

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

COALITION FOR GOOD
GOVERNANCE, *et al.*

Plaintiffs,

v.

BRIAN KEMP, in his official capacity
as Governor of the State of Georgia, *et al.*,

Defendants.

Civil Action No.:
1:21-CV-02070-JPB

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Brian Kemp, in his official capacity as the Governor of the State of Georgia; Brad Raffensperger, in his official capacity as Secretary of State of Georgia; and Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, in their official capacities as members of the State Election Board (collectively, "Defendants"), move this Court for summary judgment in their favor pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1. As shown by the attached Defendants' Brief in Support of Motion for Summary Judgment, the Exhibits attached to and filed with the Statement of Material Facts accompanying the Brief, and the deposition testimony filed with this Court, there are no material issues of fact in dispute and, as a matter

of law, Defendants are entitled to summary judgment on all of Plaintiffs' claims.

WHEREFORE, Defendants respectfully request that this Court enter summary judgment in their favor and cast all costs against Plaintiffs.

Respectfully submitted this 17th day of July, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Motion has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

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**BRIEF IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Plaintiffs in this case challenge various common-sense election administration rules, including SB 202's accountability structure for county officials established through the bipartisan State Election Board. But despite their policy disagreements with Defendants, Plaintiffs cannot present admissible evidence to support the sweeping allegations in their latest Complaint, and Defendants are entitled to judgment as a matter of law on all claims.

First, Plaintiffs' claims about the temporary suspension of county election officials who engage in long-term mismanagement of elections fail because Plaintiffs cannot show any (1) imminent injury; (2) lack of due process for the temporary suspension; or (3) impact on the right to vote, each of which is required for Plaintiffs to prevail. Only Fulton County has even had a performance review conducted under the provisions of SB 202, and that panel recommended that those county officials *not* be suspended following a comprehensive process that achieved its goal of providing incentives for the county to improve election administration.

Second, Plaintiffs' claims about observing voters while they are voting fail because Plaintiffs cannot demonstrate any impact on the right to vote or that the provisions are vague. Indeed, this Court has already concluded that

accidental viewing of another's ballot is not actionable, and Plaintiffs have done nothing to develop the evidentiary record otherwise.

Third, Plaintiffs cannot succeed on their challenges to the provisions of SB 202 that ensure early scanning totals are not disclosed before the polls close. This Court has already denied Plaintiffs' attempts to enjoin these provisions, and there is no basis to change that outcome.

Finally, Plaintiffs cannot show that the rules regarding photographing ballots have any impact on them, nor can they show that those rules violate any provision of the U.S. Constitution.

Plaintiffs made grand promises in their latest Complaint and in their briefing opposing the motion to dismiss earlier in this case. But now they must come forward with admissible evidence supporting their claims. They have not and cannot, and this Court should enter judgment in favor of Defendants on all counts.

PROCEDURAL BACKGROUND

Although this case was filed in May 2021, Plaintiffs have taken remarkably few steps to develop any factual support for their claims. Indeed, shortly after filing their initial complaint, Plaintiffs amended their complaint and sought emergency relief for a subset of their claims. [Docs. 1, 14, 15]. After

this Court denied nearly all the emergency relief Plaintiffs sought,¹ [Doc. 49], it later denied Defendants' motion to dismiss, finding that, while Plaintiffs alleged enough to get to the discovery phase of the case, they would be required to develop a record to support their claims. [Docs. 50, 78]. Despite this opportunity, Plaintiffs have failed to do so even though this Court gave them multiple extensions of discovery.

This Court originally issued a scheduling order setting the expert report deadline for May 16, 2022, and the end of discovery for July 1, 2022. [Doc. 67]. Shortly after that Order, Plaintiffs sought to amend their Complaint again, and the case essentially ground to a halt. [Doc. 69]. Plaintiffs never put forward any expert testimony in support of their claims and did not conduct any depositions. The parties agreed to extend discovery once, with a new end date for discovery of October 3, 2022. [Docs. 83, 84]. When Plaintiffs later sought to extend discovery over the objection of Defendants, this Court noted the lack of depositions or experts from Plaintiffs and granted a limited, 45-day extension. [Doc. 89, p. 2].

After Defendants served notices of deposition on Plaintiffs following unsuccessful attempts to schedule those depositions [Doc. 91], Plaintiffs next

¹ This Court granted a limited injunction that allowed photographing ballots outside of the polling place. [Doc. 49, pp. 39].

sought to dismiss most of their claims, which Defendants opposed. [Docs. 92, 94]. Plaintiffs then sought to extend discovery until 30 days after this Court ruled on their motion to stay. [Doc. 96]. This Court denied the motion for a stay, granted the motion for extension of discovery through May 8, 2023, and later extended the end of discovery to June 16, 2023. [Docket Order, May 8, 2023].

During the additional discovery extensions, Plaintiffs amended their Complaint for the second time to drop several claims. Thus, under the Second Amended Complaint [Doc. 104], Plaintiffs challenge four “buckets” of changes made by SB 202. First, they challenge provisions related to suspension of county election officials who violate state law over multiple election cycles (the “Suspension Rule”² in Counts I, II, and III). Second, they challenge provisions related to observing voters while they vote (the “Observation Rule” in Counts IV, V, and VI). Third, they claim that provisions designed to avoid the premature disclosure of election results are unconstitutional (the “Tally Rules” and the “Communication Rule” in Counts VII, VIII, and XI). Fourth, they challenge prohibitions on photography of ballots (the “Photography Rules” in

² For ease of reference, Defendants utilize this Court’s names for each challenged provision as referenced in the Order on the motion to dismiss. [Doc. 78, pp. 2–3].

Count IX and X). In their Second Amended Complaint, Plaintiffs abandoned their challenges to the Ballot Application Rule and the Voter ID Rule that this Court reviewed in ruling on Defendants’ motion to dismiss [Doc. 78, pp. 28–32, 40–43].

Now that discovery is concluded, Plaintiffs are no longer entitled to the presumptions they received at the motion-to-dismiss phase. As discussed below, there is a complete lack of evidence supporting their remaining claims at this stage of the case, warranting judgment as a matter of law in favor of Defendants.

FACTUAL BACKGROUND

I. O.C.G.A. § 21-2-33.2: The Suspension Rule.

SB 202 provided the State Election Board (SEB) the ability, after notice and a hearing, to *temporarily* suspend election superintendents after they committed multiple violations of the law over multiple election cycles. O.C.G.A. § 21-2-33.2; Statement of Material Facts (“SMF”) ¶ 1. The General Assembly explained why it took this step: “Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity” because of the lack of accountability under existing law. Senate Bill 202 As Passed, attached as Ex. D (“SB 202”), at 5:96–101.

Since the adoption of SB 202 in 2021, none of the counties where the Board Member Plaintiffs³ serve (currently or previously) were subjected to an investigation or performance review. SMF ¶ 2; Declaration of Ryan Germany (“Germany Dec.”), attached as Ex. A, ¶¶ 4–6. The only county election officials who have undergone a performance review are the members of the Fulton County Board of Elections and Registration and staff. SMF ¶ 3; Germany Dec., ¶¶ 4–6; Fulton Performance Review Board Report (“Fulton Report”), attached as Ex. 1 to Germany Dec.; Excerpts of Response to Interrogatories, attached as Ex. B, Nos. 1–2.

The Fulton County Performance Review was initiated by members of the General Assembly in the local legislative delegation. SMF ¶ 4; Fulton Report, p. 5. The three-member Review Board personally observed “pre-election, Election Day, and post-election processes at Fulton County in both the 2021 municipal elections and the 2022 general and runoff elections.” SMF ¶ 5; Fulton Report at 6. Those observations included at least four visits to the Fulton County Election Processing Center and at least 16 visits to different

³ The Second Amended Complaint identifies the “Board Member Plaintiffs” as Plaintiffs Shirley, Lang, Pullar, Thomas-Clark, and McNichols, serving on the boards of elections and/or registration for Athens-Clarke, Coffee, Chatham, Clayton, and Jackson Counties at the time the lawsuit was filed. [Doc 104, ¶¶ 146–197].

election day polling place and advance-voting locations. SMF ¶ 6; Fulton Report at 6. The Review Board also worked with the Carter Center to observe Fulton County elections in November 2022 to assist with its review. SMF ¶ 7; Fulton Report at 6. Finally, the Review Board conducted formal interviews with staff and members of the Fulton County Board of Elections, reviewed procedures, and coordinated with the Secretary's office for its review. SMF ¶ 8; Fulton Report at 7.

When it issued its report, the Review Board confirmed that, in prior years, “disorganization and a lack of a sense of urgency in resolving issues plagued Fulton County elections.” SMF ¶ 9; Fulton Report at 1. But the Review Board also recognized the improvement in election administration in Fulton County from 2020 through 2022, at least in part because of the incentives created by the Performance Review itself. SMF ¶ 10; Fulton Report at 18. As a result, the Review Board did not recommend any Fulton officials be suspended under the Suspension Rule. SMF ¶ 11; Fulton Report at 18–19.

The SEB did not suspend the Fulton officials, has not announced any plans for conducting additional performance reviews, and is not considering suspension of additional county election officials, including the Board Member Plaintiffs here. SMF ¶¶ 12–14; Germany Dec., ¶¶ 7–8. Thus, the SEB has not

suspended any county officials, nor has it announced any plans to do so or to investigate any other county at this point.

II. O.C.G.A. § 21-2-568.1: The Observation Rule.

Prior to SB 202, it was already a felony to induce an elector “to show how he or she marks or has marked his or her ballot” or to disclose “to anyone how another elector voted, without said elector’s consent.” O.C.G.A. § 21-2-568(a)(3) and (4). The “enclosed space” of a precinct was also heavily regulated.⁴ Additional provisions placed limitations on who can be in the enclosed space while voters are voting and limited activities in that space. O.C.G.A. §§ 21-2-413, 414. Those restrictions include prohibitions on (1) the general public entering unless they are voting or providing assistance, (2) anyone but law enforcement carrying firearms, and (3) campaigning. *Id.* Only a limited number of authorized poll watchers are allowed inside. *Id.*

Consistent with those existing limitations on activities in the enclosed space and to ensure a secret ballot, SB 202 added a provision making it a felony to engage in the *intentional* observation of an elector casting a ballot “in a manner that would allow such person *to see for whom or what the elector is*

⁴ “It is, at least on Election Day, government-controlled property set aside for the sole purpose of voting. The space is ‘a special enclave, subject to greater restriction.’” *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1886 (2018) (quoting *Int’l Soc’y for Krishna Consciousness v. Lee*, 505 U.S. 672, 680 (1992)).

voting.” SMF ¶ 15; SB 202 at 95:2448–2454 (emphasis added). As this Court recognized, the intent requirement “excludes inadvertent viewing and applies only if a person *intentionally* attempts to see for whom an elector is voting.” [Doc. 49, pp. 28–29] (emphasis in original). Further, existing rules require county superintendents to arrange each polling place “in such a manner as to provide for the privacy of the elector while voting.” Ga. Comp. R. & Regs. r. 183-1-12-.11(4). The Secretary of State provided guidance to counties on proper precinct layout, and county election officials are ultimately responsible for the setup of voting machines in ways that comply with Georgia law. SMF ¶ 16; Declaration of Blake Evans, attached as Ex. C (“Evans Dec.”), ¶ 3 and Ex. 1. Plaintiffs cannot point to any evidence of arbitrary enforcement of the rule or its improper use to target political opponents.

The State has an interest in protecting the secrecy of the ballot process and upholding the integrity of elections, which the Observation Rule protects. [Doc. 49, p. 29]; Ga. Const. Art. II, § I, ¶ I; *see also Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1353 (11th Cir. 2009).

III. O.C.G.A. §§ 21-2-386(a)(2)(B)(vii), -386-(a)(2)(A), and-386(a)(2)(B)(vi): The Tally and Communication Rules.

Following the 2020 election, some counties were repeatedly asked how many votes they had left to tabulate that they could not answer in a timely

fashion. SMF ¶ 17; Germany Dec., ¶ 9. Because posting election results quickly is one of the best things that election officials can do to generate confidence in the outcome of an election, the legislature decided that “[c]reating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly.” SMF ¶¶ 18; SB 202 at 6:123–125; Germany Dec., ¶ 9. Prior to SB 202, early scanning of absentee ballots could only be performed by a sequestered group of individuals beginning at 7:00 a.m. on Election Day itself, so there was no danger of those individuals leaving to report vote totals or estimates during that single-day process. SMF ¶ 19; O.G.C.A. § 21-2-386(a)(2) (2019); Germany Dec., ¶ 13. To mitigate the risk that early vote counts would be disclosed during early scanning in the weeks before an election, the legislature designed a process that ensured that information about the scanning process would not be publicized prior to the final close of the polls. SMF ¶ 20; Germany Dec., ¶¶ 11, 12, 14. Accordingly, SB 202 permits only election officials to handle absentee ballots, requires individuals involved to swear an oath, and places several requirements on observers to avoid disclosure of vote counts. SMF ¶ 21; SB 202 at 39:965–40:981; 66:1687–1690; 67:1698–1712; Germany Dec., ¶ 15. Plaintiffs seek to enjoin two of these requirements, namely, preventing observers and monitors from attempting to tally or estimate vote totals (the Tally Rules) and

communicating information about a vote they might see to anyone other than an election official (the Communication Rule) before polls are closed.⁵ SB 202 at 67:1698–1712.

The Communication Rule only applies to “any ballot, vote or selection” during the viewing or monitoring of the absentee-ballot scanning process. SMF ¶ 23; Germany Dec., ¶ 16. This process occurs in a room that also has other specific requirements about the use of recording devices and other equipment. SMF ¶ 24; Germany Dec., ¶ 17. Maintaining the secrecy of that process is critical to preserving the integrity of the election process by ensuring vote totals are not disclosed while other voters are still voting or have yet to vote. SMF ¶ 25; Germany Dec., ¶ 18. Likewise, the Tally Rules protect the integrity of the election process by ensuring that county votes or estimates about vote totals do not take place prior to the conclusion of the voting process. SMF ¶ 26; Germany Dec., ¶ 19. If officials were enjoined from enforcing these two provisions, individuals would be free to share information about the early-scanning process with the general public and with candidates, which would

⁵ These provisions closely track the emergency SEB rules that were used throughout 2020 for early scanning of ballots. SMF ¶ 22; Germany Dec., ¶ 10. Other states that allow scanning before Election Day also prohibit and/or criminalize disclosure of tallies before the polls are closed. *See, e.g.*, Ariz. Rev. Stat. Ann. § 16-551 (felony in Arizona to release tallies early); N.M. Stat. Ann. § 1-6-14(H); Del. Code Ann. tit. 15, § 5510; Colo. Rev. Stat. § 1-7.5-107.5.

undermine the integrity of the election process. SMF ¶¶ 27–28; Germany Dec., ¶¶ 20–22.

IV. O.C.G.A. § 21-2-568.2: The Photography Rules.

Prior to SB 202, it was already a violation of the Election Code to take pictures inside a polling place and specifically to photograph the face of a voting machine with the ballot displayed. O.C.G.A. § 21-2-413(e). But there was no specific penalty, meaning the only possible penalty was the catch-all misdemeanor for violations of the Election Code. O.C.G.A. § 21-2-598.

In SB 202, the General Assembly provided a specific misdemeanor penalty for conduct that was already a misdemeanor and further clarified that photographing or recording a voted ballot outside of a polling place (such as an absentee ballot) was also a misdemeanor.⁶ SB 202 at 96:2455–2462. This provision can prevent vote-buying schemes that require a voter to show proof of their vote to the person paying them and also prevent others from pressuring voters to show for whom they voted. SMF ¶ 29; Germany Dec., ¶ 23. This provision protects individuals from being subjected to outside pressure as a result of the votes they cast and ensures ballot secrecy. SMF ¶ 30; Germany

⁶ Several other states also prohibit taking photographs of ballots. *See, e.g.*, Ala. Code § 17-9-50.1; 25 Pa. Stat. Ann. § 3530 (prohibiting allowing anyone to see ballot or machine “with the apparent intention of letting it be known how he is about to vote”).

Dec., ¶¶ 24–26; Ga. Const. Art. II, § I, ¶ I (guarantee of secret ballot). Further, this provision ensures that photographic images of a voter’s ballot are not stored in ways that can connect the ballot to the voter, preserving the voter’s privacy, ballot secrecy, and the integrity of the election. SMF ¶ 31; Germany Dec., ¶ 27.

ARGUMENT AND CITATION TO AUTHORITY

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial burden but need not disprove the opposing party’s claims. Instead, the moving party may point to the absence of evidence to support the non-moving party’s case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Marion v. DeKalb County*, 821 F. Supp. 685, 687 (N.D. Ga. 1993). In defending its claims, the non-moving party must do “more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The non-moving party “must come forward with **significant, probative evidence** demonstrating the existence of a triable issue of fact.” *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995) (emphasis added) (quoting *Chanel, Inc. v. Italian Activewear, Inc.*, 931 F.2d 1472, 1477 (11th Cir. 1991)). As discussed below, Plaintiffs have not produced any evidence and cannot show

that there is any dispute over a material fact on any of Plaintiffs' remaining claims, and Defendants are entitled to judgment as a matter of law.

I. Plaintiffs lack Article III standing.

The first basis for judgment in Defendants' favor is Plaintiffs' lack of standing. Federal courts may decide only active "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. To establish standing to present a case or controversy, a litigant must prove: "(1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)); *U.S. v. Amodeo*, 916 F.3d 967, 971 (11th Cir. 2019). "[E]ach element must be supported . . . with the manner and degree of evidence required at the successive stages of the litigation." *Jacobson*, 974 F.3d at 1245 (quoting *Lujan*, 504 U.S. at 561). While standing is provisionally determined at the time a lawsuit is filed, it is continuously reevaluated and "must persist throughout a lawsuit." *Ga. Ass'n of Latino Elected Officials, Inc. v. Gwinnett Cty. Bd. of Registration & Elections*, 36 F.4th 1100, 1113 (11th Cir. 2022) ("*GALEO*"). Further, "[i]f a case 'no longer presents a live controversy with respect to which the court can give meaningful relief,' the case is moot and must be dismissed."

Id. (quoting *Friends of Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1216 (11th Cir. 2009)).

For purposes of both the Defendants' Motion to Dismiss [Doc. 41] and Plaintiffs' Motion for Preliminary Injunction [Doc. 15], this Court found that at least one Plaintiff had standing to bring each count asserted in the Amended Complaint [Doc. 49, pp. 4–14; Doc. 78, pp. 5–15]. As Defendants argued at the time, Plaintiffs do not have an injury based on their subjective fear of prosecution or of arbitrary enforcement of various provisions of SB 202 because those potential injuries are too attenuated and speculative, and rely too heavily on the independent actions of third parties, to constitute a concrete and cognizable injury for purposes of Article III standing. This is all the more clear now that discovery is complete. Further, Plaintiffs cannot demonstrate any traceability to or redressability by Defendants regarding their remaining claims.

