrar and two sworn witnesses shall unseal the ballot box, remove the paper ballots, and place the ballots in one or more durable, portable, secure, and sealable containers. The registrars shall complete and affix to each container a form identifying the advance voting location, the advance voting dates that the ballots were cast, ballot scanner serial number, the number assigned to that ballot scanner for that specific election, the count of the ballots from the ballot scanner, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the registrar and the two witnesses such that it cannot be opened without breaking the seal. The ballot box shall be resealed, and the new seal numbers shall be documented. The registrar and at least one sworn witness shall deliver the ballot container to the election superintendent for secured storage until time for the tabulation of votes, and the election superintendent shall complete a chain of custody form indicating the delivery of the secure container. The form shall be signed by the registrar and any witnesses who travelled with the registrar indicating that no sealed documents were unsealed enroute and have not been tampered with. The ballot scanners and ballot containers shall then be secured until time for the tabulation of votes.

(14) By the close of the polls on the day of the primary, election, or runoff, the registrars shall deliver all of the ballot scanners used for advance voting and all other absentee ballots received to the election superintendent or the tabulating center. The election superintendent or tabulating center personnel shall count all of the absentee ballots in accordance with the procedures required by law and the rules of the State Election Board. The election superintendent or tabulating center personnel shall verify the seal numbers of each ballot scanner with the numbers recorded on the daily recap sheet form and shall inspect each seal and unit to verify that there is no evidence of tampering with the unit. If the seal numbers are not correct or there is evidence of tampering, the Secretary of State and the election superintendent shall be notified immediately and no further action shall be taken with regard to such unit until the reason for the discrepancy has been determined to the satisfaction of the election superintendent.

(15) After verifying the seal number and the integrity of the seal on each ballot scanner, the election superintendent or tabulating center personnel shall open each ballot scanner and turn on the power. The election superintendent or tabulating center personnel shall then compare the numbers shown on the election counters of the ballot scanners with the numbered list of absentee electors and the absentee ballot recap form to verify that there are no discrepancies. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. The election superintendent or tabulating center personnel shall cause each ballot scanner to print a minimum of three tapes showing the vote totals as cast on that ballot scanner. Three witnesses shall sign each of the tapes or shall write on the tapes the reason why they will not sign the tapes. One copy of the results tape for each ballot scanner shall be made available for the information of the public. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purpose), provided by the election superintendent along with "poll worker" memory cards from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The envelope shall be initialed by the poll manager and the two witnesses indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the absentee ballot recap form.

(16) After completing the printing of the results, the ballot scanner shall be turned off, secured, and resealed. The ballot scanners shall then be placed in a secure area with appropriate climate control. The envelopes containing the memory cards and results tapes, voter access cards, poll worker cards, ballot encoder devices, numbered lists of absentee voters, absentee ballot recap forms, and other such paperwork shall be transported to the office of the election superintendent by the election superintendent or tabulating center personal, which transportation shall at all times involve at least two authorized individuals. The office of the election superintendent shall receive the materials and shall document delivery. The election superintendent or tabulating center personal who travelled with the materials shall sign a form indicating that no sealed documents were unsealed enroute and that the materials have not been tampered with.

(17) Any notices to the Secretary of State about discrepancies in numbers or seals, zero tapes, or election counters shall also be forwarded to members of the State Election Board, but such information shall be considered confidential if the Secretary of State has initiated an investigation of the matter.

Authority: O.C.G.A. §§ 21-2-31, 21-2-385

183-1-14-.11 Mailing and Issuance of Ballots

During early voting, as additional applicants for absentee ballots are determined to be eligible, the board of registrars or absentee ballot clerk shall mail or issue official absentee ballots or

provisional absentee ballots, if appropriate, to such additional applicants immediately upon determining their eligibility. The board or clerk shall make such determination and mail or issue official absentee ballots; provisional absentee ballots, if appropriate, or notices of rejection of absentee ballot applications to such additional applicants within 3 business days after receiving the absentee ballot applications.

Authority: O.C.G.A. §§ 21-2-31, O.C.G.A. § 21-2-384

183-1-14-.12 Eligibility of Application for Absentee Ballot

(1) The application for an absentee ballot shall be in writing and shall contain sufficient information for proper identification of the elector. To be deemed sufficient, an application for an absentee ballot must contain the signature of the applicant.

(a) In the case of the elector making such application for an absentee ballot, the application shall contain the signature of such elector.

(b) In the case of a relative making an application on behalf of an elector pursuant to O.C.G.A. § 21-2-381(a)(1)(B), the application shall contain the signature of the elector's relative as well as the relationship of the relative to the elector.