A. The Board Member plaintiffs only have theoretical injuries.

Since this case was filed, at least one Board Member Plaintiff is no longer serving on an election board. SMF ¶ 32; Deposition of Patricia Pullar [Doc. 122] ("Pullar Dep."), 24:18–25:1. And of the remaining Board Member Plaintiffs, there is no evidence of any pending action against any county boards, including

the counties where Board Member Plaintiffs serve. SMF ¶ 33; Germany Dec., ¶¶ 7–8. Further, the Board Member Plaintiffs can only be injured if (1) they engage in violations of the Election Code, (2) over multiple election cycles, that lead (3) to a motion or performance review, that (4) finds support for those violations. O.C.G.A. § 21-2-33.2. As a result, any injury is only speculative and cannot constitute the basis for any relief. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013); *Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1344 (11th Cir. 2021).

B. Plaintiffs lack standing because any harm to them or their members is speculative.

The lack of any impending injury requires summary judgment on standing. As the Eleventh Circuit recently explained, imposing harm on members or the organization itself as a result of something that is not “certainly impending” means there is no injury for purposes of standing. *City of S. Miami v. Governor of Fla.*, 65 F.4th 631, 638, 640 (11th Cir. 2023). So too here: Because Plaintiffs cannot present any evidence that any county official is currently subject to potential suspension under the Suspension Rules, SMF ¶ 34; Germany Dec., ¶¶ 7–8; Fulton Report; the harm is not certainly impending, and these claims must be dismissed.

Further, while Plaintiffs claim that they have changed their behavior because of the Observation, Tally, and Communication Rules, the individual Plaintiffs have not shown any enforcement or investigation against them personally for any alleged violations. They thus rely solely on subjective fears of prosecution (or claimed difficulty complying with those laws), as well as concerns about merely being accused of violating such laws. While they may sincerely feel those concerns, there is a long chain of events encompassing the actions of third parties not before the Court that must occur before Plaintiffs' fears could even get close to becoming reality. This "attenuated chain of possibilities," *Clapper*, 568 U.S. at 419, means Plaintiffs could only be injured if *all* of the following events occur: (1) they change their mind regarding going to polling places and other areas where the challenged provisions are in effect; (2) they commit some violation of the challenged provisions (which none has expressed an intent to do); (3) a third party (a) observes and (b) reports such violation; and, finally (4) that third party refers that violation to the SEB, the Secretary, or some criminal enforcement arm (such as a district attorney or the Attorney General). And that criminal enforcement arm will then have to engage in a series of actions and deliberations to *independently decide* to prosecute Plaintiffs and *then* actually commence such prosecution. Only then would Plaintiffs suffer any injury whatsoever.

This hypothetical chain of events demonstrates the abstract and conjectural nature of Plaintiffs' purported injury. And courts are and should be "reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment." *Clapper*, 568 U.S. at 414. Thus, like the plaintiffs who took action based on fear of racial profiling in Florida, Plaintiffs cannot show any injury is certainly impending from the provisions of SB 202 that they challenge. *City of S. Miami*, 65 F.4th at 638-40.

C. Plaintiffs cannot show traceability or redressability on any of their remaining claims.

Even if Plaintiffs have an injury, they still cannot show that their injury is traceable to or redressable by Defendants. Plaintiffs' claims encompass criminal penalties, which are only enforceable by district attorneys or other prosecutorial officials, O.C.G.A. §§ 21-2-598, -599, -600, 15-18-6, 17-7-71, and Plaintiffs have not named any prosecutorial officials in this lawsuit. Thus, regardless of any relief entered against Defendants, Plaintiffs' alleged injury would not be fully addressed because they still would have potential criminal charges brought by officials Plaintiffs did not sue.

This Court previously found that traceability and redressability were met in an analysis that correctly recognized the foundational standard that "to satisfy the causation requirement of standing, a plaintiff's injury must be

‘fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” [Doc. 49, p. 11] (quoting *Jacobson*, 974 F.3d at 1253). The Court also highlighted the important limiting principle that “it must be the effect of the court’s judgment on the defendant—not an absent third party—that redresses the plaintiff’s injury, whether directly or indirectly.” *Id.* (quoting *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1301 (11th Cir. 2019)). But the Court then relied on two Eleventh Circuit cases that predate *Jacobson* and *Lewis* to find traceability and redressability, but in doing so failed to recognize several key limiting principles on the authority of federal courts that undermine that finding.

The Court first relied on a 1988 case from the Eleventh Circuit for the proposition that all that is needed to find traceability and redressability is that “the state officer sued must, by virtue of his office, have some connection with the unconstitutional act or conduct... Whether this connection arises out of general law, or is specially created by the act itself, is not material so long as it exists.” [Doc. 49, p. 12] (quoting *Luckey v. Harris*, 860 F.2d 1012, 1015–16 (11th Cir. 1988)). This conclusion is contradicted by the holdings of *Jacobson* and *Lewis*. Thus, this Court incorrectly concluded that all that really matters for purposes of traceability and redressability is if a party, like the Governor, “is generally responsible for enforcing the state’s laws.” *Id.* But this is

inconsistent with the *Jacobson* method of evaluating traceability and redressability. And the second pre-*Jacobson* case relied upon by this Court was entirely dependent on *Luckey* for its analysis, which provides no helpful guidance as to how this circuit views traceability and redressability today. *See* [Doc. 49, p. 13] (citing *Ga. Latino Alliance for Human Rights v. Governor of Ga.*, 691 F.3d 1250 (11th Cir. 2012)).

Indeed, the law in the Eleventh Circuit no longer allows the conclusion that “prospective relief could be ordered against the... governor of Georgia, who is **generally responsible** for enforcing the state’s laws.” [Doc. 49, p. 12] (emphasis added). The key questions for traceability and redressability “are who caused the injury and how it can be remedied.” *City of S. Miami*, 65 F.4th at 640. As *Jacobson* explains, “general supervision and administration of the election laws[] does not make the [challenged election law] traceable to [the Secretary of State].” 974 F.3d at 1254; *see also Lewis*, 944 F.3d at 1300 (where the court rejected the plaintiffs’ reliance upon “a host of provisions of the Alabama Code that generally describe the Attorney General’s [enforcement] authority” to establish traceability).

In the same way, redressability cannot be established for all challenged provisions except for the Suspension Rule because enjoining *Defendants* will

not redress any alleged injury because the *provisions* will not be enjoined. The Eleventh Circuit made clear that a district court's jurisdiction is limited:

The district court's decision rests on the flawed notion that by declaring the ballot statute unconstitutional, it eliminated the legal effect of the statute in all contexts. But "federal courts have no authority to erase a duly enacted law from the statute books." Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 936 (2018); *see also Steffel v. Thompson*, 415 U.S. 452, 469, 94 S. Ct. 1209, 39 L. Ed. 2d 505 (1974) ("Of course, a favorable declaratory judgment . . . cannot make even an unconstitutional statute disappear." (internal quotation marks omitted)). Our power is more limited: we may "enjoin executive officials from taking steps to enforce a statute." Mitchell, *supra*, at 936.

Jacobson, 974 F.3d at 1255.

Accordingly, the Governor's general authority here to enforce all state laws does not automatically establish traceability as to each challenged provision. *See City of S. Miami*, 65 F.4th at 614 ("Neither the governor nor the attorney general acts under [the statute] in such a way that the organizations' injury is traceable to them or redressable by enjoining them."). Similarly, the general authority of the Secretary of State and State Election Board related to elections does not satisfy the redressability or traceability requirements for the challenged provisions outside of the Suspension Rule.

Moreover, as discussed above, the Court exercising its authority to enjoin enforcement of certain provisions does not enjoin the provisions themselves. *Jacobson*, 974 F.3d at 1255. So, if another party—such as a district attorney or

other prosecutor (the only officials authorized to bring criminal charges under the challenged provisions)—can continue to enforce the challenged provisions even were this Court to enjoin the parties to this action, Plaintiffs have not established redressability under Article III. *Id.*

II. Defendants are entitled to summary judgment on each count of Plaintiffs’ Second Amended Complaint.

Even if Plaintiffs have standing, Defendants are still entitled to summary judgment on the merits of each of Plaintiffs’ current claims.

A. Defendants are entitled to summary judgment on all claims regarding the Suspension Rule (Counts I, II, and III).

1. *The Suspension Rule complies with procedural due process (Count I).*

As this Court explained, the Board Member Plaintiffs claim “that the Suspension Rule violates their right to procedural due process” because they are at risk of being “improperly deprived of their protected property interest in their respective county board seats [without] a pre-deprivation notice and hearing and a ‘meaningful’ post-deprivation remedy.” [Doc. 78, p. 17] (quoting Am. Compl. ¶¶ 368–69), *accord* [Doc. 104, ¶¶ 352–353]. In its Order denying Defendants’ motion to dismiss, the Court noted that “[c]onstitutionally adequate process is ‘a guarantee of fair procedure,’ *id.*, at 19, and inquiring into whether a state law provides sufficient due process requires a ‘flexible

concept that varies with the particular situation.’ *Id.* at 20. This flexible concept is detailed in *Mathews v. Eldridge*, and entails weighing several factors. 424 U.S. 319, 335 (1976).

According to *Mathews*, the Court must weigh the private interest affected; the risk of an “erroneous deprivation” of such interest; the relative value in any additional or substitute safeguards; and the Government’s interest, “including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* In its Order denying Defendants’ motion to dismiss, this Court held that Plaintiffs’ claims on this count were not appropriate for dismissal “[s]ince a proper analysis of the issues requires reference to facts not stated in the Amended Complaint.” [Doc. 78, p. 21]. But now, with the benefit of ample time for discovery, we have the necessary facts or—more accurately—the absence of necessary facts, to permit this Court to dispose of this Count of Plaintiffs’ Complaint.

Mathews involved a social security disability claimant’s purported right to receive benefits and answered a somewhat different question from the one at issue here. In *Mathews*, the claimant acknowledged that the review procedures available to him were adequate “if disability benefits were not terminated until *after* the evidentiary hearing stage of the administrative

process.” 424 U.S. at 333. Here, Plaintiffs take issue with the *process itself*, not just the timing of the decision, while acknowledging they would only be deprived of their purported property right *after* a notice and hearing takes place. [Doc. 104, ¶ 84]. Thus, they are already in a better position than the plaintiff in *Mathews*. Turning next to the three due-process factors identified in *Mathews*, it is clear that there is no evidence that Plaintiffs have been deprived of their due-process rights.

Initially, Plaintiffs do not have a property interest in their seats on the respective election boards. When this Court previously denied Intervenor-Defendants’ motion to dismiss Board Member Plaintiffs’ due process claims, it held that “the Board Member Plaintiffs plausibly allege that they have a protected interest in their board seats and that the Suspension Rule threatens to take away that interest without an adequate opportunity to be heard.” [Doc. 78, p. 20]. It further found that “[a] property interest does not fall outside due process protection simply because it can be extinguished by statute.” *Id.* at 20–21. In support, the Court drew on the 1985 case of *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985). But *Loudermill* is not useful on this question because it involved consideration of whether a school board could summarily dismiss an *employee* when a statute otherwise conferred on that employee a right to employment. The statute provided that the particular

employee at issue “can be terminated only for cause, and may obtain administrative review if discharged.” *Id.* at 535 (quoting Ohio Rev. Code. Ann. Sec. 124.34). Thus, it was established in *Loudermill*—unlike in this case—that a property interest had been conferred by statute.

In this case, there is no conferral—because no such conferral can occur for an election board official. “[T]he Supreme Court has held that ‘unlawful denial by state action of a right to state political office is not a denial of a right of property or liberty secured by the due process clause.’” *Gamza v. Aguirre*, 619 F.2d 449, 452 n.3 (5th Cir. 1980⁷) (quoting *Snowden v. Hughes*, 321 U.S. 1, 7 (1944)). Courts in other circuits have also agreed. *See, e.g., Miller v. Centre Cty.*, No. 4:15-CV-1754, 2016 U.S. Dist. LEXIS 62019, *44–45 (M.D. Pa. May 11, 2016) (collecting cases); *see also LaPointe v. Winchester Bd. of Ed.*, 366 F. App’x 256, 257 (2d Cir. 2010); *Taylor v. Beckham*, 178 U.S. 548, 576 (1900) (“public offices are mere agencies or trusts, and not property as such”).

Thus, Board Member Plaintiffs do not have a protected property interest in their seats and this alone is sufficient to grant judgment as a matter of law to Defendants on Count I.

⁷ This Fifth Circuit case is binding precedent. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

But even if there is a property interest, there is no risk of erroneous deprivation. More than two years since passage of SB 202 and with the completion of a statewide general election, none of the Board Member Plaintiffs is able to point to a single instance in which they were targeted because of the Suspension Rule. SMF ¶ 35; Deposition of Ernestine Thomas-Clark [Doc. 119], 39:11–40:8; Deposition of Adam Shirley [Doc. 118], 40:21–41:1; Deposition of Judy McNichols [Doc. 121], 44:11–46:2; Pullar Dep., 28:11–29:4. Far from confirming the Board Member Plaintiffs’ unfounded and speculative fears, the passage of time has revealed quite a different result, with the SEB empaneling just one performance review panel. SMF ¶ 36; Germany Dec., ¶ 7. That investigation was robust and searching, involved state officials, county officials, and the Carter Center, and ultimately did not result in the suspension of any county official. SMF ¶ 37; Germany Dec., ¶ 6; Fulton Report. Further, the panel concluded that the creation of the performance review that precedes the Suspension Rule incentivized the county officials to improve the administration of elections. SMF ¶ 38; Fulton Report, pp. 18–19. In its Order denying Defendants’ motion to dismiss, this Court found that Defendants did not point to “*relevant*” circumstances where the rule would be constitutional.” [Doc. 78, p. 24] (emphasis in original). But with two years of the Suspension

Rule in practice, there is ample evidence that the provision provides constitutionally adequate process.

Moreover, the Suspension Rule closely mirrors that portion of O.C.G.A. § 20-2-73 that allows the takeover of elected members of school boards. Both the school board rule and the Suspension Rule allow the notice and hearing *prior* to any suspension. *Id.* Both require a showing of cause before the process can be initiated. *Id.* Both provide for reinstatement. *Id.* And both provide for judicial review. *Id.* In the school-board context, courts have upheld this nearly identical process as constitutionally permissible. *DeKalb Cty. Sch. Dist. v. Ga. State Bd. of Educ.*, 294 Ga. 349, 369 (2013). There is no reason to hold any differently for the Suspension Rule under Plaintiffs' procedural due process claim. The Suspension Rule does not violate any due-process rights of any Plaintiff, and this Count should be dismissed.

2. *The Suspension Rule complies with substantive due process (Count II).*

While styled as a substantive due process claim, Count II of Plaintiffs' Second Amended Complaint alleges that the provisions authorizing the SEB to temporarily replace an underperforming election superintendent violate the *Georgia* Constitution as an improper delegation of legislative functions. [Doc. 104, ¶¶ 360–364, 370–371]. But these claims are not cognizable in federal court

because they do not allege “an ongoing violation of *federal* law and seek[] relief properly characterized as prospective.” *Verizon Md. Inc. v. PSC*, 535 U.S. 635, 645 (2002) (cleaned up) (emphasis added).

While Plaintiffs briefly mention the Fourteenth Amendment [Doc. 104, ¶ 359], almost all of Count II focuses on alleged state-law violations. And “it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

This Court previously kept Count II alive because the Court believed that Count II was within the *Ex Parte Young*, 209 U.S. 123 (1908), exception to the Eleventh Amendment. [Doc. 78, pp. 26–28]. But now at summary judgment, Plaintiffs’ mere allegations will not suffice—especially without any evidence that the SEB has or will use the takeover provisions in the cavalier manner suggested by Plaintiffs. Indeed, Plaintiffs have produced no evidence suggesting “a deprivation of federally protected rights” or showing “the fundamental fairness of the electoral process” being “seriously undermined” by the Suspension Rule. [Doc. 78, p. 27] (citing *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. Unit B Sep. 1981)). If anything, the SEB, led by Judge William Duffey, has protected the voting rights of Georgia’s citizens while protecting the rights of the members of local boards of election in the exercise of their

duties. SMF ¶ 39; Fulton Report, pp. 18–19. The performance review of Fulton County was comprehensive, cooperative, and resulted in better election administration in Georgia’s largest county—and Plaintiffs can point to no evidence to the contrary. SMF ¶ 40; Fulton Report, pp. 18–19.

Thus, without any evidence to support Plaintiffs’ allegations, this Court must be dismissed. But if this Court does not grant summary judgment in favor of Defendants on Count II, it should certify the questions of state law it presents to the Georgia Supreme Court. As the United States Supreme Court has noted, “[w]arnings against premature adjudication of constitutional questions bear heightened attention when a federal court is asked to invalidate a State’s law, for the federal tribunal risks friction-generating error when it endeavors to construe a novel state Act not yet reviewed by the State’s highest court.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 79 (1997); *see also Forgione v. Dennis Pirtle Agency, Inc.*, 93 F.3d 758, 761 (11th Cir. 1996). But that is not necessary given the Georgia Supreme Court’s ruling in *DeKalb Cty. Sch. Dist.*, 294 Ga. at 369, finding a similar suspension process complied with all relevant constitutional provisions. Thus, Defendants are entitled to judgment as a matter of law on Count II.

3. *The Suspension Rule does not burden the right to vote (Count III).*

Plaintiffs' last attempt to invalidate the Suspension Rule is to attack it as a violation of the right to vote. But even if Plaintiffs had standing to challenge the provision in this Count—which they do not because they cannot demonstrate any injury—nothing in the record indicates a county registrar will be suspended by the SEB with SEB allowing the position to sit vacant, thus depriving voters of the ability to vote or register to vote, as Plaintiffs claim. [Doc. 104, ¶¶ 377–378]. Plaintiffs' nightmare scenario of a county board of registrars with no members is just that: a dream conjured up by attorneys that would require the SEB to disregard its legal obligations to Georgia voters. The fears expressed two years ago have not come to pass. Quite to the contrary, the SEB has thus far suspended *zero* county officials, to say nothing of failing to replace an official that was suspended after a thorough investigative procedure, before even considering whether suspension was appropriate in the one matter that potentially met the strict criteria of SB 202's Suspension Rule. SMF ¶ 41; Germany Dec., ¶¶ 6–8. Plaintiffs offer no evidence otherwise.

At best, Plaintiffs continue to assert the tenuous notion that the SEB may someday remove some yet-to-be-named registrar and fail to replace him, her, or a board, and that this possibility will prevent voters from registering to

vote. [Doc. 104, ¶ 378]. This extremely speculative harm renders the injury too attenuated to support jurisdiction. *Clapper*, 568 U.S. at 409.

But even if mere speculative future harm were an “injury,” the General Assembly adopted the Suspension Rule specifically to provide protect voters and remedies for “counties with dysfunctional election systems.” SB 202 at 5:97. And the evidence demonstrates the Suspension Rule processes have resulted in improved elections. SMF ¶ 42; Fulton Report, pp. 18–19. Thus, the hypothetical and unlawful scenario offered by Plaintiffs would be directly contrary to the aims of SB 202 itself. The government interests in uniformity and a well-run election system, including ensuring opportunities for all voters to vote, more than justify the Suspension Rule providing the State a way to remedy ongoing violations of State law by local election officials. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). As a result, this Court should grant Defendants judgment as a matter of law on Count III.