(2) Any person or entity, except an election superintendent or registrar, that creates an application for absentee ballot form for an elector, other than the elector themselves, shall ensure that the absentee ballot form is substantially in the same form as the application for absentee ballot form made available by the Secretary of State. Such person or entity shall also clearly disclose on the face of the application for absentee ballot form that they created the application for absentee ballot form. Any nonconforming application for absentee ballot shall still be processed if it meets the legal requirements of O.C.G.A. § 21-2-381(a).

Authority: O.C.G.A. §§ 21-2-31, 21-2-381

183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall notify the elector by mailing written notice no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected after the close of the advance voting period, the board of registrars or absentee ballot clerk shall notify the elector by mailing written notice no later than 3:00 PM on the next business day. The board of registrars or absentee ballot clerk shall also attempt to notify the elector by email and telephone within the same time requirements if an email or telephone number is on the elector's voter registration record.

Authority: O.C.G.A. §§ 21-2-31, 21-2-386

EXHIBIT B

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**NOTICE OF INTENT TO POST A RULE OF THE STATE ELECTIONS BOARD,
CHAPTER 183-1-14, RULES OF STATE ELECTION BOARD, RULE 183-1-14-.02
ADVANCE VOTING AND 183-1-14-.13 PROMPT NOTIFICATION OF ABSENTEE
BALLOT REJECTION.**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia State Election Board, (hereinafter "SEB") proposes to post an SEB rule, Rule 183-1-14-.02 *Advanced Voting* and Rule 183-1-14-.13 *Prompt Notification of Absentee Ballot Rejection* (hereinafter "proposed rule").

This notice, together with an exact copy of the proposed new rule amendment and a synopsis of the proposed rule amendment, is being distributed to all persons who have requested, in writing, that they be placed on a distribution list. A copy of this notice, an exact copy of the proposed rule amendment, and a synopsis of the proposed rule amendment may be reviewed during normal business hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, except official state holidays, at the Office of the Secretary of State, Elections Division, 2 Martin Luther King Jr. Drive, S.E., 8th Floor West Tower, Atlanta, Georgia 30334. These documents will also be available for review on the State Election Board's web page at https://sos.ga.gov/index.php/elections/state_election_board. Copies may also be requested by contacting the Elections Division at 404-656-2871.

To provide the public an opportunity to comment upon and provide input into the proposed rule amendment, a public hearing will be held on:

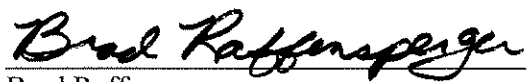
February 28, 2020
9:00 a.m.
2 Martin Luther King Jr. Dr. SE
18th Floor, West Tower
Room 1816
Atlanta, GA 30334

At the public hearing anyone may present data, make a statement, comment or offer a viewpoint or argument whether orally or in writing. Oral statements should be concise and will be limited to 3 minutes per person. Additional comments should be presented in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record on or before February 17, 2020 to the below address for written comments. Written comments must be received on or before February 17, 2020 and be addressed to Jasmine Shannon by mail to Office of the Secretary of State, Elections Division, 2 Martin Luther King Jr. Drive, S.E., 8th Floor West Tower, Atlanta, Georgia 30334 or by email to jshannon@sos.ga.gov.

The State Election Board will consider the proposed rule at a meeting scheduled to begin at 9:00 a.m. on February 28, 2020 at 2 MLK Jr. Dr. SE, 18th Floor, West Tower, Room 1816, Atlanta, Georgia 30334.

This notice is given in compliance with O.C.G.A. § 50-13-4.

This 24th day of January, 2020.

A handwritten signature in black ink, reading "Brad Raffensperger", written over a horizontal line.

Brad Raffensperger
Chairman, State Elections Board

Posted: January 24, 2020

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**SYNOPSIS OF THE PROPOSED RULE OF THE
STATE ELECTIONS BOARD, CHAPTER 183-1-14, *RULES OF STATE
ELECTION BOARD*, RULE 183-1-14-.02 *ADVANCE VOTING*, RULE 183-1-14-.11
MAILING AND ISSUANCE OF BALLOTS AND 183-1-14-.13 *PROMPT
NOTIFICATION OF ABSENTEE BALLOT REJECTION***

Purpose: The purpose of the rule is to revise the procedures for advance and absentee voting to be consistent with the requirements of the updated laws and new voting system.

Main Features: The main feature of the rule is to update the procedures for absentee voting to comply with Georgia law and to conform to the new components of the voting system. Rule 183-1-14-.02 is being revised to instruct election officials on how to conduct advance voting using the new voting equipment. Rule 183-1-14-.13 is being created to ensure that election officials promptly notify electors when their absentee ballots have been rejected and the opportunity to cure the issue so their ballot may be counted.

**DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED
AMENDMENTS OF THE STATE ELECTION BOARD, CHAPTER 183-1-14,
RULES OF STATE ELECTION BOARD, RULE 183-1-14-.02 *ADVANCE VOTING*
AND RULE 183-1-14-.13 *PROMPT NOTIFICATION OF ABSENTEE BALLOT
REJECTION***

NOTE: Struck through text is proposed to be deleted. Underlined text is proposed to be added.