B. Defendants are entitled to summary judgment on all claims regarding the Observation Rules (Counts IV, V, and VI).

1. *The Observation Rule does not impose an undue burden on the right to vote (Count IV).*

As the Eleventh Circuit recently explained, claims brought under the fundamental right to vote and the Equal Protection Clause related to elections are evaluated “under what is known as the *Anderson-Burdick* test, weighing

‘the character and magnitude of the asserted injury’ to voting rights ‘against the precise interests put forward by the State as justifications for the burden imposed by its rule.’” *Curling v. Raffensperger*, 50 F.4th 1114, 1121 (11th Cir. 2022) (quoting *Burdick*, 504 U.S. at 434, and *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

That inquiry is a sliding scale:

If we conclude that the State’s policy imposes a severe burden on the right to vote, we subject the policy to strict scrutiny—meaning that the rule survives only if it is narrowly tailored to serve a compelling state interest. . . . When the burden is more modest, though, so is the inquiry. . . . So long as a policy is “reasonable and nondiscriminatory,” the State’s “important regulatory interests in conducting orderly elections” will generally be enough to justify it.

Id. (citations omitted).

This balancing test is important because there is “no license for ‘second-guessing and interfering with’ state decisions; ***the Constitution charges States, not federal courts, with designing election rules.***” *Id.* (citing *New Georgia Project v. Raffensperger*, 976 F.3d 1278, 1284 (11th Cir. 2020)) (emphasis added). And it is not enough to show a burden on the right to vote. Plaintiffs “must show, at the very least, that the burdens imposed ‘represent a significant increase over the usual burdens of voting.’” *Id.* (quoting *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008) (plurality opinion)).

This Court previously determined that the Observation Rule does not extend to inadvertent actions of voters and therefore likely does not impose a severe burden on the right to vote. [Doc. 49, p. 29]. The evidence in the record and the passage of time have vindicated this view. Indeed, Plaintiffs cannot point to any evidence suggesting the Observation Rule has been applied in a manner inconsistent with this Court's interpretation in its order. The Plaintiffs' fears that their casual glances will result in prosecution remain unfounded. And since the Observation Rule does not impose a severe burden on the right to vote, the state's interests in protecting Georgia voters' right to a secret ballot and upholding the integrity of elections is enough to justify what is a very minimal burden placed on Plaintiffs: that they must not *intentionally* view other voters' ballots while in the polling place. Moreover, even if this were a severe burden, which it is not, the state interests in maintaining the secrecy of a voter's ballot more than justify the slight burden. Ga. Const., Art. II, § I, ¶ I; Germany Dec., ¶ 30.

Also, any burden is not created by Defendants because Plaintiffs have not sued the parties responsible for their alleged injuries. It is the *counties* that select polling locations and decide how to set up ballot stations according to the orientation of the space they have selected. SMF ¶ 43; Evans Dec., ¶ 3 and Ex. 1. Thus, even if there were an injury, as explained above, it is not traceable to,

nor redressable by, Defendants. If the scenario occurs where Plaintiffs simply cannot look around without accidentally (but also somehow intentionally) viewing other voters' ballots, it is because the county has set up the polling location in a way that allows for that. In either case, Defendants are entitled to judgment as a matter of law on this Count.

2. *The Observation Rule is not vague (Count V).*

This Court previously drew upon several cases to guide its void-for-vagueness analysis regarding the Observation Rule. As the Court pointed out, “the void for vagueness doctrine encompasses ‘at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; and second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.’” [Doc. 49, pp. 29–30] (quoting *Wollschlaeger v. Governor of Fla.*, 848 F.3d 1293, 1320 (11th Cir. 2017)). In other words, it requires that “a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” *Id.* The Observation Rule meets all of these requirements.

First, this Court has already concluded that the Observation Rule “provides fair warning as to what conduct is prohibited and therefore satisfies

the first prong of the vagueness test.” [Doc. 49, p. 31]. Plaintiffs cannot provide any evidence to the contrary beyond their own claimed confusion. While the Court noted the second prong “might be a closer question,” it nonetheless found that “the rule’s intent requirement addresses those concerns” it had about the potential for arbitrary enforcement. *Id.* at 32; *see also League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F.4th 905, 946 (11th Cir. 2023) (finding *mens rea* element in election statute addressed vagueness claims).

Having now had the benefit of discovery, Plaintiffs have failed to adduce any evidence proving that this law has been arbitrarily enforced against Plaintiffs or any other Georgia voter. For the same reasons the Court denied Plaintiffs’ preliminary injunction request on this Count, it should similarly grant judgment as a matter of law to Defendants on Count V.

3. *The Observation Rule does not intimidate voters (Count VI).*

Plaintiffs next claim that the observation provisions are illegal voter intimidation in violation of 52 U.S.C. § 10307. [Doc. 104, ¶¶ 401–08]. But even if there were a private right of action under this provision, a prohibition on *intentional* observation of others voting cannot be intimidating to the one doing the unlawful observation.

First, this section of the Voting Rights Act (VRA) provides no private right of action—and “private rights of action to enforce federal law must be created by Congress.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). “Where Congress has not created a private right of action, courts may not do so.” *Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019) (finding no private right of action under the Help America Vote Act); *see also Brnovich v. Dem Nat’l Comm.*, 141 S. Ct. 2321, 2350 (2021) (Gorsuch, J. concurring) (questioning whether implied right of action exists under VRA); *Ala. State Conference of the NAACP v. Alabama*, 949 F.3d 647, 656–57 (11th Cir. 2020) (Branch, J., dissenting) (arguing that VRA has not abrogated state sovereign immunity), *vacated as moot by Ala. v. Ala. State Conference of NAACP*, 2021 WL 1951778, *1 (U.S. 2021). This is because “Section 1983 does not provide an avenue for relief every time a state actor violates a federal law.” *Vega v. Tekoh*, 142 S. Ct. 2095, 2106 n.6 (2022) (quoting *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 119 (2005)) (cleaned up). Because Plaintiffs do not have a right to bring a claim under this provision, this Count must be dismissed.

Second, even if a private right of action existed, Plaintiffs’ claim that the Observation Rule somehow intimidates voters because it could potentially be “invoked to selectively criminalize mere entry into a polling place or even approaching a polling place with large windows” [Doc. 104, ¶ 401] is without

any evidentiary proof. Plaintiffs cannot even point to a single individual who is being prosecuted as a result of such innocent activities. SMF ¶ 44–45; Germany Dec., ¶ 30; Ex. B, Response Nos. 1–2. Thus, like the other bases for challenging the Observation Rule, Plaintiffs’ fears of selective criminalization are entirely speculative. And the record demonstrates that Plaintiffs’ fears are unfounded. Indeed, there is no evidence that *any* investigations or charges have been brought against any Plaintiff in this action or any voter for merely “approaching a polling place with large windows.” SMF ¶ 45; Ex. B, Response Nos. 1–2.

Further, the intent requirement of the Observation Rule removes the potential for arbitrary application of the law. *See* [Doc. 49, p. 32]. Considering this view of the law against the backdrop of *zero* prosecutions—arbitrary or otherwise—against any Georgia voter, this Court should grant Defendants’ Motion for Summary Judgment as to Count VI of the Second Amended Complaint because no voter can be intimidated by being required to avoid *intentionally* viewing another voter’s secret ballot.

C. Defendants are entitled to summary judgment on all claims regarding the Communications and Tally Rules (Counts VII, VIII, and XI).

1. *The Communications Rule does not violate the First Amendment (Count VII).*

Even with broad constitutional protections on freedom of speech, “the government may impose some content-based restrictions on speech in nonpublic forums, including restrictions that exclude political advocates from political advocacy.” *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885–86 (2018). In determining whether a particular location is, in fact, a “non-public forum,” courts consider whether it is “a space that ‘is not by tradition or designation a forum for public communication.’” *Id.* at 1885 (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983)). As this Court has already explained, “where the regulation of speech in a nonpublic forum is content-based but neutral as to viewpoint, ‘there is no requirement of narrow tailoring.’” [Doc. 49, pp. 16–17] (quoting *Mansky*, 138 S. Ct. at 1888). “Instead, courts employ a lower standard of review, which requires only that the regulation be ‘reasonable in light of the purpose served by the forum.’” *Id.* at 17 (quoting *Mansky*, 138 S. Ct. at 1886).

The Communication Rule easily fits within this legal principle. Issues involving the First Amendment are unique in the context of elections. Ballots,

like draft cards, are government property, *see U.S. v. O'Brien*, 391 U.S. 367, 387–88 (1968), and so the government can implement reasonable regulations governing the disclosure of the information contained in them. This is particularly true when that disclosure can affect the outcome of a vote. The State has a strong interest in ensuring that observers do not attempt to depress or otherwise alter voter turnout by disclosing a vote tally before the election has concluded. SMF ¶ 46; Germany Dec., ¶¶ 11–14, 18–19. Further, it is possible that such observers may inadvertently (or purposely) disclose the *wrong* tally, which again could depress or alter turnout in the election. SMF ¶ 47; Germany Dec., ¶¶ 20–22. That is why SB 202’s reasonably tailored, content-neutral, and time-limited restriction on disclosures by such observers, who already occupy a privileged position as compared to typical voters that the government itself permits, does not violate the First Amendment.

For these reasons, the Communication Rule satisfies the First Amendment, and this Court should grant judgment as a matter of law to Defendants on Count VII.

2. *The Tally Rules are not vague (Count VIII).*

As discussed previously, “the void for vagueness doctrine encompasses ‘at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly;

second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” [Doc. 49, pp. 29–30] (quoting *Wollschlaeger*, 848 F.3d at 1320).

Plaintiffs claim the “Tally Rules violate due process because they criminalize the act of thinking about or attempting to think about a tally or tabulation...” [Doc. 104, ¶ 420]. But this Court has already found this characterization of the Tally Rules unpersuasive: “[t]he Court disagrees with Plaintiffs’ argument that the Tally Rules punish pure thought and inherently lack any ‘observable or objective indicia of criminal conduct.’” [Doc. 49, p. 34]. Moreover, the evidence in the record shows that this rule has not been arbitrarily or discriminatorily applied nor has it been applied in the manner Plaintiffs claim they feared.⁸ SMF ¶ 48; Ex. B, Response Nos. 1–2. Thus, for the same reasons the Court denied Plaintiffs’ preliminary injunction request on this Count, it should similarly grant judgment as a matter of law to Defendants.

⁸ This Count is also based on extremely speculative harm that can only result in an injury based on an attenuated chain of possibilities, removing any standing for claims on this Count. *Clapper*, 568 U.S. at 409.

3. *The Tally Rules do not violate the First Amendment (Count XI).*

Finally, Plaintiffs claim that the Tally Rules “criminalize the overt acts of recording or communicating tallies, tabulations, or estimates of the number of absentee ballots cast or the tallies of votes on the absentee ballots cast” in alleged violation of the First Amendment. [Doc. 104, ¶ 462]. But, to the extent the First Amendment applies to prohibition of these observations and disclosures—and it is not clear that it does—for the same reasons the Communications Rule does not violate the First Amendment, neither do the challenged Tally Rules. As previously noted, the prohibited conduct is limited to the processes around the scanning of absentee ballots. Thus, it takes place in a non-public forum and a content-neutral analysis must be applied. *Mansky*, 138 S. Ct. at 1885. And during early scanning, that location is similar to a precinct—in other words, “a government-controlled property set aside for the sole purpose of voting.” *Id.* at 1886. It is entirely reasonable for the government to prohibit disclosure of voting tallies by observers when such disclosure could affect or alter the ultimate vote.

Further, the speech in question is not content-based and should be evaluated under *Anderson/Burdick* because the Tally Rules relate to the “mechanics of the electoral process.” *McIntyre v. Ohio Elections Comm’n*, 514

U.S. 334, 345 (1995); *see also* *VoteAmerica v. Raffensperger*, 609 F. Supp. 3d 1341, 1361 (N.D. Ga. 2022). Under that standard, preventing Plaintiffs from disclosing election results before the election is over does not burden the right to vote; and, even if it does, the regulatory interests in protecting ballot secrecy, orderly election administration, and voter confidence amply justify so slight a burden. *Common Cause/Georgia*, 554 F. 3d at 1354; *Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. Of Registration & Elections*, 446 F. Supp. 3d 1111, 1124 (N.D. Ga. 2020); *see* Deposition of Jeanne Dufort [Doc. 120], 40:18–42:18 (describing monitoring of election administration when observing).

Thus, the Tally Rules also comply with the First Amendment, and Defendants are entitled to judgment as a matter of law on this Count.

D. Defendants are entitled to summary judgment on all claims regarding the Photography Rules (Counts IX and X).

1. *The Photography Rules do not violate the First Amendment (Count IX).*

This Court earlier determined that the Photography Rules contain two separate provisions—one that applies in polling locations (Photography Rule I) and another that applies in any location (Photography Rule II). [Doc. 49, pp. 2, 21–22]. Because Photography Rule I only applies in a non-public forum, as discussed above, the State’s interests in protecting ballot secrecy and avoiding fraud in the precinct are sufficient to uphold this provision under a First

Amendment challenge—and Plaintiffs have no evidence to the contrary. *Mansky*, 138 S. Ct. at 1885; [Doc. 49, p. 20].

But this Court granted a preliminary injunction regarding Photography Rule II. A closer examination of the issues and evidence demonstrates that, even assuming strict scrutiny under the First Amendment applies to this rule (and Defendants maintain that it does not), Defendants are still entitled to summary judgment on Count IX.

When the Court granted a preliminary injunction on Photography Rule II, it expressed concern that Defendants failed to “argue[] that it is narrowly tailored to serve [compelling government] interests.” [Doc. 49 p. 22]. But the broad nature of Georgia’s no-excuse absentee voting, where every Georgia voter, everywhere in the world, can obtain a ballot, demonstrates the need for protecting the integrity of the ballot beyond the polling place itself. The same interests of ballot secrecy and “preventing fraud, including vote payment schemes,” [Doc. 49, p. 22], apply with equal force to absentee ballots outside the polling place itself. In fact, rules to protect those interests are even more important outside of the polling place because that type of voting is done beyond the supervision of election officials. The State’s interest in protecting the integrity of a voter’s vote is compelling, and the idea that the State cannot offer the same protections to voters who choose to vote absentee as it offers to

voters who choose to vote in-person is a distinction that does not make sense. After all, voters voting absentee and voters voting in-person are engaged in the same activity—voting their ballot—and should be afforded the same protections. And both voters are part of a system that offers voters protections from vote-buying schemes and intimidation in order to give the entire electorate confidence in election results. SMF ¶ 49; Germany Dec., ¶¶ 23–25. Georgia’s system of no-excuse absentee voting depends on being able to put in place reasonable requirements to protect absentee voters from intimidation, undue influence, or vote-buying schemes.

Vote-buying schemes, where a third-party may offer to pay or offer something of value in return for a vote, or intimidates voters, where a third-party may not explicitly offer to buy votes but may pressure a voter to publicly reveal how they voted, undermine the foundations of merit-based representative democracy and the protections of a secret ballot guaranteed in the Georgia Constitution.⁹ SMF ¶ 50; Ga. Const. Art. II, § I, ¶ I; Germany Dec., ¶ 26. And Photography Rule II’s extension of Photography Rule I to the ballot itself wherever it may be located—rather than limiting it strictly to the polling

⁹ Vote-buying schemes have a long pedigree in United States politics. See Donald Debats, *Vote Buying in Nineteenth Century US Elections*, available at <https://sociallogic.iath.virginia.edu/sites/default/files/BeforeSecret-Buying.pdf>

place—not only makes sense, but it is the only reliable way to ensure the government’s compelling interest is achieved. For that reason, this rule is indeed narrowly tailored to that interest.

Further, cameras are now commonplace in almost every mobile device in use today. SMF ¶ 51; Germany Dec., ¶ 28. And pictures are often quickly uploaded to a cloud storage provider on the Internet and would connect the voter’s ballot with the voter immediately. SMF ¶ 52; Germany Dec., ¶ 28. It is typically private companies and not the user (and certainly not the State) that control the security protocols at the locations where the photographic data is stored. SMF ¶ 53; Germany Dec., ¶ 29. Thus, to protect Georgia voters, the State needs a reliable way to ensure that sensitive data like a voted ballot is not leaked or otherwise aggregated by a nefarious actor. SMF ¶ 54; Germany Dec., ¶ 27. This applies even if a voter thinks they are only taking a picture for themselves and not intending to share it with anyone—the conveniences of modern technology may make that desire illusory. Merely hoping that all the parties involved in modern cloud data storage (cell phone provider, cell phone network provider, internet provider, data storage provider, etc.) implement sufficient safeguards against data breaches is not sufficient. The best protection is a prohibition on taking a picture of the ballot itself in the first place. This is a narrowly tailored prohibition to stem the many security

breaches that could occur once the photo is taken in addition to the potential for vote-buying schemes, intimidation, or undue influence. SMF ¶ 54; Germany Dec., ¶ 27. Moreover, it provides a reliable mechanism to prevent absentee vote-buying schemes or intimidation of absentee voters, which, by definition, take place outside the security of the polling place, O.C.G.A. § 21-2-385(a), and thus are more susceptible to such schemes.

For the foregoing reasons, both photography rules are narrowly tailored to achieve a compelling government interest and, for that reason, Defendants are entitled to summary judgment on Count IX of the Second Amended Complaint.

2. *The Photography Rules are not vague (Count X).*

As this Court has already noted, “Photography Rule I applies only to polling stations...” [Dec. 49, p. 21]. This limits the reach of the rule to a non-public forum, which in turn subjects this Court’s review of the prohibition to “the lower reasonable standard of review.” *Id.* The prohibition clearly satisfies this standard because it is tailored to prevent fraud “including vote payment schemes...” *Id.* at 22. And, as with the other provisions in this section, discovery has not produced any evidence showing that this rule will be arbitrarily or discriminatorily enforced in the ways Plaintiffs claim. SMF ¶ 55; Ex. B, Response Nos. 1–2.

Thus, because the Photography Rules make clear “what is required” and there is no evidence of any lack of “precision and guidance” to those enforcing the law, [Doc. 49, pp. 29–30] (quoting *Wollschlaeger*, 848 F.3d at 1320), they are not void for vagueness. Accordingly, the Court should grant Defendants summary judgment on this Count for the same reasons it denied the Plaintiffs injunctive relief.

CONCLUSION

Plaintiffs disagree with the Georgia General Assembly about how elections should be run. But the mere fact of those disagreements does not make them questions of constitutional import.

The role of this Court is limited. And the Eleventh Circuit has recognized that “[t]he wisdom of the Legislature’s policy choices is not ours to judge.” *League of Women Voters of Fla. Inc.*, 66 F.4th at 931. Because none of the claims raised by Plaintiffs involves a violation of the Constitution, but only disagreements about the policy of election administration, this Court should grant judgment as a matter of law to Defendants on all counts.

Respectfully submitted this 17th day of July, 2023,

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing brief was prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/Bryan P. Tyson
Bryan P. Tyson

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

COALITION FOR GOOD
GOVERNANCE, *et al.*

Plaintiffs,

v.