RULE 183-1-14-.02 Advance Voting

(1) ~~Counties and municipalities shall use~~All federal, state, and county primaries and elections shall be conducted using electronic ballot markers and ballot scanners for in-person absentee voting during the advance voting period. As used in this rule, the term "registrar" or "registrars" means a county board of registrars, a county board of elections and registration, a joint county-municipal board of elections and registration, a municipal absentee ballot clerk, a municipal registrar, or the designee of a board of registrars, board of elections and registration, or joint county-municipal board of elections and registration.

(2) The registrar shall publish the times, dates, and locations of the availability of advance voting in their jurisdiction on the homepage of the county's a publicly accessible website associated with elections and/or registrations, or if the ~~registrar~~ county does not have such a website, in a newspaper of general circulation ~~or~~ and by posting in a prominent location in the county, no later than 7 days prior to the beginning of the advance voting period. Any additional advance voting locations added after that deadline shall be published as soon as possible. The registrar shall endeavor not to remove or alter any

advance voting locations after they are published, ~~but if~~ unless there are emergency or unforeseen circumstances make such a change necessary, in which case the registrar shall publish those changes as soon as possible.

(3) Electronic ballot markers and ballot scanners shall be configured and tested in accordance with the provisions of Rule 183-1-12-.08 prior to use in advance voting. Public notice of the time and place for such configuration and testing of the electronic ballot markers and ballot scanners to be used for advance voting shall be given in accordance with O.C.G.A. §§ 21-2-374 and 21-2-379.25 and Rule 183-1-12-.08 prior to such configuration and testing.

(4) The electronic ballot markers and ballot scanners to be used for advance voting shall be set up in a manner to assure the privacy of the elector while casting his or her ballot while maintaining the security of such components against tampering, damage, or other improper conduct. In addition, there shall be at least one electronic ballot marker configured for use by physically disabled electors. at each advance voting location.

(5) Voter access cards for use in electronic ballot markers for advance voting may be encoded by use of an electronic poll book or other device approved by the Secretary of State. The registrar may also utilize the correct access code to manually bring up the correct ballot on the touchscreen.

(6) Magnifying devices shall be available at advance voting locations to assist voters in reviewing their paper ballots.

(7) On the first day of the advance voting period, prior to any votes being cast on ballot scanners, the registrars shall verify that the seals for each electronic ballot marker, ballot scanner, and ballot box are intact and that there is no evidence or indication of any tampering with the seal or the component. The registrars shall verify that the number of the seal matches the number of the seal recorded for that component when such component was prepared by the election superintendent for the primary, election, or runoff. If a seal number does not match or if there is any evidence or indication of tampering with the seal or component, the election superintendent shall be immediately notified and such component shall not be used until such matters are resolved by agreement of the election superintendent and the registrars. The set up shall be performed in public and the public may view the set up subject to such reasonable rules and regulations as the registrars may deem appropriate to protect the security of the voting system components and to prevent interference with the duties of the registrars. The registrars and two witnesses sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall run a zero tape on each ballot scanner prior to the beginning of advance voting on those scanners, and the registrar and the two witnesses shall sign the zero tape in the space provided. The registrars shall verify that the electronic ballot markers and ballot scanners all indicate zero counts prior to the opening of the polls. If the tape does not show zero votes prior to the start of voting, the election superintendent shall be immediately notified and such component shall not be used until the component is cleared and the matter is resolved by agreement of the election superintendent and the registrars. The registrar and the same two sworn witnesses who

signed the zero tape shall inspect and confirm that the ballot box associated with that scanner is empty and contains no ballots or other unauthorized matter, and shall verify that fact in writing on a form to be developed by the Secretary of State. Such form shall include the date and time it was executed, shall be attached to the zero tape generated by the ballot scanner attached to that ballot box, and shall be returned to the election superintendent at the close of the advance voting period with the other paperwork from the voting location. The registrars shall verify that there is no unauthorized matter affixed to the electronic ballot markers, ballot scanners, or voting booths. The registrars shall affix a card of instructions for voting within each voting booth. Prior to voters entering the voting booth, the registrars may also distribute to such voters a card of instructions for voting that has been approved or provided by the Secretary of State.