BRIAN KEMP, in his official capacity
as Governor of the State of Georgia, *et al.*,

Defendants.

Civil Action No.:
1:21-CV-02070-JPB

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants Brian Kemp, in his official capacity as the Governor of the State of Georgia; Brad Raffensperger, in his official capacity as Secretary of State of Georgia; and Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, in their official capacities as members of the State Election Board (collectively, "Defendants") pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 submits this Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. SB 202 provided the State Election Board (SEB) the ability, after notice and a hearing, to temporarily suspend election superintendents after

they committed multiple violations of the law over multiple election cycles. O.C.G.A. § 21-2-33.2.

2. Since the adoption of SB 202 in 2021, none of the counties where the Board Member Plaintiffs serve (currently or previously) were subjected to an investigation or performance review. Declaration of Ryan Germany (“Germany Dec.”), attached as Ex. A, ¶¶ 4–6.

3. The only county election officials who have undergone a performance review are the members of the Fulton County Board of Elections and Registration and staff. Germany Dec., ¶¶ 4–6; Fulton Performance Review Board Report (“Fulton Report”), attached as Ex. 1 to Germany Dec.; Excerpts of Response to Interrogatories, attached as Ex. B, Nos. 1–2.

4. The Fulton County Performance Review was initiated by members of the General Assembly in the local legislative delegation. Fulton Report, p. 5.

5. The three-member Review Board personally observed “pre-election, Election Day, and post-election processes at Fulton County in both the 2021 municipal elections and the 2022 general and runoff elections.” *Id.* at 6.

6. Those observations included at least four visits to the Fulton County Election Processing Center and at least 16 visits to different election day polling place and advance-voting locations. *Id.*

7. The Review Board also worked with the Carter Center to observe Fulton County elections in November 2022 to assist with its review. *Id.*

8. The Review Board conducted formal interviews with staff and members of the Fulton County Board of Elections, reviewed procedures, and coordinated with the Secretary's office for its review. *Id.* at 7.

9. When it issued its report, the Review Board confirmed that, in prior years "disorganization and a lack of a sense of urgency in resolving issues plagued Fulton County elections." *Id.* at 1.

10. The Review Board also recognized the improvement in election administration in Fulton County from 2020 through 2022, at least in part because of the incentives created by the Performance Review itself. *Id.* at 18.

11. The Review Board did not recommend any Fulton officials be suspended under the Suspension Rule. *Id.* at 18–19.

12. The SEB did not suspend the Fulton officials. Germany Dec., ¶¶ 7–8.

13. The SEB has not announced any plans for conducting additional performance reviews. Germany Dec., ¶¶ 7–8.

14. The SEB is not considering suspension of additional county election officials, including the Board Member Plaintiffs here. Germany Dec., ¶¶ 7–8.

15. SB 202 added a provision making it a felony to engage in the *intentional* observation of an elector casting a ballot “in a manner that would allow such person *to see for whom or what the elector is voting.*” SB 202 (Ex. D) at 95:2448–2454 (emphasis added).

16. The Secretary of State provided guidance to counties on proper precinct layout, and county election officials are ultimately responsible for the setup of voting machines in ways that comply with Georgia law. Declaration of Blake Evans, attached as Ex. C (“Evans Dec.”), ¶ 3 and Ex. 1.

17. Following the 2020 election, some counties were repeatedly asked how many votes they had left to tabulate that they could not answer in a timeline fashion. Germany Dec., ¶ 9.

18. Posting election results quickly is one of the best things that election officials can do to generate confidence in the outcome of an election. Germany Dec., ¶ 9.

19. Prior to SB 202, early scanning of absentee ballots could only be performed by a sequestered group of individuals beginning at 7:00 a.m. on Election Day itself, so there was no danger of those individuals leaving to report vote totals or estimates during that single-day process. O.G.C.A. § 21-2-386(a)(2) (2019); Germany Dec., ¶ 13.

20. To mitigate the risk that early vote counts would be disclosed during early scanning in the weeks before an election, the legislature designed a process that ensured that information about the scanning process would not be publicized prior to the final close of the polls. Germany Dec., ¶¶ 11, 12, 14.

21. SB 202 permits only election officials to handle absentee ballots, requires individuals involved to swear an oath, and places several requirements on observers to avoid disclosure of vote counts. SB 202 at 39:965–40:981; 66:1687–1690; 67:1698–1712; Germany Dec., ¶ 15.

22. The early scanning provisions of SB 202 closely track the emergency SEB rules that were used throughout 2020 for early scanning of ballots. Germany Dec., ¶ 10.

23. The Communication Rule only applies to “any ballot, vote or selection” during the viewing or monitoring of the absentee-ballot scanning process. Germany Dec., ¶ 16.

24. The absentee-ballot scanning process occurs in a room that also has other specific requirements about the use of recording devices and other equipment. Germany Dec., ¶ 17.

25. Maintaining the secrecy of that absentee-ballot scanning process is critical to preserving the integrity of the election process by ensuring vote

totals are not disclosed while other voters are still voting or have yet to vote. Germany Dec., ¶ 18.

26. The Tally Rules protect the integrity of the election process by ensuring that counting votes or estimates about vote totals do not take place prior to the conclusion of the voting process. Germany Dec., ¶ 19.

27. If officials were enjoined from enforcing these two provisions, individuals would be free to share information about the early-scanning process with the general public and with candidates. Germany Dec., ¶¶ 20–22.

28. Having information about early-scanning totals shared with the general public and with candidates would undermine the integrity of the election process. Germany Dec., ¶¶ 20–22.

29. The Photography Rules can prevent vote-buying schemes that require a voter to show proof of their vote to the person paying them and also prevent others from pressuring voters to show for whom they voted. Germany Dec., ¶ 23.

30. The Photography Rules protect individuals from being subjected to outside pressure as a result of the votes they cast and ensures ballot secrecy. Germany Dec., ¶¶ 24–26; Ga. Const. Art. II, § I, ¶ I (guarantee of secret ballot).

31. The Photography Rules ensure that photographic images of a voter's ballot are not stored in ways that can connect the ballot to the voter,

preserving the voter's privacy, ballot secrecy, and the integrity of the election. Germany Dec., ¶ 27.

32. Patricia Pullar is no longer serving on an election board. Deposition of Patricia Pullar [Doc. 122] ("Pullar Dep."), 24:18–25:1.

33. There are no performance reviews or other pending action related to the Suspension Rules against Athens-Clarke, Coffee, Chatham, Clayton, and Jackson Counties. Germany Dec., ¶¶ 7–8.

34. None of the Board Member Plaintiffs are currently subject to potential suspension under the Suspension Rules. Germany Dec., ¶¶ 7–8.

35. None of the Board Member Plaintiffs are able to point to a single instance in which they were targeted because of the Suspension Rule. *See, e.g.* Deposition of Ernestine Thomas-Clark [Doc. 119], 39:11–40:8; Deposition of Adam Shirley [Doc. 118], 40:21–41:1; Deposition of Judy McNichols [Doc. 121], 44:11–46:2; Pullar Dep., 28:11–29:4.

36. The SEB has only empaneled one performance review panel since the adoption of SB 202. Germany Dec., ¶ 7.

37. The Review Board investigation into Fulton County was robust and searching, involved state officials, county officials, and the Carter Center, and ultimately did not result in the suspension of any county official. Germany Dec., ¶ 6; Fulton Report.

38. The panel concluded that the creation of the performance review that precedes the Suspension Rule incentivized the county officials to improve the administration of elections. Fulton Report, pp. 18–19.

39. The State Election Board has protected the voting rights of Georgia’s citizens while protecting the rights of the members of local boards of election in the exercise of their duties. Fulton Report, pp. 18–19.

40. The performance review of Fulton County was comprehensive, cooperative, and resulted in better election administration in Georgia’s largest county. *Id.*

41. The SEB has suspended zero county officials under the Suspension Rule. Germany Dec., ¶¶ 6–8.

42. The Suspension Rule processes have resulted in improved elections. Fulton Report, pp. 18–19.

43. It is the counties that select polling locations and decide how to set up ballot stations according to the orientation of the space they have selected. Evans Dec., ¶ 3 and Ex. 1.

44. No individual is being prosecuted based on merely approaching a polling place with large windows. Germany Dec., ¶ 30.

45. There is no evidence that any investigations or charges have been brought against any Plaintiff in this action or any voter for merely

“approaching a polling place with large windows.” *See* Ex. B, Response Nos. 1–2.

46. The State has a strong interest in ensuring that observers do not attempt to depress or otherwise alter voter turnout by disclosing a vote tally before the election has concluded. Germany Dec., ¶¶ 11–14, 18–19.

47. It is possible that such observers may inadvertently (or purposely) disclose the *wrong* tally, which could depress or alter turnout in the election. Germany Dec., ¶¶ 20–22.

48. The Tally Rules have not been arbitrarily or discriminatorily applied nor has it been applied in the manner Plaintiffs claim they feared. Ex. B, Response Nos. 1–2.

49. Protecting voters from vote-buying schemes and intimidation give the entire electorate confidence in election results. Germany Dec., ¶¶ 23–25.

50. Vote-buying schemes, where a third-party may offer to pay or offer something of value in return for a vote, or intimidates voters, where a third-party may not explicitly offer to buy votes but may pressure a voter to publicly reveal how they voted, undermine the foundations of merit-based representative democracy and the protections of a secret ballot guaranteed in the Georgia Constitution. Ga. Const. Art. II, § I, ¶ I; Germany Dec., ¶ 26.

51. Cameras are now commonplace in almost every mobile device in use today. Germany Dec., ¶ 28.

52. Pictures are often quickly uploaded to a cloud storage provider on the Internet and would connect the voter's ballot with the voter immediately. Germany Dec., ¶ 28.

53. It is typically private companies and not the user that control the security protocols at the locations where the photographic data is stored. Germany Dec., ¶ 29.

54. The Photography Rules also ensure that photographic images of a voter's ballot are not stored in ways that can connect the ballot to the voter, preserving the voter's privacy, secret ballot, and the integrity of the election. Germany Dec., ¶ 27.

55. The Photography Rules have not been arbitrarily or discriminatorily enforced in the ways Plaintiffs claim. *See* Ex. B, Response Nos. 1–2.

Respectfully submitted this 17th day of July, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Statement has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
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EXHIBIT A

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

COALITION FOR GOOD
GOVERNANCE, *et al.*

Plaintiffs,

v.

BRIAN KEMP, in his official capacity
as Governor of the State of Georgia, *et al.*,

Defendants.

Civil Action No.:
1:21-CV-02070-JPB

DECLARATION OF C. RYAN GERMANY

I, C. Ryan Germany, declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge.

1. When SB 202 was enacted, I was the General Counsel for the Office of the Georgia Secretary of State. I held that position from January 2014 until January 2023. My job responsibilities included providing legal advice and guidance to all divisions of the Secretary of State's Office, including the Elections Division. I also worked closely with the State Election Board. I routinely interacted with county election officials.

2. In that role, I also worked with the Georgia General Assembly on election legislation. The Georgia General Assembly frequently enacts election-

related legislation after an election. Through such legislation, the General Assembly ensures that the State applies lessons learned and responds to issues that arose from each election cycle, ensuring that the State's elections continue to be efficient, secure, accessible, and are conducted in a way that voters can have confidence in the election's results. This was true after both the 2018 and 2020 elections.

3. I regularly provided input to the General Assembly and its members regarding the administration of elections based on my experience in the Secretary of State's office and my interactions with county election officials.

4. Since the passage of SB 202, the only county election officials that have been the subject of a performance review pursuant to O.C.G.A. § 21-2-33.2 are the members of the Fulton County Board of Elections and Registration and its staff.

5. I was appointed to serve on the Performance Review Board for Fulton County Elections ("the Review Board") and the Review Board issued a report to the State Election Board on January 13, 2022.

6. A true and correct copy of that report is attached as Ex. 1 to this declaration. The report is correct summation of the process and analysis used by the Review Board, which included a robust investigation involving state officials, county officials, and the Carter Center.

7. Since the passage of SB 202, the SEB has only empaneled the Performance Review Board for Fulton County Elections and has not empaneled any other Review Boards to evaluate any other county election officials.

8. The SEB has not announced any plans for additional performance reviews or consideration of suspension of additional county election officials.

9. Posting election results quickly is one of the best things that election officials can do to generate confidence in the outcome of an election, especially in a close election. Posting results quickly requires county election officials to tabulate results both quickly and accurately. Following the 2020 election, some counties (particularly Fulton County) were repeatedly asked how many votes they had left to tabulate, and they could not answer in a timely fashion. The inability of the county to answer that question in a timely fashion contributed to a post-election environment where the accuracy and legitimacy of the overall result was challenged and still not accepted by some portion of the electorate.

10. SB 202 codified a State Election Board emergency rule related to early processing of absentee ballots that was utilized in the 2020 election. A true and correct copy of the emergency rule related to early processing of absentee ballots that was used in 2020 is attached as Ex. 2 to this declaration.

11. Early processing of absentee ballots, which Georgia law allows to begin as early as two weeks prior to the election, and early tabulation, which can begin at 7:00 a.m. on Election Day, allows election officials to quickly post results once the polls close on Election Day without rushing to do so, which helps to ensure accuracy and lets county election officials focus on tabulating and posting Election Day results as they come in. Quickly posting accurate election results following the closing of the polls is one of the best things that election officials can do to instill confidence in the results of the election.

12. While early processing and early tabulation of absentee ballots can lead to increased confidence in election results by ensuring quick posting of accurate results once the polls close, both processes introduce the risk of leaked information prior to the polls closing that can harm the integrity of the election process. Both the SEB emergency rule in 2020 and its codification in SB 202 contain processes to mitigate that risk while still recognizing the importance of allowing bi-partisan and public monitoring of the processes. The rules put in place by the General Assembly and the State Election Board attempt to balance all three of those interests: (1) the benefit of posting accurate results quickly, with (2) the risk of leaked information prior to the close of polls, and (3) the importance of election procedures being subject to public inspection.

13. Prior to the emergency rule passed by the State Election Board in 2020 and its subsequent codification in SB 202, early scanning of absentee ballots was only performed by a sequestered group of individuals beginning at 7:00 a.m. on Election Day itself as part of the early tabulation process, so (as long as the sequestration rules were properly followed), the risk of leaked vote totals getting out prior to the close of the polls was sufficiently mitigated because it took place on a single day and did not extend over multiple days, when individuals could not remain sequestered.

14. In order to mitigate the risk that early vote counts would be disclosed when the option of early scanning in the weeks before an election was made available to local election officials, the legislature designed a process that ensured that information about vote totals would not be publicized prior to the official release of results following the close of the polls.

15. SB 202 permits only election officials to handle absentee ballots, requires individuals involved to swear an oath, and places several requirements on observers to avoid disclosure of vote counts.

16. The Communication Rule prohibits monitors and observers of the early scanning process from “communicating any information that they see while monitoring the processing and scanning of absentee ballots...about any ballot, vote, or selection to anyone other than an election official who needs

such information to carry out his or her official duties.” O.C.G.A. § 21-2-386(a)(2)(B)(vii). It applies during the viewing or monitoring of the early scanning process.

17. The early processing and early tabulation processes occur in a room that is already subject to other specific requirements about the use of recording devices and other equipment.

18. Ensuring that information regarding vote totals is not gathered or leaked prior to the official reporting process is critical to preserving the integrity of the election process by ensuring vote totals are not disclosed while other voters are still voting or have yet to vote.

19. The Tally Rules protect the integrity of the election process by ensuring that counting votes or estimates about vote totals do not take place prior to the official tabulation process.

20. The Communication and Tally Rules ensure that early processing of absentee ballots can occur without any official or unofficial (and likely inaccurate) information about vote totals being leaked to media, campaigns, candidates, or otherwise used in a fashion that may attempt to depress or otherwise alter voter turnout by disclosing any vote totals prior to the closing of the polls and the official tabulation and reporting process.

21. If observers were permitted to attempt to tally votes while they are observing the early scanning process and then to communicate that information to others, it is likely that they would (inadvertently or purposefully) disclose inaccurate information, which could depress or alter turnout in the election. Of course, even disclosing accurate information regarding partial or estimated vote totals could depress or otherwise alter turnout in the election

22. If officials were enjoined from enforcing the Communication Rule and the Tally Rules, individuals would be free to attempt to count votes while observing the early-scanning process and provide that information to campaigns, candidates, political operatives, media, or others, which would undermine the integrity of the election process.

23. The Photography Rules help to prevent vote-buying or voter-intimidation schemes. Both of those schemes are much more likely to exist in an environment where potential vote buyers or intimidators know that a voter can take a picture of their ballot and use that to prove for whom they voted.

24. The Photography Rules protect individuals from being subject to outside pressure to cast their ballot a certain way and from being pressured to disclose who they voted for, as well as helping to ensure a secret ballot.

25. Protecting voters from vote-buying schemes, intimidation, and pressure to vote a certain way or disclose how they voted is an important part of giving the entire electorate confidence in election results.

26. Vote-buying schemes, where a third-party may offer to pay or offer something of value in return for a vote, or voter-intimidation schemes, where a third party may not explicitly offer to buy votes but may pressure a voter to show how they voted, undermine the foundations of merit-based representative democracy and the protections of a secret ballot guaranteed in the Georgia Constitution.

27. The Photography Rules also ensure that photographic images of a voter's ballot are not stored in ways that can connect the ballot to the voter, preserving the voter's privacy, secret ballot, and the integrity of the election.


28. Pictures taken on mobile devices are often quickly uploaded to a cloud storage provider on the internet and could connect the voter's ballot with the voter immediately.

29. It is typically private companies—and not the voter—who are in charge of ensuring privacy and security protocols at cloud storage location where photographic data, including pictures of a voter's ballot, would be stored if voters were permitted to take pictures of their ballots on mobile devices.

30. I am not aware of any investigation or charges against any individual in Georgia for violations of the Observation Rule based on merely approaching a polling place with large windows.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and accurate to the best of my knowledge, information, and belief.