(8) If at the close of voting on any day during the advance voting period, there are more than 1,500 ballots inside any ballot box, the registrar and two sworn witnesses shall unseal the ballot box, remove the paper ballots, and place the ballots in one or more durable, portable, secure, and sealable containers. The registrars shall complete and affix to each container a form identifying the advance voting location, the advance voting dates that the ballots were cast, the ballot scanner serial number, the number assigned to that ballot scanner for that specific election, the count of the ballots from the ballot scanner, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the registrar and the two witnesses such that it cannot be opened without breaking the seal. The ballot box shall be resealed, and the new seal numbers shall be documented. The registrar and at least one sworn witness shall deliver the ballot container to the election superintendent for secured storage until time for the tabulation of votes, and the election superintendent shall complete a chain of custody form indicating the delivery of the secure container. The form shall be signed by the registrar and any witnesses who travelled with the registrar indicating that no sealed documents were unsealed enroute and have not been tampered with. In the discretion of the registrar, the same procedure for emptying the ballot box may be followed if there are less than 1,500 ballots in the ballot box at the end of any advance voting day, but the ballot box shall not be opened while voting is taking place except as authorized by Rule 183-1-12-.10(5).

(9) At the close of voting each day during the advance voting period, the registrars shall document the election counter number from the ballot scanner on the daily recap sheet. The memory cards shall remain in the ballot scanner at all times during the advance voting period until the polls close on the day of the primary, election, or runoff. Each electronic ballot marker, ballot scanner, ballot box, electronic poll book, paper backup poll book, and voter access cards shall then be secured overnight. If the room where advance voting is taking place cannot be locked and secured overnight in the reasonable judgment of the superintendent, the superintendent shall cause the voting system components to be stored in a locked, secure container that is reasonably affixed to the polling place; be under visual surveillance of an election official or their designee, a licensed security guard, or a law enforcement official; or if, if the previously listed options are not feasible, in another manner that in the reasonable judgment of the superintendent secures and protects the voting system components from unauthorized access. Any electronic visual surveillance

used for security when voting is not taking place shall not record, capture, or otherwise compromise the privacy of an elector's ballot.

(10) Each morning during the advance voting period prior to voting beginning, the registrars shall verify the seal numbers on each electronic ballot marker and ballot scanner to be used for advance voting with the number of the seal recorded on the daily recap sheet from the previous day of advance voting and shall verify that the seals do not show any signs of tampering. If the seal number corresponds to the entry on the daily recap sheet and there is no evidence of tampering, the electronic ballot markers and ballot scanners shall be turned on. If the numbers do not match or there is evidence of tampering, the election superintendent shall be notified immediately and the component shall not be used until such discrepancy is resolved to the satisfaction of the election superintendent and the registrars. After turning on the ballot scanners, the registrars shall verify the election counter number with the number recorded on the daily recap sheet from the previous day of advance voting. If the numbers do not match, the election superintendent shall be immediately notified and the component shall not be used until such discrepancy is resolved to the satisfaction of the election superintendent and the registrars. The election counter number shall then be entered onto the daily recap sheet for that day.

(11) Voters who vote absentee ballots in person shall first complete an absentee ballot application and sign an oath, which may be on the same form and may be on paper or digital. After the registrars determine that the voter is eligible to vote, the registrars shall note the voter's registration number and ballot style on the absentee ballot application. Each voter shall be offered instruction by a registrar in the method of voting on the voting system, including specific instruction to review their printed ballot prior to scanning it. In providing such instruction, the registrar shall not in any manner request, suggest, or seek or persuade or induce any voter to vote any particular ticket or for any particular candidate, or for or against any particular question. The voter shall then be issued a voter access card programmed with the correct ballot style or the registrar shall use the correct access code to manually bring up the correct ballot on the electronic ballot marker. The voter shall then enter the enclosed space in the advance voting location and proceed to vote his or her choices. Upon making his or her selections, the voter shall cause the paper ballot to print, remove his or her printed ballot from the printer, remove the voter access card from the touchscreen unit, review the selections on his or her printed ballot, scan his or her printed ballot into the ballot scanner, and return the voter access card to a poll ~~worker~~ officer.

(12) The registrars shall cause each advance voting location to be sufficiently staffed. At least one poll officer shall be assigned to assisting voters who have questions while they are in the voting booth, but before they approach the ballot scanner. Another poll officer shall and a poll worker is to be stationed at every ballot scanner in use in the polling place while voting is occurring. The poll officer stationed at the ballot scanner shall offer each voter specific verbal instruction to review their printed paper ballot prior to scanning it. In addition to the preceding instruction, the poll officer stationed at the ballot scanner shall offer general instruction throughout the period while voting is occurring telling voters that sample ballots and magnifying devices are available to assist them in reviewing their paper ballot. The poll officer shall take all reasonable precautions not to view the selections on

an elector's ballot unless it is required due to assistance requested by the elector. If a poll officer observes a voter attempting to leave the enclosed space with a paper ballot, the poll officer shall inform the voter of the consequence of not depositing his or her paper ballot into the ballot scanner prior to leaving the room. instruction throughout the period while voting is occurring reminding voters to review their printed paper ballots.

(a) If a voter discovers that the ballot presented on the electronic ballot marker is not correct or, for a partisan primary, is not the ballot that the voter desired to vote, the voter should immediately notify a poll officer. The poll officer shall cancel or void the ballot on the electronic ballot marker without attempting, in any manner, to see how the voter has voted and shall then take the necessary steps to provide the voter with the correct ballot and make any necessary corrections to the voter's certificate of the voter, the electors list, and the numbered list of voters. If the error is due to equipment malfunction, the poll officer shall document the incident on a form developed by the Secretary of State. The poll officer shall inform the election superintendent immediately if one or more electronic ballot markers are associated with a significant number of incidents.

(b) If, while reviewing his or her paper ballot, a voter discovers that the printed ballot does not reflect the voter's desired selections or that the voter was not issued the proper ballot, the voter should immediately inform a poll officer. The poll officer shall spoil the paper ballot and take the necessary steps to allow the voter to make his or her selections again on the electronic ballot marker and cause the correct ballot to be issued. The poll officer shall document the incident on a form circulated by the Secretary of State. The poll manager shall inform the elections superintendent immediately if one or more BMDs are associated with a significant number of incidents.

(13) At the end of the advance voting period, the registrars shall record the election counter number from each ballot scanner on the daily recap sheet. The ballot scanners shall be shut down and sealed. The registrars shall record the seal numbers on the daily recap sheet. The registrar and two sworn witnesses shall unseal the ballot box, remove the paper ballots, and place the ballots in one or more durable, portable, secure, and sealable containers. The registrars shall complete and affix to each container a form identifying the advance voting location, the advance voting dates that the ballots were cast, ballot scanner serial number, the number assigned to that ballot scanner for that specific election, the count of the ballots from the ballot scanner, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the registrar and the two witnesses such that it cannot be opened without breaking the seal. The ballot box shall be resealed, and the new seal numbers shall be documented. The registrar and at least one sworn witness shall deliver the ballot container to the election superintendent for secured storage until time for the tabulation of votes, and the election superintendent shall complete a chain of custody form indicating the delivery of the secure container. The form shall be signed by the registrar and any witnesses who travelled with the registrar indicating that no sealed documents were unsealed enroute and have not been tampered with. The ballot scanners and ballot containers shall then be secured until time for the tabulation of votes.

(14) By the close of the polls on the day of the primary, election, or runoff, the registrars shall deliver all of the ballot scanners used for advance voting and all other absentee ballots received to the election superintendent or the tabulating center. The election superintendent or tabulating center personnel shall count all of the absentee ballots in accordance with the procedures required by law and the rules of the State Election Board. The election superintendent or tabulating center personnel shall verify the seal numbers of each ballot scanner with the numbers recorded on the daily recap sheet form and shall inspect each seal and unit to verify that there is no evidence of tampering with the unit. If the seal numbers are not correct or there is evidence of tampering, the Secretary of State and the election superintendent shall be notified immediately and no further action shall be taken with regard to such unit until the reason for the discrepancy has been determined to the satisfaction of the election superintendent.

(15) After verifying the seal number and the integrity of the seal on each ballot scanner, the election superintendent or tabulating center personnel shall open each ballot scanner and turn on the power. The election superintendent or tabulating center personnel shall then compare the numbers shown on the election counters of the ballot scanners with the numbered list of absentee electors and the absentee ballot recap form to verify that there are no discrepancies. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. The election superintendent or tabulating center personnel shall cause each ballot scanner to print a minimum of three tapes showing the vote totals as cast on that ballot scanner. Three witnesses shall sign each of the tapes or shall write on the tapes the reason why they will not sign the tapes. One copy of the results tape for each ballot scanner shall be made available for the information of the public. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purpose), provided by the election superintendent along with "poll worker" memory cards from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The envelope shall be initialed by the poll manager and the two witnesses indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the absentee ballot recap form.

(16) After completing the printing of the results, the ballot scanner shall be turned off, secured, and resealed. The ballot scanners shall then be placed in a secure area with appropriate climate control. The envelopes containing the memory cards and results tapes, voter access cards, poll worker cards, ballot encoder devices, numbered lists of absentee voters, absentee ballot recap forms, and other such paperwork shall be transported to the office of the election superintendent by the election superintendent or tabulating center personnel, which transportation shall at all times involve at least two authorized individuals. The office of the election superintendent shall receive the materials and shall document delivery. The election superintendent or tabulating center personnel who travelled with the materials shall sign a form indicating that no sealed documents were unsealed enroute and that the materials have not been tampered with.

(17) Any notices to the Secretary of State about discrepancies in numbers or seals, zero tapes, or election counters shall also be forwarded to members of the State Election Board, but such information shall be considered confidential if the Secretary of State has initiated an investigation of the matter.