7/17/23
Date


C. Ryan Germany

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EXHIBIT 1

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PERFORMANCE REVIEW BOARD REPORT ON FULTON COUNTY ELECTIONS

January 13, 2022

Performance Review Board Members:

Ryan Germany
Stephen Day
Rickey Kittle

SUMMARY

- In prior years, disorganization and a lack of a sense of urgency in resolving issues plagued Fulton County elections. However, Fulton County has shown improvement in administering elections from 2020 to 2022. This improvement is due to a multitude of factors. Prior staff that oversaw elections, voter registration, redistricting, and absentee ballots are no longer with the office, and new staff can bring new energy and renewed commitment. Training, processes and procedures, and overall organization have all been improved as well, but those things need further improvement to ensure readiness and success in the 2024 election cycle.
- The Fulton County Board of Elections and Registration is engaged and helping to drive those improvements. Replacing the board would not be helpful and would in fact hinder the ongoing improvements to Fulton County elections.
- The County Manager's Office in Fulton County has continued to be involved in planning, strategizing, and preparing for upcoming elections, which has positively contributed to improved execution of elections.
- Like election officials across the state, Fulton County elections staff show daily dedication and effort in carrying out and seeking to improve the administration of elections in Fulton County. Director level staff and the Fulton County Board of Elections need to ensure that staff has the necessary tools and guidance to ensure best practices and compliance.
- The Performance Review Board members individually donated hundreds of hours to this project and The Carter Center donated almost 4000 people hours. Both observations (which were conducted independently) noted significant improvement from the 2020 election, but both also noticed things that could use additional improvement, including further improvements to training and processes.
- The existence of the Performance Review helped incentivize Fulton County to make improvements to their elections, but it took an enormous amount of donated work, and it is difficult to see how it is a sustainable process that can continue to positively influence election administration in Georgia without some reforms. A positive, proactive, and periodic review process, appropriately funded, designed to support and assist all counties with election process improvements could be more effective than the performance review process in its current iteration.
- While the Performance Review Process has seen improvement in Fulton County elections since the 2020 election, further improvement is still needed to ensure readiness for the 2024 presidential election cycle. Presidential election cycles see more voters than midterms and take even more planning and preparation to ensure successful execution. Georgia will be a competitive state in next year's elections, so election preparation needs to recognize that

Fulton County's actions (and all counties in Georgia, for that matter) will be heavily scrutinized by political parties, campaigns, candidates, and activist groups. To ensure successful execution of the 2024 election, Fulton County should continue the improvements it has already embarked on and prioritize the areas for improvement noted in this report. Those areas are:

- More contextualized poll worker training
- Environment of order, organization, and control
- Compliance with State Election Board Regulation regarding ballot review
- Planning and Preparation based on capacity and execution
- Review polling place layout
- Compliance with Georgia law regarding sequestration during early tabulation

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BACKGROUND ON FULTON COUNTY ELECTIONS

Fulton County has a long and well-documented history of issues administering elections.¹ The 2012 Presidential Election in Fulton County resulted in the largest fine ever issued by the State Election Board and required remedial training.² In that election failures in timely processing voter registration applications snowballed into significant issues for voters on Election Day.³ This “snowball” effect, where problems on Election Day are generally indicative of earlier failures in the election administration process, was also very present in the June 2020 primary in Fulton County.

The June 2020 Primary Election was marked by long lines and confusion in Fulton County. That election, which occurred during the brunt of the COVID-19 pandemic, was uniquely difficult from an election administration perspective. Massive increases in absentee ballots were difficult for all election officials to keep up with. Pandemic fears increased the already difficult task of recruiting and training poll workers and finding adequate polling locations. Georgia election officials faced the added difficulty of having to implement a new paper-ballot voting system during the 2020 Election Cycle. Implementing a new system always increases logistical and training issues, and issues due to the COVID-19 pandemic stretched election officials to their breaking point. But while every county in Georgia faced those issues, many Fulton County voters had a uniquely bad experience.

Some of the reasons for the issues in the June 2020 primary, in addition to the exigencies mentioned in the above paragraph, were outside Fulton County’s control. In addition to certain polling locations electing not to make themselves available due to the COVID-19 pandemic, other locations were not available due to previously existing remodeling schedules. This led to combining many precincts into one voting location and to utilizing locations that were not typically polling locations, such as Park Tavern in Midtown Atlanta. Fulton’s Chief Registrar at the time was hospitalized due to COVID-19 and another long-time employee passed away due to the virus. However, Fulton’s response to these circumstances added to the Election Day difficulties, specifically the hiring of poll workers on the weekend before Election Day and not ensuring adequate training of those poll workers.

Following the June 2020 Primary Election, the State Election Board considered multiple complaints regarding the election in Fulton County, including accusations that absentee ballot applications were not processed, that polling places did not open on time and did not have all required forms (such as recap sheets), and that poll workers were not adequately trained. The State Election Board found probable cause to send the complaints to the Attorney General’s office for

¹ “Fulton to Retool Absentee Vote System” *Atlanta Journal-Constitution* (1993); “Touch and No-Go in Fulton? Unreadiness for New Voting System Raises Florida Effect Fears” *Atlanta Journal-Constitution* (2002); “Fulton Needs ‘Wake-Up Call’” *The Macon Telegraph* (2008); “Claim: The ‘Error Rates’ for Fulton County Elections Department are ‘Well Below the Average, Rating: False’” *Politifact* (2012); “Fulton County Tries to Recover from Election Problems” *Athens Banner-Herald* (2014).

² [“State Approves Fulton Election Settlement.”](#) *Atlanta Journal-Constitution* (August 13, 2015).

³ [“Fulton Elections Investigation Sent to Attorney General.”](#) *Atlanta Journal-Constitution* (December 17, 2013).

further prosecution, but instructed the Attorney General's office, Secretary of State's office, and Fulton County to try to resolve these issues with an eye toward improving the issues prior to the November 2020 General Election.

In October 2020, Fulton County and the State Election Board agreed to a Consent Order to resolve the complaints stemming from the June 2020 Primary Election.⁴ That order included certain remedial measures that Fulton County agreed to implement prior to the November 2020 General Election as well as the appointment of an independent, non-partisan monitor. The consulting firm Seven Hills Strategies was appointed by the State Election Board as the independent monitor. Carter Jones, of Seven Hills Strategies, spent more than 270 hours observing all aspects of Fulton County's election processes and was granted full access by Fulton County.⁵ Seven Hills Strategies' report noted that it saw no instances of dishonesty, fraud, or intentional malfeasance, but that it did see areas of disorganization, sloppiness, and mismanagement.⁶

REQUEST FROM GENERAL ASSEMBLY FOR PERFORMANCE REVIEW

On July 15, 2021, Senate President Pro Tempore Butch Miller and twenty-two of his Republican colleagues in the Georgia Senate sent a letter to Rick Barron, then-Director of the Fulton County Board of Elections and Registration, requesting answers to questions regarding the double-scanning of nearly 200 ballots and Fulton County's audit tally sheets. Senator Miller requested a response by July 22, 2021. On July 21, 2021, Mr. Barron responded that he wanted to provide answers to the inquiries but that he needed approval from the Fulton County Board of Elections prior to sending responses, that the next board meeting was scheduled for August 12, 2021, and that he would not be able to meet the requested deadline.

On July 27, 2021, Senators Matt Brass, Kay Kirkpatrick, and John Albers (Republican members of the Senate Fulton County delegation), along with twenty-two other members of the Senate Republican caucus, sent a letter to the State Election Board invoking O.C.G.A. § 21-2-106 and requesting a performance review of Fulton County based on their failure to respond to Senator Miller's questions.

On July 30, 2021, Speaker Pro Tempore Jan Jones of the Georgia House of Representatives, joined by four other Republican members of the Fulton County delegation in the House of Representatives, joined their Senate colleagues' request for a performance review of Fulton County elections, mentioning the same issues as their Senate colleagues in addition to "persistent sloppiness in election processes over multiple election cycles."

⁴ "Consent Order." State Election Board Cases 2020-016 and 2020-027, attached hereto as Exhibit A.

⁵ "State Election Board Report- Post Election Executive Summary" *Seven Hills Strategies* (February 16, 2021), attached hereto as Exhibit B.

⁶ "[Report Shows No Fraud But Many Problems with Fulton Voting Process](#)." Georgia Public Broadcasting. (February 17, 2021).

PERFORMANCE REVIEW PROCESS

On August 18, 2021, pursuant to the request from the requisite members of the General Assembly, the State Election Board appointed a Performance Review Board consisting of Stephen Day, member and former Chair of the Gwinnett County Board of Elections; Ryan Germany, General Counsel for the Office of the Secretary of State; and Rickey Kittle, Chair of the Catoosa County Board of Elections.

O.C.G.A. § 21-2-106 states that the duty of the performance review board is “to make a thorough and complete investigation of the local election official with respect to all actions of the local election official regarding the technical competency in the maintenance and operation of election equipment, proper administration and oversight of registration and elections, and compliance with state law and regulations.” “Local election official” is defined in relevant part to this performance review by O.C.G.A. § 21-2-105 as “a county board of elections or a county board of elections and registration.”

After completing that thorough and complete investigation, the performance review board is to “issue a written report of its findings to the Secretary of State, the State Election Board, and the local governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate.” O.C.G.A. § 21-2-106(b).

The Performance Review Board utilized a multi-faceted approach to accomplish the required “thorough and complete investigation,” which spanned across the municipal elections in 2021, the redistricting process, and the 2022 election cycle. We reviewed existing documentation regarding Fulton County elections, particularly the report of independent-monitor Seven Hills Strategies. We conducted an interview with Carter Jones, the author of that report, to get his insights into the performance review process and into Fulton County elections generally. The Performance Review Board itself observed pre-election, Election Day, and post-election processes at Fulton County in both the 2021 municipal elections and the 2022 general and runoff elections. This observation included at least four separate visits to the Fulton County Election Processing Center during the 2021 and 2022 elections to observe absentee by mail processes, equipment and paperwork return, vote tabulation and uploading, and other operations. It also included visits to at least nine different election day polling places and seven separate advance voting locations.

In addition to the observation of the Performance Review Board, The Carter Center, which has observed more than 100 elections in 39 countries since 1989, was invited by the Performance Review Board and the Fulton County Board of Elections to observe the November 2022 General Election in Fulton County. The thorough investigation that the Performance Review Board conducted would not have been possible without the independent observation efforts of The Carter Center. The Carter Center greatly expanded the reach of the three-person Performance Review Board, who each had other election-related duties to attend to during the 2022 election cycle. They contributed almost 4000 people hours to observation, as well as recruiting, managing, and training their observers and then analyzing and reporting the data they gathered. Their assistance was invaluable, and their work was of the highest quality. The Performance Review Board is exceedingly grateful to The Carter Center for their time and effort.⁷

⁷ “2022 General Election Observation: Fulton County, Georgia.” *The Carter Center*. Attached hereto as Exhibit C.

The Performance Review Board conducted formal interviews of key current and former staff members at Fulton County elections, reviewed Standard Operating Procedures, compared those Standard Operating Procedures to procedures in other counties, and interviewed members of the Fulton County Board of Elections.⁸ We also were in close contact with the Secretary of State's Investigations Division and Elections Division as they looked into issues that were relevant to the ongoing review, including redistricting following the 2021 Census and processing of absentee ballot and absentee ballot applications.

OBSERVATIONS

2020 Election Cycle

Before moving to the observations of the Performance Review Board, this section will discuss the 2020 elections in Fulton County based on our review of Seven Hills Strategies' report, interview with Carter Jones, discussions with Secretary of State Elections Divisions, and review of Secretary of State investigations. We will then move to the current status of Fulton County's elections process with the intent of showing the marked improvement in both preparation and performance from 2020 to 2022.

Regarding the 2020 elections that occurred prior to the outset of the performance review process, our interviews and review of materials confirmed much of what has already been written about those elections in Fulton County. In our interview with Carter Jones, the author of the Seven Hills Strategies report, we found him to be knowledgeable, fair, and well-informed regarding Fulton County operations. We concur in his finding that we did not see any indications of fraud, dishonesty, or intentional malfeasance in the 2020 election results in Fulton County, but we did see how a lack of careful planning and precision in ensuring that processes were strictly followed led to errors and to an overall environment that appeared unorganized. In an election with as much interest from voters, media, and others around the country and world, the organizational deficiencies identified in Seven Hills Strategies' report were apparent to voters, observers, and media.

For example, in a pattern that echoed the issues from the 2012 General Election (where a failure to timely process voter registration applications led to difficulties on Election Day), the June 2020 Primary Election saw a failure to timely process absentee ballot applications "snowball" into voter frustration, a high number of absentee ballot requests being cancelled, and long lines on Election Day. In June 2020, these issues were exacerbated due to policies that Fulton County put in place to respond to the COVID-19 pandemic and by issues outside the control of Fulton County (long-time polling places choosing not to make themselves available due to COVID-19, other polling places being closed for previously scheduled remodels, etc.).

⁸ The two Republican Party-appointed members of the Fulton County Board of Elections did not respond to requests for interviews.

While the November 2020 General Election and January 2021 Runoff Election were smoother than the June 2020 Primary (in large part thanks to the remedial measures from the October 2020 Consent Order) Seven Hills Strategies still observed areas where a lack of precision and strict adherence to policies and rules made post-election activities more difficult. Again, many of these difficulties were exacerbated due to policies the Fulton County Board of Elections and Registration chose to put in place in response to the COVID-19 pandemic and by a post-2020 election environment filled with misinformation and false allegations that increased the difficulty of performing all election-related tasks.

Secretary of State Investigators who investigated complaints regarding the November 2020 General Election in Fulton County elections had similar findings to the Seven Hills Strategies' report—no evidence of fraud, dishonesty, or intentional misconduct, but persistent disorganization that made it difficult to get to the bottom of certain claims. Our review reaches a similar conclusion—we do not see any evidence of fraud, intentional misconduct, or large systematic issues that would have affected the result of the November 2020 election. The fact that three separate counts of the 2020 presidential race in Fulton County (initial count, hand-audit count, and machine recount) all showed very similar results supports this conclusion.

Hand-Count Audit of 2020 Presidential Race

One example of Fulton County's disorganization leading to errors and those errors being used to make claims of fraud are the allegations regarding the hand-count audit of the November 2020 Presidential contest that were investigated by Secretary of State Investigators in Case No. SEB 2021-181. In that case, citizen-activists brought to light errors made on tally sheets and in data entry. In a presentation to the State Election Board on March 18, 2022, Secretary of State Investigators confirmed data-entry errors in Fulton County but found that the citizen-activists' conclusions (that such errors obviated the usefulness of the hand-count) were not substantiated.

Independent audit experts confirmed to Secretary of State Investigators that some amount of human error is expected in large hand-counts and that the types of errors seen in the Fulton County audit are the typical types of errors that are seen in hand tabulations. As part of that investigation, Fulton County stated that one reason for the errors was that the Arlo system used for the audit did not have required naming conventions for batches and allowed counties to utilize their own naming conventions. However, the fact that Fulton County did not use standardized naming conventions in their hand audit of the 2020 presidential race indicates a failure of planning and execution to avoid a predictable issue, not something that should be blamed on the Arlo system. The State Election Board referred Case No. SEB 2021-181 to the Attorney General's office, and it remains there for final resolution.

Additional contributing factors to the challenges that occurred in Fulton County's hand-audit that were outside of the county's control include that this was the first election with paper ballots in more than twenty years, so this was the first time the county had put in place and executed paper ballot batch management procedures for such a large number of ballots. Due to its status as the largest county with the greatest number of votes to count, Fulton also ran up against the deadline to complete the hand-count audit and was not able to do reconciliation checks of its data entry.

Other counties, including large counties, did have time to check their data entry and caught and corrected errors prior to submission. A full hand-count audit was not something that was planned for or expected in any county. It came about due to the state's new audit requirement and the fact that the margin of the race for president (the contest selected for the audit) was incredibly small, so counties were not allowed much time to plan and train prior to execution of the audit. The environment post-election in Fulton County in 2020 was also extremely difficult to operate in given an influx of poll-watchers and public from around the country that made even regular operations difficult. Of course, policies put in place to respond to the COVID-19 pandemic also contributed to these difficulties.

In conclusion, Secretary of State Investigators did confirm the existence of errors in the Fulton County audit, but independent audit experts confirmed that the existence of those errors was not surprising given the expected error rates in hand counts, the fact that Fulton did not have time to double check data entry, and the other circumstances surrounding the audit. Those same experts confirmed that some level of data entry errors are expected in a full hand-count, and they do not alter the overall conclusion of the audit, which confirmed that Joe Biden won the 2020 presidential race in Georgia.

Double-Scanning of Ballots

One of the allegations leading to the General Assembly's request for this review was that ballots were double scanned. As has already been reported, Secretary Investigators substantiated the allegations that two batches totaling almost 200 ballots were double scanned during the initial count of the November 2020 election.⁹ As one election expert said, and the Performance Review Board concurs, double-scanning of ballots is "something that should never happen."¹⁰ Contributing factors in this case likely include poor batch management and storage practices (also a contributing factor in errors in the hand-count audit and the recount), a time crunch created by the failure to utilize the early scanning period, and significantly heavier usage of central scanners due to the massive increase in absentee ballots resulting from the COVID-19 pandemic and a corresponding increase in paper jams.

The January 2021 U.S. Senate Runoff

The January 2021 U.S. Senate Runoff Election showed improvements from the November 2020 General Election, most notably in that Fulton County took advantage of the early scanning period for absentee ballots, which decreases the time crunch and rush to scan the ballots (increasing accuracy) and leads to faster posting of results on Election Day. Other reasons for these improvements include the fact that election officials and poll workers had more experience running elections with the new equipment, a decrease in the number of absentee ballots to issue and process, and greater familiarity with COVID-19 protocols.

⁹ "[Some Ballots Initially Double-Counted in Fulton Before Recount.](#)" *Atlanta Journal-Constitution*. (July 13, 2021).

¹⁰ *Id.*

2021 Municipal Elections

After being appointed in August 2021, the first elections that the Performance Review Board observed in Fulton County were the 2021 municipal elections administered by Fulton County. These elections are orders of magnitude smaller than a presidential or midterm General Election, but they are still valuable to see how a county performs essential election functions. The 2021 municipal elections were significantly smoother than the 2020 elections in Fulton. On Election Night, one performance review board member was present at the Election Processing Center and spoke with Mr. Foris Webb, III, the Atlanta Municipal Clerk. Mr. Webb has observed elections in Fulton County (municipal elections, but also county, state, and federal elections) for 24 years, and he stated that the 2021 municipal election in Fulton was the smoothest one he had observed to date.

The Performance Review Board observation similarly showed smooth operations and significant improvement from the 2020 election. Some of this improvement is undoubtedly due to the fact that a municipal election is much smaller than a presidential election, but it also seemed that Fulton had improved some of their processes since 2020.

One area that contributed to the improvement in operations was staffing. Fulton County created and filled several key and new management positions. These new positions include a Deputy Director, an Absentee Ballot Manager, and a Manager for the Ballot Marking Equipment. The additional managers had staff focused on their areas, allowing for responsibilities to be more spread out and better executed.

Absentee Ballot Process

One example of improvement was identified during our observation of absentee ballot procedures. Following the 2020 election cycle, Fulton County split responsibility for managing the absentee ballot process and the registration process, which had been under one manager. Fulton County created and filled a new position of the Absentee Ballot Manager who supervised staff dedicated to absentee ballots. The Absentee Ballot Manager was new to her role in 2021 and had not been in charge of absentee ballots in 2020. This change seems to have resulted in significant process improvements. Our observation was that the processes put in place by the Absentee Ballot Manager were effective and compliant with Georgia law. The location where absentee ballot processing occurred was set up to ensure a good flow of the process while ensuring ballot security and allowing required transparency to poll watchers. The Absentee Ballot Manager stated that part of the training conducted for staff executing those processes is making sure they are aware of how important the task is to the success of the overall election and focuses on quality control.

Equipment Handling

Another issue Fulton County addressed following the 2020 election was to split responsibilities for managing ballot marking devices and other election site supplies. Fulton County hired a new manager responsible for ballot marking devices and assigned technicians to specific polling sites to address issues with the equipment. Fulton County also implemented a supply scanning system

that allowed more accurate and timely tracking of supplies and equipment. While this supply scanning system does not appear fully implemented, it is a positive step.