Authority: O.C.G.A. § 21-2-31

RULE 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall ~~notify~~ send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, close of the advance voting period, the board of registrars or absentee ballot clerk shall ~~notify~~ send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than ~~3:00 PM~~ close of business on the next business day. The board of registrars or absentee ballot clerk shall also ~~attempt to notify the elector by email and telephone within the same time requirements if an email or telephone number is on the elector's voter registration record.~~

Authority: O.C.G.A. § 21-2-31

COPY OF THE PROPOSED NEW RULE

RULE 183-1-14-.02 Advance Voting

- (1) All federal, state, and county primaries and elections shall be conducted using electronic ballot markers and ballot scanners for in-person absentee voting during the advance voting period. As used in this rule, the term "registrar" or "registrars" means a county board of registrars, a county board of elections and registration, a joint county-municipal board of elections and registration, a municipal absentee ballot clerk, a municipal registrar, or the designee of a board of registrars, board of elections and registration, or joint county-municipal board of elections and registration.
- (2) The registrar shall publish the times, dates, and locations of the availability of advance voting in their jurisdiction on the homepage of the county's publicly accessible website associated with elections and/or registrations, or if the county does not have such a website, in a newspaper of general circulation and by posting in a prominent location in the county, no later than 7 days prior to the beginning of the advance voting period. Any additional advance voting locations added after that deadline shall be published as soon as possible. The registrar shall endeavor not to remove or alter any advance voting locations after they are published, unless there are emergency or unforeseen circumstances make such a change necessary, in which case the registrar shall publish those changes as soon as possible.
- (3) Electronic ballot markers and ballot scanners shall be configured and tested in accordance with the provisions of Rule 183-1-12-.08 prior to use in advance voting. Public notice of the time and place for such configuration and testing of the electronic ballot markers and ballot scanners to be used for advance voting shall be given in accordance with O.C.G.A. §§ 21-2-374 and 21-2-379.25 and Rule 183-1-12-.08 prior to such configuration and testing.
- (4) The electronic ballot markers and ballot scanners to be used for advance voting shall be set up in a manner to assure the privacy of the elector while casting his or her ballot while maintaining the security of such components against tampering, damage, or other improper conduct. In addition, there shall be at least one electronic ballot marker configured for use by physically disabled electors, at each advance voting location.
- (5) Voter access cards for use in electronic ballot markers for advance voting may be encoded by use of an electronic poll book or other device approved by the Secretary of State. The registrar may also utilize the correct access code to manually bring up the correct ballot on the touchscreen.
- (6) Magnifying devices shall be available at advance voting locations to assist voters in reviewing their paper ballots.
- (7) On the first day of the advance voting period, prior to any votes being cast on ballot scanners, the registrars shall verify that the seals for each electronic ballot marker, ballot

scanner, and ballot box are intact and that there is no evidence or indication of any tampering with the seal or the component. The registrars shall verify that the number of the seal matches the number of the seal recorded for that component when such component was prepared by the election superintendent for the primary, election, or runoff. If a seal number does not match or if there is any evidence or indication of tampering with the seal or component, the election superintendent shall be immediately notified and such component shall not be used until such matters are resolved by agreement of the election superintendent and the registrars. The set up shall be performed in public and the public may view the set up subject to such reasonable rules and regulations as the registrars may deem appropriate to protect the security of the voting system components and to prevent interference with the duties of the registrars. The registrars and two witnesses sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall run a zero tape on each ballot scanner prior to the beginning of advance voting on those scanners, and the registrar and the two witnesses shall sign the zero tape in the space provided. The registrars shall verify that the electronic ballot markers and ballot scanners all indicate zero counts prior to the opening of the polls. If the tape does not show zero votes prior to the start of voting, the election superintendent shall be immediately notified and such component shall not be used until the component is cleared and the matter is resolved by agreement of the election superintendent and the registrars. The registrar and the same two sworn witnesses who signed the zero tape shall inspect and confirm that the ballot box associated with that scanner is empty and contains no ballots or other unauthorized matter, and shall verify that fact in writing on a form to be developed by the Secretary of State. Such form shall include the date and time it was executed, shall be attached to the zero tape generated by the ballot scanner attached to that ballot box, and shall be returned to the election superintendent at the close of the advance voting period with the other paperwork from the voting location. The registrars shall verify that there is no unauthorized matter affixed to the electronic ballot markers, ballot scanners, or voting booths. The registrars shall affix a card of instructions for voting within each voting booth. Prior to voters entering the voting booth, the registrars may also distribute to such voters a card of instructions for voting that has been approved or provided by the Secretary of State.

(8) If at the close of voting on any day during the advance voting period, there are more than 1,500 ballots inside any ballot box, the registrar and two sworn witnesses shall unseal the ballot box, remove the paper ballots, and place the ballots in one or more durable, portable, secure, and sealable containers. The registrars shall complete and affix to each container a form identifying the advance voting location, the advance voting dates that the ballots were cast, the ballot scanner serial number, the number assigned to that ballot scanner for that specific election, the count of the ballots from the ballot scanner, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the registrar and the two witnesses such that it cannot be opened without breaking the seal. The ballot box shall be resealed, and the new seal numbers shall be documented. The registrar and at least one sworn witness shall deliver the ballot container to the election superintendent for secured storage until time for the tabulation of votes, and the election superintendent shall complete a chain of custody form indicating the delivery of the secure container. The form shall be signed by the registrar and any witnesses who travelled with the registrar indicating that no sealed documents were unsealed enroute and have not been

tampered with. In the discretion of the registrar, the same procedure for emptying the ballot box may be followed if there are less than 1,500 ballots in the ballot box at the end of any advance voting day, but the ballot box shall not be opened while voting is taking place except as authorized by Rule 183-1-12-.10(5).

(9) At the close of voting each day during the advance voting period, the registrars shall document the election counter number from the ballot scanner on the daily recap sheet. The memory cards shall remain in the ballot scanner at all times during the advance voting period until the polls close on the day of the primary, election, or runoff. Each electronic ballot marker, ballot scanner, ballot box, electronic poll book, paper backup poll book, and voter access cards shall then be secured overnight. If the room where advance voting is taking place cannot be locked and secured overnight in the reasonable judgment of the superintendent, the superintendent shall cause the voting system components to be stored in a locked, secure container that is reasonably affixed to the polling place; be under visual surveillance of an election official or their designee, a licensed security guard, or a law enforcement official; or if, if the previously listed options are not feasible, in another manner that in the reasonable judgment of the superintendent secures and protects the voting system components from unauthorized access. Any electronic visual surveillance used for security when voting is not taking place shall not record, capture, or otherwise compromise the privacy of an elector's ballot.

(10) Each morning during the advance voting period prior to voting beginning, the registrars shall verify the seal numbers on each electronic ballot marker and ballot scanner to be used for advance voting with the number of the seal recorded on the daily recap sheet from the previous day of advance voting and shall verify that the seals do not show any signs of tampering. If the seal number corresponds to the entry on the daily recap sheet and there is no evidence of tampering, the electronic ballot markers and ballot scanners shall be turned on. If the numbers do not match or there is evidence of tampering, the election superintendent shall be notified immediately and the component shall not be used until such discrepancy is resolved to the satisfaction of the election superintendent and the registrars. After turning on the ballot scanners, the registrars shall verify the election counter number with the number recorded on the daily recap sheet from the previous day of advance voting. If the numbers do not match, the election superintendent shall be immediately notified and the component shall not be used until such discrepancy is resolved to the satisfaction of the election superintendent and the registrars. The election counter number shall then be entered onto the daily recap sheet for that day.

(11) Voters who vote absentee ballots in person shall first complete an absentee ballot application and sign an oath, which may be on the same form and may be on paper or digital. After the registrars determine that the voter is eligible to vote, the registrars shall note the voter's registration number and ballot style on the absentee ballot application. Each voter shall be offered instruction by a registrar in the method of voting on the voting system, including specific instruction to review their printed ballot prior to scanning it. In providing such instruction, the registrar shall not in any manner request, suggest, or seek or persuade or induce any voter to vote any particular ticket or for any particular candidate, or for or against any particular question. The voter shall then be issued a voter access card

programmed with the correct ballot style or the registrar shall use the correct access code to manually bring up the correct ballot on the electronic ballot marker. The voter shall then enter the enclosed space in the advance voting location and proceed to vote his or her choices. Upon making his or her selections, the voter shall cause the paper ballot to print, remove his or her printed ballot from the printer, remove the voter access card from the touchscreen unit, review the selections on his or her printed ballot, scan his or her printed ballot into the ballot scanner, and return the voter access card to a poll officer.

(12) The registrars shall cause each advance voting location to be sufficiently staffed. At least one poll officer shall be assigned to assisting voters who have questions while they are in the voting booth, but before they approach the ballot scanner. Another poll officer shall be stationed at every ballot scanner in use in the polling place while voting is occurring. The poll officer stationed at the ballot scanner shall offer each voter specific verbal instruction to review their printed paper ballot prior to scanning it. In addition to the preceding instruction, the poll officer stationed at the ballot scanner shall offer general instruction throughout the period while voting is occurring telling voters that sample ballots and magnifying devices are available to assist them in reviewing their paper ballot. The poll officer shall take all reasonable precautions not to view the selections on an elector's ballot unless it is required due to assistance requested by the elector. If a poll officer observes a voter attempting to leave the enclosed space with a paper ballot, the poll officer shall inform the voter of the consequence of not depositing his or her paper ballot into the ballot scanner prior to leaving the room.