Advance Voting

We also observed several advance voting sites, including Sandy Springs Library and Metropolitan Library. At both locations, voting was proceeding smoothly with almost no wait time. Fulton had added a person to advance voting locations to ensure that voter credit was promptly and properly given in the ENET voter registration system and reconciled ENET voter credit with paper Advance Voting Ballot Applications filled out at the time of check-in. This reconciliation check is a noted improvement and shows increased attention to these important processes.

The Performance Review Board also observed advance voting at Buckhead Library and C.T. Martin Natatorium. The observation of those two locations occurred on the last day of early voting so traffic was heavier. Buckhead Library had some poll workers who did not show up that day and was experiencing long lines to vote. The check-in process was going smoothly, but we observed that some check-in stations were not being utilized due to the lack of staff. Buckhead Library is a popular voting location, but the setup is a bit cramped due to space that's available. On that same day, C.T. Martin Natatorium had a full complement of poll workers and kept a short line to vote. The facility at C.T. Martin Natatorium is bigger and allowed for more ease of movement.¹¹ We also noticed that the poll manager at C.T. Martin would jump-in to staff a check-in station when the line got long, which seemed to really set a good tone for all poll workers at that location.

Election Day

On Election Day for the municipal elections in November 2021, the Performance Review Board had a presence at Fulton County Election Headquarters, at the Election Processing Center, and at polling places around the county. At headquarters, Fulton County has an impressive system of logging issues that are reported at different polling places. But the overall atmosphere still seemed disorganized and reported issues did not seem to result in a sense of urgency to resolve. The Performance Review Board was able to visit locations that had specific issues reported such as North Springs High School in Sandy Springs and Independence High School in Roswell. Overall, voter experience on Election Day seemed to be smooth. Typical turnout during municipal elections is significantly lower than in a presidential or midterm election, so issues are able to be resolved without leading to major backups in voting. The two issues discussed below are indicative of the types of issues that can occur when administering an election.

¹¹ Finding good, centrally located polling locations that have sufficient space, parking, accessibility, security, etc. is a difficulty for election officials across the country, especially in urban environments and even more so since schools have understandably stepped back from being polling locations. We conclude that Fulton County does a good job managing this difficulty. Fulton County election seems to have a very good relationship with the Fulton County library system, and while the available space in libraries is not always large, libraries provide good accessibility, availability, and are under county control. We also understand that library staff has also been trained to assist in some election tasks, which could be a huge benefit. The Performance Review Board recognizes the vital assistance the Fulton County Library System plays in ensuring that Fulton County can continue improving administration of elections.

At North Springs High School, the poll manager noticed she was missing the key to the cabinets that store the ballot marking devices and scanners. Even though she reported this issue the Saturday before the election, the key to the cabinets was not delivered until 10:00 a.m. on Election Day. To the poll manager's credit, she utilized available backup procedures (i.e., emergency paper ballots) to ensure that voting was able to occur beginning at 7:00 a.m. on Election Day.

At Independence High School in Roswell, the equipment was delivered to the location much later in the day before the election than was scheduled (schedule for 2:00 p.m. but did not arrive until 8:30-9:30 p.m.). The equipment was incorrectly delivered to a cafeteria downstairs, but the poll manager was told by school officials that was not the proper place. The poll manager alerted Fulton County on Monday night that the equipment needed to be moved to a different location. She was told that a logistics team would be present at 5:00 a.m. on Election Day to move the equipment, but that team did not show up until 1:00 p.m. on Election Day. Fortunately, the poll officials (all female), took the initiative to manually move the necessary equipment themselves up a steep incline. They were up and running by the time the polls opened at 7:00 a.m. and had no delays to opening.

These examples both show poll managers utilizing their training and showing initiative to successfully resolve issues. The fact that backup procedures were utilized to ensure that voters were still able to vote without delay shows a massive improvement from the June 2020 Primary. However, the issues at both of those locations were ones that could have been avoided by better control and execution of the equipment delivery process.¹² These issues were also both noticed by poll managers well in advance of opening of the polls, and a quicker response from Fulton County would have mitigated the need for the extra steps that had to be taken by poll officials.

At the Election Processing Center on Election Night, we observed that the system for tracking memory cards that had already been uploaded was disorganized. Fulton County actually had to recertify their election results after the Secretary of State's office pointed out to them that certain checks did not add up. Fulton County found memory cards that had not been uploaded. This is something that should never happen, would not happen with better organization, and would be caught with better checks and balances.

Redistricting

After the 2021 municipal elections and prior to the 2022 elections, all counties in Georgia had to redistrict voters following the new district maps passed by the General Assembly following the decennial census. Just like voter registration and the absentee ballot process, redistricting is an essential election process where errors can "snowball" into voters being in the wrong location, long lines, and confusion on Election Day. The Secretary of State's Elections Division, particularly Deputy State Elections Director Dr. Jesse Harris, communicated frequently with Fulton about their redistricting. Utilizing a mapping tool, the Secretary of State's office checked all counties state and federal redistricting work to identify voters that may have been placed in the wrong district

¹² One of the improvements observed in the 2022 election cycle by both the Performance Review Board and The Carter Center was improved organization in the warehouse. This improvement, if it is kept up, should help to minimize issues with equipment delivery moving forward.

and flagged those records for counties to review. In one of the initial checks, the mapping software identified approximately 30,000 records for counties to review. Approximately 20,000 of those records were in Fulton County.

Fulton County had new staff in charge of redistricting from previous cycles, and once this information was brought to their attention, they worked diligently to resolve any issues. Fulton County also separately contracted with a mapping service to help them check their work for county level districts. Due to the delay in the census caused by COVID-19, which caused maps to be passed by the General Assembly later than in previous cycles, the corrections that Fulton County was making were occurring closer to the May primary than is ideal. It also became clear that Fulton had not prioritized monthly and annual “street maintenance” (the process that ensures that street names and numbers in the voter registration database are updated to account for new development).

In other large counties, street maintenance is a monthly process regardless of whether redistricting is occurring. As a result of neglecting the street maintenance process, the new staff in Fulton had to spend significant time “catching up” on tasks that ideally would have been completed prior to redistricting. However, at the end of the process, one expert at the Secretary of State’s office said that he thought Fulton’s voter database was in better shape than it had been in a long time. This was due to dedicated effort by Fulton County elections staff, support from others in Fulton County, (including the County Manager) to ensure that elections had the resources they needed, and assistance from the Secretary of State’s office.

2022 Election Cycle

In an effort to expand the reach of the three-member Performance Review Board and to further inform the review, the Performance Review Board and the Fulton County Board of Elections and Registration entered into an agreement with The Carter Center to provide independent, non-partisan observation¹³ of Fulton County’s election. In addition to The Carter Center’s observation, the Performance Review Board also conducted some limited observations of advance voting and processes at Fulton’s Election Preparation Center when advance voting equipment and ballots were being returned.¹⁴

During advance voting in the November General Election, The Carter Center deployed 64 observers to all 36 early voting locations and the four “outreach” advance voting locations, collecting over 330 observation reports on advance voting. On Election Day, the Center deployed 104 observers to 217 of the 249 polling places in Fulton County. The Carter Center also observed absentee ballot processing, election night drop-off, and tabulation. Their analysis is based on direct

¹³ “Nonpartisan election observation is an impartial process where observers systematically gather data determine whether an election was fair, peaceful, and credible... [N]onpartisan observers have no stake in the election outcome. They do not interfere in the election day process, even if they see something take place that should not happen. They are trained to understand the election process as specified by law and report on whether election day procedures are being correctly followed.” The Carter Center Report on Observation of Fulton County Election, pg. 5.

¹⁴ Due to the fact that the Performance Review Board members have election-related duties that they must also attend to, the members were limited in what observations they could perform in the November 2022 election. The Carter Center observation was vital to the ability to complete the review in a timely fashion.

observation, desk analysis of documents provided by Fulton County, and conversations with Fulton County staff.

The Carter Center's observation and the Performance Review Board's observations were conducted independently from each other, but both reached similar conclusions. The Performance Review Board observed dedicated poll workers working efficiently to process voters. Voter check-in was proceeding smoothly at the locations we observed (Buckhead Library and Chastain Park), averaging between 55 seconds and 2 minutes and 55 seconds per voter. The overall process was more organized than 2021, which was more organized than 2020. This conclusion was echoed by the poll manager at Chastain Park and by Fulton County elections staff. We also observed that the Elections Preparation Center looked cleaner and more organized than it had in 2021. Fulton County had also implemented a new inventory tracking system that aimed to help with equipment delivery and return. The inventory tracking system is not perfectly implemented yet, but the fact that they have added it shows a recognition of the importance of organization and preparation to the overall election process.

The Carter Center observed that both advance voting and Election Day were calm and peaceful. During advance voting, lines were generally short, ranging from no line to a maximum of 25 minutes. The last day of advance voting saw longer lines (also noted by the Performance Review Board observation). On Election Day, lines generally stayed under 15 minutes throughout the day. Most voters waited far less than 15 minutes, with 57% of observed polling places having no line at all and 38% had lines of 5 minutes or less. Lines at opening were manageable at all observed locations. The longest line at opening at an observed location was 43 people and observers reported that it was cleared quickly. The Carter Center also noted that the presence of compliance officer during advance voting, tasked with ensuring reconciliation of voter credit and voter check-in throughout the day, and a technical specialist, tasked with troubleshooting equipment issues, helped streamline processes.

The Carter Center also noted that election workers were generally friendly, enthusiastic, and helpful to voters, and that there was a strong emphasis on customer service. This is no small task given that workdays could be up to 14 hours.

The Carter Center observed good processes for tracking and processing absentee ballot applications and absentee ballots, similar to what the Performance Review Board observed in 2021. They noted that absentee ballot applications were received by the mailroom, timestamped, opened, and batched in groups of 50 for processing, with batch cover sheets used to track each group of 50 through the process, recording the total accepted or rejected. Applications were processed and reconciled to the voter registration database each night.

In another big improvement from the November 2020 election, Fulton County fully utilized the early scanning period to scan verified and accepted absentee ballots prior to Election Day. Utilizing this time period (codified in Georgia law by S.B. 202 following the 2020 election) allows absentee ballot scanning to be less of a rush, provides more time for quality control checks, and still allows the county to get results posted quickly after the polls close. Observers witnessed absentee ballot processing from initial receipt through verification and tabulation. Best practices were observed at

each step of the process, including using small batches, tracking each batch via a cover sheet that logged any ballots that were removed (e.g., ballots rejected during verification), and reconciling counts of ballots at various stages throughout the process. Following processes like this in an organized fashion is what ensures that the double-scanning of ballots that occurred in 2020 is not something that happens again. One other improvement noted by the Performance Review Board from 2021 to 2022 was a more organized system for storing memory cards when they are returned to the Election Processing Center for tabulation.

AREAS FOR IMPROVEMENT

Both The Carter Center and Performance Review Board observed significant improvements since 2020, but observers also noted things that could use further improvement.

While poll workers generally seemed better-trained in 2022 than 2020 given that essential functions were successfully performed with relative uniformity, poll worker training can still be improved. The Carter Center observers noted that more contextualized training that helped poll officials understand the big picture “why” of certain administrative steps would be beneficial. For example, the processes of checking seals and properly filling out recap sheets were completed by poll officials, but there did not seem to always be an understanding of why and how these processes were undertaken. Both of those processes are important for overall system security and for public confidence in elections, and both are also ways to potentially find any issues at the point where they can still be easily resolved.

General organization can continue to improve as well. While the reality is that there is no such thing as a mistake-free election, a tightly organized environment lessens the opportunity for mistakes and increases the probability of catching mistakes. For example, in the May 2022 Primary Election, just like in the November 2021 Municipal Election, the Secretary of State’s office noticed that Fulton County did not upload all memory card that contained votes. The issue was resolved prior to certification, but it’s something that should not have happened and, at the very least, should have been caught with basic reconciliation checks.

Another observation that can be resolved through better training is compliance with the State Election Board regulation that requires the poll official stationed at the ballot scanner to “offer each voter specific verbal instruction to review their printed ballot prior to scanning it.”¹⁵

The Carter Center also noted that the “outreach” locations opened on college campuses for advance voting had the most significant staffing challenges, with poll managers having to give inexperienced staff on-the-job training. These locations were not initially planned to be advance voting locations, but they were added at the request of activist groups.¹⁶ Preparation and planning is vital to successful election administration. In determining plans for polling locations, we assume the Fulton County Board of Elections and Registration is already taking into account what can

¹⁵ Georgia Rules and Regulations 183-1-12-.11(8).

¹⁶ “[Following ACLU Complaint, Fulton to Host Voting on College Campuses.](#)” *Atlanta Journal-Constitution*. (August 11, 2022).

feasibly be accomplished by available resources and staff. Altering plans at the request of activist groups, who may be driven by motivations other than Fulton County executing a smooth election, can lead to the significant staffing challenges that The Carter Center observed.

We have already mentioned that finding suitable polling places is a difficulty for all, and especially urban, election officials. But one thing Fulton can pay more attention to is the layout of equipment at polling places. Voter privacy, voter flow, and appropriate transparency for certified partisan monitors should all be considered when determining setup and layout. Of course, given that available space will not always be perfect, it is not always possible to maximize each of those considerations, but polling place setup should be intentional and thought through.

One area noted by The Carter Center where significant improvement is needed is in following the sequestration requirements of O.C.G.A. § 21-2-386(a)(6) during early tabulation.¹⁷ Fulton County should be applauded for taking advantage of both the early processing and early tabulating opportunities offered by Georgia law. Early processing and early tabulation ensure that sufficient time and care can be offered to those vital processes, which increases accuracy, while still allowing timely reporting of results. But the rules in place that allow for those processes to be done securely must be followed to ensure fairness and confidence.

Fulton County also has relatively new staff managing certain process since the 2020 election. The Performance Review Board's observation is that staff is dedicated and open to improvements when the necessary tools and guidance are provided. As The Carter Center stated well:

Election processes are complex logistical exercises. As such, there are always opportunities for continuous improvement of processes to bolster efficiency and maximize appropriate and contextualized transparency. This process of continuous improvement relies on the observation of systems and processes and the creation of monitored feedback loops so that lessons from one election can be integrated into systems to improve future elections.

We hope that Fulton County will continue to build on the significant improvements that our review has noted since the 2020 election cycle.

Fulton County's Future Plans

In addition to the improvements that the Performance Review Board and The Carter Center were able to observe, Fulton County has also taken other steps that we believe can lead to even further improvements in future elections.

¹⁷ Georgia law, clarified by S.B. 202, allows for both an early processing period where absentee ballots can be scanned but not tabulated (i.e. election officials can essentially do everything to prepare absentee ballots for tabulation but not yet tabulate) and a period beginning at 7:00 a.m. on Election Day where absentee ballots can be tabulated as long as all participants are sequestered so that results cannot be known by anyone outside that room until the polls close.

Elections Central Location

Many of the issues in 2020 were caused by or at least exacerbated by the fact that tasks and personnel were spread across many different locations. This was even more so the case in 2020 due to processes put in place to respond to the COVID-19 pandemic, but even outside of pandemic circumstances, Fulton County election operations are spread across multiple locations.

In Spring 2023, Fulton County plans to move to one central location (“Elections Central”) where they will be able to conduct all election operations. Elections Central should reduce miscommunication and allow more visibility to managerial staff. Elections Central also shows the commitment of the Fulton County Commission to ensuring that Fulton County Elections has the resources they need to be successful.

Budget Priority

Along the same lines as the move to Elections Central, it became clear through our interviews that the Fulton County Commission now takes the budget needs of Fulton County Elections more seriously. One benefit of all the challenges from the 2020 election is that it showed people other than just election officials that election administration is a difficult and complicated logistical operation. Executing elections with the precision, integrity, and voter convenience that Georgia voters deserve and election officials want takes adequate resources.

We did not review the Fulton County Elections budget as part of this review, so we cannot speak to specifically to that issue. We have heard some rumblings that Fulton County Elections is overfunded. We are not able to speak specifically to that allegation, but it is the opinion of the Performance Review Board that elections in Georgia have generally been underfunded, not overfunded.

Improvements to Poll Worker Training

Even before The Carter Center’s observation noted that some improvements to training would be beneficial, members of the Fulton County Board of Elections had already identified improvements to poll worker training. This came across in our interviews with Cathy Woolard, Chair of the Board, and Teri Crawford, one of the members. Apparently, certain poll managers noticed some weaknesses in training and approached the board about reworking the training manual. We understand that project is in progress. It is also encouraging that the poll managers themselves sought out to improve the training.

CONCLUSIONS AND RECOMMENDATIONS

- In prior years, disorganization and a lack of a sense of urgency in resolving issues plagued Fulton County elections. However, Fulton County has shown improvement in administering elections from 2020 to 2022. This improvement is due to a multitude of factors. Prior staff that oversaw elections, voter registration, redistricting, and absentee ballots are no longer with the office, and new staff can bring new energy and renewed commitment. Training, processes and procedures, and overall organization have all been improved as well, but those things need further improvement to ensure readiness and success in the 2024 election cycle.
- The Fulton County Board of Elections and Registration is engaged and helping to drive those improvements. Replacing the board would not be helpful and would in fact hinder the ongoing improvements to Fulton County elections.
- The County Manager's Office in Fulton County has continued to be involved in planning, strategizing, and preparing for upcoming elections, which has positively contributed to improved execution of elections.
- Like election officials across the state, Fulton County elections staff show daily dedication and effort in carrying out and seeking to improve the administration of elections in Fulton County. Director level staff and the Fulton County Board of Elections need to ensure that staff has the necessary tools and guidance to ensure best practices and compliance.
- The Performance Review Board members individually donated hundreds of hours to this project and The Carter Center donated almost 4000 people hours. Both observations (which were conducted independently) noted significant improvement from the 2020 election, but both also noticed things that could use additional improvement, including further improvements to training and processes.
- The existence of the Performance Review helped incentivize Fulton County to make improvements to their elections, but it took an enormous amount of donated work, and it is difficult to see how it is a sustainable process that can continue to positively influence election administration in Georgia without some reforms. A positive, proactive, and periodic review process, appropriately funded, designed to support and assist all counties with election process improvements could be more effective than the performance review process in its current iteration.
- While the Performance Review Board has seen improvement in Fulton County elections since the 2020 election, further improvement is still needed to ensure readiness for the 2024 presidential election cycle. Presidential election cycles see more voters than midterms and take even more planning and preparation to ensure successful execution. Georgia will be a competitive state in next year's elections, so election preparation needs to recognize that

Fulton County's actions (and all counties in Georgia, for that matter) will be heavily scrutinized by political parties, campaigns, candidates, and activist groups. To ensure successful execution of the 2024 election, Fulton County should continue the improvements it has already embarked on and prioritize the areas for improvement noted in this report. Those areas are:

- More contextualized poll worker training
- Environment of order, organization, and control
- Compliance with State Election Board Regulation regarding ballot review
- Planning and Preparation based on capacity and execution
- Review polling place layout
- Compliance with Georgia law regarding sequestration during early tabulation

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EXHIBIT A

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**BEFORE THE STATE ELECTION BOARD
STATE OF GEORGIA**

In the matter of:

**FULTON COUNTY BOARD OF
REGISTRATION AND ELECTIONS
and RICHARD BARRON, in his official
capacity**

Respondents.