(a) If a voter discovers that the ballot presented on the electronic ballot marker is not correct or, for a partisan primary, is not the ballot that the voter desired to vote, the voter should immediately notify a poll officer. The poll officer shall cancel or void the ballot on the electronic ballot marker without attempting, in any manner, to see how the voter has voted and shall then take the necessary steps to provide the voter with the correct ballot and make any necessary corrections to the voter's certificate of the voter, the electors list, and the numbered list of voters. If the error is due to equipment malfunction, the poll officer shall document the incident on a form developed by the Secretary of State. The poll officer shall inform the election superintendent immediately if one or more electronic ballot markers are associated with a significant number of incidents.

(b) If, while reviewing his or her paper ballot, a voter discovers that the printed ballot does not reflect the voter's desired selections or that the voter was not issued the proper ballot, the voter should immediately inform a poll officer. The poll officer shall spoil the paper ballot and take the necessary steps to allow the voter to make his or her selections again on the electronic ballot marker and cause the correct ballot to be issued. The poll officer shall document the incident on a form circulated by the Secretary of State. The poll manager shall inform the elections superintendent immediately if one or more BMDs are associated with a significant number of incidents.

(13) At the end of the advance voting period, the registrars shall record the election counter number from each ballot scanner on the daily recap sheet. The ballot scanners shall

be shut down and sealed. The registrars shall record the seal numbers on the daily recap sheet. The registrar and two sworn witnesses shall unseal the ballot box, remove the paper ballots, and place the ballots in one or more durable, portable, secure, and sealable containers. The registrars shall complete and affix to each container a form identifying the advance voting location, the advance voting dates that the ballots were cast, ballot scanner serial number, the number assigned to that ballot scanner for that specific election, the count of the ballots from the ballot scanner, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the registrar and the two witnesses such that it cannot be opened without breaking the seal. The ballot box shall be resealed, and the new seal numbers shall be documented. The registrar and at least one sworn witness shall deliver the ballot container to the election superintendent for secured storage until time for the tabulation of votes, and the election superintendent shall complete a chain of custody form indicating the delivery of the secure container. The form shall be signed by the registrar and any witnesses who travelled with the registrar indicating that no sealed documents were unsealed enroute and have not been tampered with. The ballot scanners and ballot containers shall then be secured until time for the tabulation of votes.

(14) By the close of the polls on the day of the primary, election, or runoff, the registrars shall deliver all of the ballot scanners used for advance voting and all other absentee ballots received to the election superintendent or the tabulating center. The election superintendent or tabulating center personnel shall count all of the absentee ballots in accordance with the procedures required by law and the rules of the State Election Board. The election superintendent or tabulating center personnel shall verify the seal numbers of each ballot scanner with the numbers recorded on the daily recap sheet form and shall inspect each seal and unit to verify that there is no evidence of tampering with the unit. If the seal numbers are not correct or there is evidence of tampering, the Secretary of State and the election superintendent shall be notified immediately and no further action shall be taken with regard to such unit until the reason for the discrepancy has been determined to the satisfaction of the election superintendent.

(15) After verifying the seal number and the integrity of the seal on each ballot scanner, the election superintendent or tabulating center personnel shall open each ballot scanner and turn on the power. The election superintendent or tabulating center personnel shall then compare the numbers shown on the election counters of the ballot scanners with the numbered list of absentee electors and the absentee ballot recap form to verify that there are no discrepancies. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. The election superintendent or tabulating center personnel shall cause each ballot scanner to print a minimum of three tapes showing the vote totals as cast on that ballot scanner. Three witnesses shall sign each of the tapes or shall write on the tapes the reason why they will not sign the tapes. One copy of the results tape for each ballot scanner shall be made available for the information of the public. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purpose), provided by the election superintendent along with "poll worker" memory cards from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The

envelope shall be initialed by the poll manager and the two witnesses indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the absentee ballot recap form.

(16) After completing the printing of the results, the ballot scanner shall be turned off, secured, and resealed. The ballot scanners shall then be placed in a secure area with appropriate climate control. The envelopes containing the memory cards and results tapes, voter access cards, poll worker cards, ballot encoder devices, numbered lists of absentee voters, absentee ballot recap forms, and other such paperwork shall be transported to the office of the election superintendent by the election superintendent or tabulating center personal, which transportation shall at all times involve at least two authorized individuals. The office of the election superintendent shall receive the materials and shall document delivery. The election superintendent or tabulating center personal who travelled with the materials shall sign a form indicating that no sealed documents were unsealed enroute and that the materials have not been tampered with.

(17) Any notices to the Secretary of State about discrepancies in numbers or seals, zero tapes, or election counters shall also be forwarded to members of the State Election Board, but such information shall be considered confidential if the Secretary of State has initiated an investigation of the matter.

Authority: O.C.G.A. § 21-2-31

RULE 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.

Authority: O.C.G.A. § 21-2-31