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**SEB Cases 2020-016
and 2020-027
Fulton County**

CONSENT ORDER

The State Election Board and Respondents Fulton County Board of Registration and Elections and Elections Director Richard Barron (collectively, “Respondents” or “BRE”), hereby enter into the following Consent Order for use in SEB Cases 2020-016 and 2020-027 before the State Election Board in lieu of an evidentiary hearing.

FINDINGS OF FACT and CONCLUSIONS OF LAW

The findings of fact and conclusions of law set forth in the following Paragraphs 1 through 9 have been asserted against Respondents. The SEB and the Respondents agree that there is no evidence of any willful misconduct but desire that the above-captioned cases be resolved in their entirety in order to avoid further litigation. Respondents and the SEB acknowledge that there is evidence of a *prima facie* case supporting the following assertions and enter into this negotiated Consent Order to resolve the issues that arose leading up to and including the June 9, 2020 general primary.

INTRODUCTION

The primary election in Georgia, originally scheduled for March 24, 2020 and eventually held on June 9, 2020, was monumentally challenging for election officials throughout the State of Georgia. The combination of an unexpected pandemic and the fear of the unknown health

dangers the pandemic posed, the substantial increase in the number of voters (including the explosive growth in the number of absentee by mail voters), implementing new voting machines at the early voting and election day polling locations, and the number of contested races on the ballot – all of these converging factors led to hurdles that had never before been envisioned or encountered by election officials. These challenges occurred throughout the State of Georgia, in fact, throughout the country. Not a single county in Georgia was untouched by the pandemic and its consequences. However, the majority of complaints and issues arose from Fulton County.

Fulton County's June 9 primary election was beset with problems. Historically long lines were experienced at polling sites. The voting machines were operated by poll workers who were not adequately trained. Poll workers who were scheduled to work on election day (and who were trained) did not report for duty because of the fear of the danger posed by the pandemic. Some supplies and forms that were needed at polling locations were not delivered and in other cases, supplies were delivered, but newly recruited poll workers failed to find them.

The absentee ballot process was besieged with obstacles. Prior to the pandemic the Fulton County Department of Registration and Elections ("DRE") had anticipated that there would be approximately 1,000 absentee ballots, based on prior election data, for the primary. In actuality, 144,000 absentee ballots were requested by voters in Fulton County. The DRE office was particularly hard hit by the pandemic. The Chief Registrar was hospitalized with COVID-19 and another employee passed away. This led to chaos in the absentee ballot process (voters could send emails, or letters, or faxes to request an absentee ballot) and the inability to record every single ballot request without mistakes. An unknown number of people who requested absentee ballots never received a ballot.

Through it all, however, the staff of the Secretary of State and the DRE and its staff worked tirelessly (and at personal risk) in an effort to overcome these unpredicted obstacles and to make sure that every person in Fulton County voted who wanted to vote and that the process functioned as well as possible. In some ways, Fulton County achieved remarkable success. In some ways it did not.

Ultimately, despite the best efforts of the state and the county, there were violations of the election code. While neither the State Election Board nor the Secretary of State's office believes these violations were the result of malicious intent, the fact remains there were violations that resulted in voters not receiving an absentee ballot and there were violations that resulted in voters not being able to vote. Countless voters experienced unacceptably long lines at voting locations.

The State Elections Board filed three separate notices of violations that occasioned hearings on August 27, 2020, September 3, 2020 and September 10, 2020.¹ Following those SEB hearings, referrals were made to the Attorney General's office to further investigate some of the matters.² Immediately thereafter, Respondents' counsel and representatives from the Attorney General's office and the Secretary of State's Office met to resolve these issues. The goal was to reach a Consent Order that had one set of paramount goals: improve the process for the November 3, 2020 election as well as the absentee ballot and early voting process; anticipate the problems that will inevitably arise; plan to solve those troubles; and enhance the ability of the SEB and the State Election staff, BRE, and DRE staff to work together to achieve an election in November that is the envy of the rest of the country. This Consent Order has been reached with that multi-faceted goal in mind.

¹ The three notices of violations are attached as Exhibits A1, A2, and A3.

² The SEB found probable cause to refer violations to the Attorney General for further investigation. The specific violations that were the subject of the referral are listed in Exhibit B.

SEB Case 2020-016

1.

The Secretary of State's office received more than 250 complaints from Fulton County electors that they requested absentee ballots for the June 9, 2020 general primary, but did not receive them. An investigation by the Secretary of State showed that of the approximately 254 complainants, 105 did not have their request entered into the Election Net ("ENET") system to generate the absentee ballot.

2.

The investigation further revealed that at least 107 of the 254 complainants who did not receive their absentee ballot did not otherwise vote in the election. However, because Respondents did not retain paper copies of the applications, there is no log or audit to verify the applications received by Respondents compared to what was entered into ENET. Therefore, the number of electors that were affected is unknown.

3.

Based upon the foregoing, there is sufficient evidence to show that there were violations of O.C.G.A. § 21-2-384(2) based on the failure to properly process absentee ballot applications received via mail and email or properly enter the requests into the ENET system.

SEB Case 2020-027

4.

The Georgia Secretary of State received over 160 complaints regarding election-day issues in reference to the June 09, 2020, general primary in Fulton County. These complaints alleged that Respondents (a) failed to timely open polling locations; (b) failed to provide voting equipment accessible to individuals with disabilities; (c) failed to provide the necessary forms to

polling locations; (d) failed to adequately train poll workers; and (e) failed to provide sufficient equipment to polling locations. An investigation into these complaints by the Secretary of State's office showed sufficient evidence of the following violations of the Elections Code.

5.

There is sufficient evidence to show that at least 12 polling locations were not open and available for voting by 7:00 a.m. on June 9, 2020. Respondents' failure to ensure that polling locations were opened on time violates O.C.G.A. § 21-2-403.

6.

There is sufficient evidence to show that at least two polling locations were not equipped with at least one electronic ballot marking device accessible to individuals with disabilities. Respondents' failure to adequately provide this equipment violates O.C.G.A. §§ 21-2-379.21.

7.

There is sufficient evidence to show that Respondents failed to provide the necessary election-day forms to a majority of polling locations within Fulton County. None of these polling locations were provided with Recap Sheets, leaving poll officers unable to complete the Recap Sheets at the polling locations. There were also reports of polling locations receiving insufficient Numbered List forms, and inner and outer provisional ballot envelopes. Respondents' failure to provide necessary forms violates O.C.G.A. §§ 21-2-401 and State Election Board Rule 183-1-12-6b.

8.

There is sufficient evidence to show that Respondents failure to provide adequately trained poll managers and workers about election procedures. Based upon complainant statements and interviews with poll managers, Respondents did not provide adequate instruction to poll officers and workers in the operation of the new voting equipment, basic trouble-shooting,

set up of the equipment, proper power supply set up, and completion of new forms and closing procedures. Respondents' failure to provide adequate instruction of poll officers and workers violates O.C.G.A. § 21-2-99(a). As explained in the Introduction, the problem with educating poll workers was largely caused by the pandemic, reflecting the unexpected inability to conduct in-person training with the new equipment, coupled with the unexpected exodus of scores of poll workers who were fearful of the dangers of appearing at crowded polling locations.

9.

There is sufficient evidence to show that two precincts (Hapeville and Fairburn) did not receive the correct voting equipment on June 9, 2020, which caused substantial delay at those precincts. Respondents' failure to provide sufficient equipment to polling locations violates O.C.G.A. § 21-2-267 and State Election Board Rules 183-1-12-.09(2) and 183-1-12.11(c).

ORDER

10.

This Consent Order addresses and resolves all matters regarding Respondent in connection with SEB Cases 2020-016 and 2020-027.

11.

The State Election Board, having considered the particular facts and circumstances of this case, inclusive of the within and foregoing Findings of Fact and Conclusions of Law, hereby ORDERS that Respondents cease and desist from further violations of the Election Code. If the remedies that are encompassed in this Consent Order in Paragraphs 12(A) – (F), are implemented, there will be no reprimand issued by the State Election Board.

12.

The State Election Board further ORDERS the Respondents pay a civil penalty of \$50,000, subject to the following: The State Election Board agrees to waive the civil penalty if

Respondents fully implement the following remedial measures for the November 3, 2020, general election (“Election Day”):

(A) Absentee Ballot Procedures.

1. Respondents agree to put in place sufficient resources and procedures with the goal of accurately processing all absentee ballot applications by the close of the next business day after the application is received. “Processing” the application means that the application is entered into ENET, the signature on the application is checked against other signatures on file, the application is accepted or rejected as appropriate (and such acceptance or rejection is entered into ENET), and, if accepted, the ballot (or provisional ballot if appropriate) is issued to the voter at the requested address. Personnel shall also be sufficiently trained in how to cancel absentee ballot requests in ENET and in the importance of entering those cancellations immediately upon receipt.
2. Respondents agree to put in place sufficient resources and procedures to accurately process all returned absentee ballots by the close of business on the next business day after the ballot is received (but no later than 3:00 p.m. on the day after Election Day). “Processing” absentee ballots means the signature on back of the ballot is compared to the signature on the absentee ballot application or other signature on file, the ballot is entered into ENET as accepted or rejected as appropriate, and any required cure notification is sent to the voter if needed. All personnel processing absentee ballots shall be properly trained on how to reject absentee ballots that come in when the

absentee ballot request has been cancelled (i.e. when the voter has voted in person).

3. Respondents agree to put in place sufficient resources and procedures to fully utilize State Election Board Emergency Rule 183-1-14-0.9-.15 Processing Absentee Ballots Prior to Election Day so that all accepted absentee ballots can be scanned by the day after Election Day.
4. Respondents agree to put in place sufficient resources and procedures to fully utilize State Election Board Emergency Rule 183-1-14-0.8-.14 Secure Absentee Ballot Drop Boxes. Respondents agree to arrange for the collection of ballots from drop boxes at least once every 24 hours and to ensure that all drop boxes are properly closed, emptied, and secured at 7:00 p.m. on Election Day. Respondents further agree to process, as described in paragraph (b) all absentee ballots received from drop boxes by the close of business on the next business day after the ballot is received by the elections office.

(B) Poll Workers and Poll Worker Training.

1. Respondents agree to have an available force of at least 2,200 poll officers, along with a sufficient pool of alternate, trained poll officers to fill unexpected absences.
2. Respondents agree to put in place sufficient resources and procedures to adequately train all poll officers and alternates. Such sufficient resources and procedures shall include, but not be limited to:
 - a. Certification for each poll officer and alternate that they completed training.

- b. Dedicated Poll Pad training, including proper steps to be taken when somebody who has requested an absentee ballot shows up to vote in person.
 - c. Dedicated training on proper setup, opening, shutdown, and ballot transfer procedures.
 - d. Dedicated training on all backup procedures (i.e. backup paper pollbooks, backup procedures for pulling up correct ballot on BMD, use of emergency paper ballots, and emergency bin in scanner) to ensure that voting does not stop during voting hours.
3. Respondents agree to provide the State Election Board with weekly updates on total poll officers and alternates, training, and allocation plan of poll officers to polling places, including contingency plan for alternate poll officers for the November election, as well as any runoff election in this election cycle.
4. Respondents agree to put in place a plan to provide for emergency allocation of poll officers on Election Day should they experience attrition or no shows.
- (C) Advance Voting Locations.** Respondents agree to provide at least 24 fully-staffed advanced in-person voting locations. Respondents further agree to enter the fact that the voter has voted early into ENET at the time that the voter votes.
- (D) Election Day Logistics and Polling Locations.**
1. Respondents agree to provide no fewer than 255 polling locations on November 3.

2. For any polling location that was not previously inspected by the Secretary of State's vendor, Respondents agree to conduct an inspection for infrastructure, accessibility, and security.
3. Respondents agree to provide their plan for Election Day distribution of election equipment (*i.e.*, pollbooks, BMDs, polling place scanners) and poll officers to the Secretary of State's office no later than October 2, 2020.
4. Respondents agree to provide extra equipment and personnel to Election Day polling locations as identified by the Secretary of State's office after plugging Respondent's plan into the MIT Election Data Lab allocation tool.
5. Respondents agree to put in place sufficient resources and procedures (including quality control procedures) to ensure that each polling place has a sufficient amount of emergency/provisional paper ballots (at least 10% of active voters assigned to the polling place), paper backup pollbooks, and all required forms.
6. Respondents agree to staff each polling location with a dedicated staffer who is designated and properly trained as a deputy registrar. Such deputy registrar shall have access to ENET at the polling location and shall be dedicated to determining whether a voter's absentee ballot has been accepted if that voter show up in person, and if the absentee ballot has not been accepted, cancelling the absentee ballot request in ENET before allowing the voter to vote in person.
7. Respondents agree to put in place sufficient resources and procedures to implement a communications plan that allows effective and timely communication from poll officers and technical support personnel at polling

locations to the county elections office and for effective and timely response, including a plan to provide additional equipment or personnel to a polling place in a timely manner.

8. Respondents agree to put in place sufficient resources and procedures to ensure effective line management at all polling locations, with the goal of processing 100 voters per hour at each voting location.

(E) **Technical Support.** Respondents agree to have a dedicated technical support person located in every polling location on Election Day. Such person shall have completed technical support training provided by Dominion and such additional training as deemed necessary by Respondent.

(F) **Audit Preparation.** Respondents agree to put in place sufficient resources and procedures to prepare for and complete a post-election audit, including proper ballot handling, ballot storage procedures, and preparation of a ballot manifest as specified by the Secretary of State's office.

13.

Respondents agree that the State Election Board may appoint an independent monitor who shall monitor progress and compliance with this Order. Respondents agree to fully cooperate with and give all required access to monitor. The monitor shall submit written reports to the State Election Board every seven (7) days from the Effective Date of this Consent Order, providing the status of the implementation of the measures detailed in Paragraph 12 above. The monitor shall be in place through certification of the January 5, 2021 runoff election. The monitor shall be compensated by Respondents for appropriate time spent gathering information and preparing reports at a reasonable hourly rate to be agreed to by Respondents, State Election Board, and monitor.

- (A) The monitor who is appointed has no supervisory authority with respect to any employee of the DRE. The monitor is only authorized to report progress on the remedial measures to the SEB and is required to provide prior notification to respondents of any report to the SEB that includes any notice of non-compliance. The monitor is not authorized to direct any person in Fulton County to perform some duty, or to refrain from performing some duty. The monitor's responsibility is limited to issuing a report to the SEB on a weekly basis between now and the conclusion of this election cycle in January, 2021.
- (B) If the monitor provides notice of any non-compliance, this will *not* serve as prima facie evidence of non-compliance and respondents will be provided an opportunity to respond and to correct any alleged deficiency.
- (C) It is the intent of the parties in agreeing to the appointment of a monitor, that the monitor will assist Fulton County in the reporting about the remedial measures. The monitor will not only assist Fulton County reporting the progress relating to these remedial measures but will *also* alert the SEB and the state elections office to measures that the state can implement to effectuate these remedial measures and to assure the optimum election procedures that are possible.

14.

Respondents have been provided with a copy of this Consent Order and have acknowledged that they understand the contents. Respondents understand that they have a right to a hearing in this matter. Respondents knowingly and voluntarily waive such right to a hearing, as well as any other rights under the Georgia Administrative Procedure Act pertaining to notice and hearing for contested cases, by entering into this Consent Order.

15.

This Consent Order is entered in settlement of disputed matters, and the Consent Order entered herein is not to be construed as an admission of guilt or liability on the part of Respondents but is entered herein to resolve the referenced State Election Board cases. This Consent Order is a civil settlement and has no criminal ramifications.

16.

This Consent Order shall not become effective unless and until approved by the State Election Board. If not approved by and executed on behalf of the State Election Board, neither the stipulations nor any other part of this agreement shall have any binding legal effect whatsoever and shall not constitute an admission against interest or prejudice the ability of either the State Election Board or Respondents to adjudicate this matter.

17.

In the event of any conflict with any Performance Enhancement Plan (PEP) proposed by the Secretary of State's office, compliance with this Consent Order shall be deemed to be compliance with the PEP.

18.

In the event of force majeure outside Respondents' control, the State Election Board agrees that it will not assess the proposed civil penalty even if the remediations in this Consent Order are not fully remediated by the November 3, 2020 as long as Respondents exercise their best efforts to remain as compliant as possible with this Consent Order. For purposes of this paragraph, the COVID-19 pandemic, significant increase in voter turnout, and significant increase in absentee ballots shall not be considered a force majeure.

This _____ day of _____, 2020.

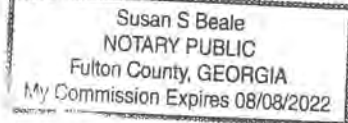
FULTON COUNTY BOARD OF REGISTRATION AND
ELECTIONS

BY:

Mary Carole Cooney
MARY CAROLE COONEY
CHAIRPERSON

Sworn to and subscribed
before me this 12th day
of October, 2020.

Susan S. Beale
NOTARY PUBLIC



Richard Barron
RICHARD BARRON
ELECTIONS DIRECTOR

Sworn to and subscribed
before me this ____ day
of _____, 2020.

NOTARY PUBLIC

Approved by the State Election Board this ____ day of _____, 2020.

STATE ELECTION BOARD

BY:

Brad Raffensperger
BRAD RAFFENSPERGER
CHAIRPERSON

Consented to:

FULTON COUNTY BOARD OF REGISTRATION AND
ELECTIONS

BY:

MARY CAROLE COONEY
CHAIRPERSON

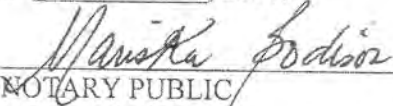
Sworn to and subscribed
before me this ____ day
of _____, 2020.

NOTARY PUBLIC



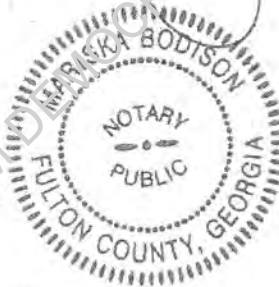
RICHARD BARRON
ELECTIONS DIRECTOR

Sworn to and subscribed
before me this 16 day
of October, 2020.



NOTARY PUBLIC

exp: 3-19-2023



Approved by the State Election Board this ____ day of _____, 2020.

STATE ELECTION BOARD

BY:

BRAD RAFFENSPERGER
CHAIRPERSON

EXHIBIT B

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State Election Board Report – Post-Election Executive Summary Updated February 16, 2021

Introduction

Seven Hills Strategies, LLC (SHS) has been contracted by the State Election Board (SEB) to serve as an independent, non-partisan monitor for the pre-electoral processes in Fulton County leading up to the November 3, 2020 general election and for any subsequent runoffs. SHS will observe absentee ballot request processing procedures, absentee ballot processing/scanning, early voting procedures, and actual ballot counting on Election Day and beyond. The goal of SHS is to identify areas of improvement and generate suggestions to ensure that Fulton County is adequately prepared to implement effective, efficient, credible, and code-compliant elections moving forward.

Fulton County's Compliance with the Terms of Sec. 12 of the Consent Order¹

In addition to this report on compliance with the terms of Consent Order, SHS believes that is necessary to share this observation: From October to January, I spent nearly 270 hours at various locations observing every aspect of Fulton County's election processes. At no time did I ever observe any conduct by Fulton County election officials that involved dishonesty, fraud, or intentional malfeasance. During my weeks of monitoring, I witnessed neither "ballot stuffing" nor "double-counting" nor any other fraudulent conduct that would undermine the validity, fairness, and accuracy of the results published and certified by Fulton County.

A) Absentee Ballot Procedures:

- 1) Leading up to the Nov. 3 election, SHS had the opportunity to observe the signature matching processes for absentee ballot applications being processed both at Darnell Senior Center and at Fulton County headquarters. During the runoff, I was stationed at Georgia World Congress Center (GWCC) and was able to monitor the vast majority of signature matching for the weeks leading into the runoff.

SHS determined the signature matching processes to be in-line with the terms outlined in the Consent Order, and generally erred on the side of "give it further research" when there was any doubt about a signature's authenticity.

However, although most applications were being processed within 48 hours of being received, SHS found one ballot application at Darnell Senior Center that had been in Fulton County's custody for more than two weeks. Given the massive influx of applications and

¹ Throughout this report, the term "Consent Order" is used to refer to the Consolidated Consent Order for SEB Cases 2020-016 and 2020-027 that created the role of State Election Board Monitor.



ballots, it is not surprising that a few ballots might be left behind, but Fulton County must re-double their efforts in future elections to speed up processing times.

Additionally, SHS received multiple reports of absentee ballots being sent to the wrong addresses, which seems to be the fault of sloppy data entry by staff. Future staff trainings should underscore the importance of correctly entering the temporary/preferred addresses of all ballot applicants.

- 2) Although Fulton County allocated ample resources for absentee ballot processing leading into the Nov. 3 election, the processes themselves were extremely sloppy and replete with chain of custody issues as the massive tide of ballots bounced around the Fulton County Gov't HQ building.

The system, created by Ralph Jones, Registration Chief for Fulton County, seemed to function, but there were many processes that seemed to be *ad hoc* solutions to problems caused by a lack of organization or permanent staff with the expertise to manage the system in place. For example, the room which housed the team doing additional voter verification was also a temporary housing location for ballots between the mail room (which receives, opens, and records the numbers of ballots) and the ENET processing room. Staff in this room seemed to not understand the process, and Jones had to intervene to stop a temporary staffer from moving a pile of recently-accepted but unverified absentee ballots into the stack to go straight to State Farm Arena for scanning/counting. Had Jones not been there with me to catch this mistake, it is safe to assume that those ballots would've been counted as if they had been verified.

I observed an additional security issue here, as one staff member told me that people had not been signing out batches of ballots as they moved around the building in trays between processing rooms, which is a clear failure in the chain of custody mandated by the O.C.G.A.

Given the inefficiencies of this system and the volume of absentee ballots received, there was no way that Fulton County could possibly comply with the mandate to "process all absentee ballots by the close of business on the next business day after the ballot is received."

Despite the aforementioned deficiencies during the Nov. 3 election, Jones and his team were able to both streamline and improve processes for the Jan. 5 runoff. The Fulton County team migrated the entire signature verification process to the facility established at GWCC and for several days even attempted to do the voter credit step on-site before resolving to handle that at Pryor St. before bringing credited ballots to GWCC. Performing the entire process² linearly and in full view of the public was a tremendous improvement on the labyrinthine

² Voter credit → 1st pass signature verification with ENET → 2nd pass signature verification with RocketFile → Return RocketFile rejects to Pryor St for curing



system concocted for the Nov. 3 election. In my opinion, Fulton County clearly made available sufficient resources to handle the influx of ballots for the runoff.

- 3) SHS has not yet been able to conduct an audit to graphically represent the rate at which absentee ballots were scanned for the Nov. 3 election; however, my research indicates that the staff was able to scan fewer than 80,000 ballots in the period leading up to Nov. 3. Judging by final absentee/UOCAVA numbers (approx. 147k), in the 72 hours from 11/3 to 11/5, the staff were able to scan nearly 80 percent (approx. 67k) of that which they had scanned in the previous two weeks. Regardless of whether the bottleneck was in receiving the ballots, verifying the signatures, opening the ballots or scanning them, this rapid acceleration in scanning rate indicates that Fulton County failed to adequately utilize the pre-scanning period allowed by SEB Emergency Rule 183-1-14-0.9-.15.

The Jan. 5 runoff, however, was a stark dichotomy and a comparative great success. With the eyes of the world watching, Fulton County was able to report 106,117 absentee votes (the vast majority) on Election Day itself due to the diligent pre-scanning work by Fulton County staff. By the time that the operation was closed at 2 a.m., Fulton County had fewer than 5,000 absentee ballots left to process. This small remainder – all received from ballot drop boxes on the evening of Jan. 5 – is a testament to how hard the Fulton County team worked to comply with this item in the Consent Order.

- 4) Based upon a conversation with Captain M. McHugh, Fulton County Police Department, regarding the security protocols installed to ensure the protection of ballot drop boxes, I am confident that Fulton County's robust security architecture made it impossible to tamper with votes at ballot drop boxes.

Given the daily influx of new ballots to the GWCC facility, I believe that ballots were, in fact, collected each day as required by SEB Emergency Rule 183-1-14-0.8-.14. On Jan. 5, multiple shipments of drop box ballots were received at GWCC (one at 4:38 p.m. and another at 11:30 p.m.) after first being checked-in at the Pryor St. mail room. As far as I witnessed, Fulton County fully complied with this item of the Consent Order.

B) Poll Workers and Poll Worker Training:

- 1) Fulton County greatly exceeded the target number (2,200) of poll workers required for both the Nov. 3 general and January 5 runoff elections. Fulton County enlisted so many poll workers to account for any potential emergencies, attrition, or no-shows on Election Day.³

³ N.B. This point also covers Section 12.B.4 of the Consent Order



| Indicator | Target | Poll Workers Assigned (11/3) | Poll Workers Assigned (1/5) |
|------------------------|--------------------------|------------------------------|-----------------------------|
| Dual Manager | | 81 | 81 |
| Manager | | 174 | 174 |
| Assistant Manager | | 510 | 510 |
| Line Manager | | 558 | 525 |
| Clerk | | 2,420 | 1,495 |
| Deputy Registrar Clerk | | 255 | 155 |
| Provisional | | 30 | 17 |
| Total | 2,200 + 560 alts. | 4,028 | 2,957 |

- 2) On October 28, 2020, SHS attended the four-hour Fulton County poll worker training at the North Annex Service Center. This training accurately and concisely reviewed all voting implementation procedures, how to use Poll Pads and other hardware, and the test at the end ensured that workers had actually learned the content.

A particular importance was placed on securing election materials and ensuring that all zip ties and numbered seal stickers are appropriately installed and recorded at the beginning and end of each day. In accordance with O.C.G.A Code, verifying the zero-count in the morning and recording the final count at the end of the day were also underscored, though there was no emphasis placed on the need to dually-sign these count receipts. Additionally, the trainer underscored processes for keeping voting open despite technological issues, stating that, “you can open the polls with one poll pad, one BMD, and one scanner; if you are not able to open at 7a.m., immediately contact Fulton County and see if you need to fall back to provisional ballots.” The trainer also frequently repeated that “we do not turn voters away” to encourage poll workers to find a workable solution to any problems that may arise.

The sole training deficit that I recognized was regarding the Senate District 39 Special Election. While it was somewhat odd that a primary election would be taking place during a general election, this lack of knowledge was a failure to adequately train the trainers regarding this special election. This lack of knowledge was passed on to poll workers, which resulted in numerous complaints to SHS about a failure to offer voters the opportunity to participate in this special election.

- 3) Fulton County was to provide the SEB with weekly updates on total poll officers and alternates, training, and allocation plan of poll officers to polling places, including contingency plan for alternate poll officers for the Nov. 3 election, as well as any runoff election in this election cycle. As these reports did not come to SHS, I cannot comment on this item.

C) Advance Voting Locations:



- 1) Fulton County was required to have 24 early voting locations, but greatly exceeded this requirement in both the Nov. 3 general and Jan. 5 runoff elections.

| Indicator | Target | Nov. 3 | Jan. 5 |
|------------------------|--------|--|--|
| Early Voting Locations | 24 | 30 + 2 mobile + 7 outreach sites | 30 + 2 mobile + 2 outreach sites |

Both Fulton County staff and poll workers could have done a better job ensuring that ENET records were kept up to date. Failure to keep accurate records of whether a voter had voted yet led to a great deal of confusion at the polls during both the Nov. 3 general and the Jan. 5 runoff as well as concerns of widespread voter fraud. Some human error is to be expected, but Fulton County must strive to reduce the number of these instances.

D) Election Day Logistics and Polling Locations:

- 1&2) Fulton County was required to have 255 voting locations for Election Day, and met this requirement in both the Nov. 3 general and Jan. 5 runoff elections. It is also worth noting that Fulton County established 91 new polling locations for this election cycle to meet this goal.

| Indicator | Target | Nov. 3 | Jan. 5 |
|-------------------------------|--------|--------|--------|
| Election Day Voting Locations | 255 | 255 | 254 |

- 3) Fulton County was to provide the SOS with their plan for Election Day distribution of election equipment and poll officers no later than October 2, 2020. As these plans did not come to SHS, I cannot comment on this item.
- 4) On October 29, Rick Barron shared early voting turnout data with the Gabriel Sterling, Chris Harvey, and Blake Evans from the SOS' office. Sterling ran the modeling through MIT's Election Data Lab allocation tool, and shared the results with Barron. Complying with this term of the Consent Order, Barron then re-programmed Poll Pads and redirected election materials to buttress any weaknesses revealed by the data model.
- 5) At no point during either the Nov. 3 election or Jan. 5 runoff election did any polling unit run out of emergency/provisional paper ballots, paper backup pollbooks, or required forms. In January, three polling units (all served as both early voting and Election Day locations) received re-supply from headquarters but never ran out of materials.
- 6) During the Nov. 3 election, Barron negotiated with the ACLU to provide 255 deputy registrars to use ENET to cancel absentee ballots. During the runoff, this task was performed mainly by a smaller number of non-ACLU deputy registrars. SHS received no complaints



during the runoff about unnecessary wait times related to not having additional dedicated deputy registrars.

- 7) Fulton County established three call centers with a combined staff of more than 100 people to answer questions from poll managers during Nov. 3 and Jan. 5. My poll worker training encouraged me to call the hotline if any problems arose while voters were casting their ballots.
- 8) After 9:30 a.m. on Nov. 3, no polling precincts in Fulton County had a wait time greater than 30 minutes. The same was true for the entirety of voting on Jan. 5. Both of these should be seen as tremendous victories for the Fulton County team, as they had allocated sufficient staff, resources, and procedures to ensure that all voters were able to cast their ballots quickly regardless of where they lived in the county.

E) Technical Support:

- 1) Fulton County trained 255 technicians for the Nov. 3 election, and additionally ensured that each early voting site also had a dedicated tech aside from State Farm Arena, which had five techs on-hand to manage their large number of BMDs. For the Jan. 5 runoff, Fulton County trained 254 technical support experts, but 22 did not report for work on Election Day for one reason or another.

F) Audit Preparation:

- 1) Fulton County's document retention processes at State Farm were adequate for protecting ballots from tampering and the system of marking boxes with scanner number, batch number, and date made it much easier to process during the forthcoming audit and recount.
- 2) Risk-Limiting Audit (RLA)
 - The scale to which Fulton County prepared for the RLA was staggering. With a maximum of 174 teams of two processing ballots by-hand, Fulton County completed the RLA more quickly and accurately than anyone had anticipated. It is a testament to the team's leadership that they were able to keep feeding the processors while keeping accurate records.
- 3) Recount
 - As with the RLA, Fulton County aggressively tackled the Recount and initially seemed as if they would complete their recount more quickly than estimated. However, failure to comply with approved technological procedures led to a server crash and significant, costly delays that required the Fulton County team to completely rescan all ballots once



again. Additionally, during the fourth count (the second lap of the recount), sloppy document storage procedures led to confusion as box labels no longer had precinct names and batch numbers on them but instead all said “ELECTION DAY.” This mistake therefore made it difficult to ascertain which ballots had been missed while trying to solve the second technical issue that resulted from accidentally naming two scanners “ICC 16” during the fourth count. Until this point, proper ballot handling, storage, and manifest procedures had been observed.

Appendices

- Appendix A – Challenges and Recommendations from the Entire 2020 Election Cycle

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State Election Board Report

Appendix A - Challenges and Recommendations from the Entire 2020 Election Cycle Updated February 16, 2021

I. The Pre-Election Period

- COVID-19 preparedness was obviously on the forefront of Barron's mind. He and his team had taken a multitude of steps to ensure that everyone was safely fulfilling all required duties in the lead-up to Election Day, but the virus had taken a heavy toll on the permanent staff leading the warehouse team. This caused several pivots and logistical changes to protect the staff, but there was still concern that a team of new players would be able to handle the tremendous workload as seamlessly as the high stakes of this election required. SHS learned that the SOS office offered vendor support to mitigate the breadth of the COVID outbreak, but this was offer was declined by Fulton County.
- SHS received multiple reports that Fulton County was slow to update MVP and give voters credit for having voted by absentee ballot (both mailed in and deposited in a drop box). It was imperative that - as the Consent Order¹ mandates - the BRE keep accurate and up-to-date records about who has voted in the publicly-visible portals lest they face double voting problems. Reports have shown that this problem has affected both absentee and early voters, so the problem was bordering on systemic.
- Additional training should be done regarding O.C.G.A. § 21-2-381(a)(1)(A-G) pertaining to relatives or helpers filling out the absentee ballot for their temporarily out of state, disabled, or elderly voters. SHS witnessed multiple staff having difficulty deciding how best to handle family members and helpers requesting absentee ballots for others.
- SHS has received a multitude of reports of absentee ballots being sent to wrong addresses even though alternate/secondary addresses were provided or already on file. One notable case being from a servicemember currently serving out-of-state who felt disenfranchised by Fulton County's inability to properly process his absentee ballot request. As witnessed at the Darnell Senior Center, the data entry for processing absentee ballot requests can be burdensome, but each entry much be triple-checked for accuracy to avoid careless mistakes like this.
- On 10/23, SHS saw one absentee ballot request dated 10/07. While this was a lone outlier and the vast majority of the ballot requests seen were dated 10/21, Fulton County must ensure that all absentee ballot requests are processed in a timely manner.
- In his press conference on 10/22, Barron stated that there was no wait time difference between the early voting locations in the north and south parts of the county; however,

¹ Throughout this report, the term "Consent Order" is used to refer to the Consolidated Consent Order for SEB Cases 2020-016 and 2020-027 that created the role of State Election Board Monitor.



anecdotal accounts have said that there have been long wait times in the Alpharetta/Johns Creek parts of the county.

- The Senate District 39 special election was a persistent source of confusion for both voters and poll workers. During SHS' poll worker training, a trainee asked about the Senate District 39 Special Election ballot and when to offer that to voters. The trainer said, frankly that "I don't know anything about this," and told her to ask her poll manager. While it is somewhat odd that a primary election will be taking place during a general election, this lack of knowledge is a failure to adequately train the trainers regarding this special election. This lack of knowledge was passed on to poll workers, which resulted in numerous complaints to SHS about a failure to offer voters the opportunity to participate in this special election. That deficiency should be corrected in the event that this occurs in the future. SHS suggests that to fix this, Fulton County consider pivoting to an "opt out" instead of an "opt in" policy for these types of elections so that all voters may participate regardless of whether or not they are aware of the race.
- There were myriad problems with the absentee processing system at Fulton County Government Headquarters, including:
 - Failure of staff to understand the process of moving ballots around the office
 - No chain of custody forms being used as ballots move from room to room
 - Mask-optional policy putting essential staff at unnecessary risk for COVID
 - Failure to sufficiently protect spoiled and rejected ballots in the mail room
- While touring the mail room at Fulton County Government Headquarters, SHS saw many ballots set to be cancelled because they were returned to drop boxes without the yellow exterior oath envelope. It should be stressed more clearly to voters that they must precisely follow all the instructions on the absentee ballots and return both envelopes if they want their vote to be counted. Since it is impossible to update the MVP of "naked" ballots when they are processed, it is likely that some of the complaints that the SOS office received about a failure to record ballots deposited at drop boxes were due to the fact that voters failed to correctly follow the necessary protocol.
- While there was a large focus on the "Know Before You Go" Campaign and encouraging voters to use the FultonVotes App to notify voters that their precincts may have changed, it is concerning that SHS has received a report that Fulton County waited until 5:51pm on October 26 to mail 169,714 postcards notifying voters of changed precincts. SHS received complaints that Fulton County was "suddenly changing polling locations without notice." It would have been prudent to send these notifications earlier so that the news did not surprise people already making plans for in-person voting on Election Day.
- On October 29-30, widespread power outages resulting from Tropical Storm Zeta forced seven polling precincts to close on 10/29 and two to stay closed on 10/30. This unanticipated closure surely had a negative impact on turnout numbers as early voting came to an end on 10/30, but there was very little that the BRE could have done to avoid this. In fact, it seems that they handled the crisis well by deploying the two mobile voting centers to the downed precincts to help manage the flow of voters.



- On October 26, the ACLU raised concern that the Fulton County office was sitting on 1,500 voter registrations that for all intents and purposes seemed to voters to have gone missing. It took two days before SHS was able to get an update from Ralph Jones, who said that there were indeed 1,500 remaining voter registrations awaiting processing and that they would be finished by the end of 10/28. This is cutting it far too close to actual Election Day for new voters who are likely unsure of the process. These voter registrations should have been processed weeks ago.
- It was brought to the attention of SHS that Fulton County has been using an outdated version of Easy Vote to check in voters and keep ENET records up to date. All software used must be updated to benefit from the latest bug and security patches.
- Fulton County has leaned very heavily upon an army of temporary workers to fulfill the litany of tasks that must be completed from logistics to processing ballots to scanning final results. It would perhaps be best to offset this number of workers with stakeholders from the local community who would like to get involved in the electoral process. By conducting multiple interviews with temporary staff, it was made clear that some have no keen interest in participating in this immensely-important process, which is perhaps to blame for some of the sloppy clerical errors and logistical shortcomings that have plagued the complicated electoral process. However, others (particularly those scanning at State Farm) are the glue that holds the entire process together. It is the opinion of SHS that several of these leaders should be hired full-time if the budget allows.

II. The November 3 General Election

- The 4-BMD unit transporters are not ADA-compliant if used for duplicating ballots. People must stand for hours to duplicate and the screens are too tall to sit and operate. One of the Fulton County staff has a bad knee and uses a cane. She was saying that her knee was hurting but she needed to keep working.
- The truth about what happened on the night of November 3rd between 10:30PM and 11:52PM continues to be elusive. GOP party poll watchers say that Fulton County staff told them and the media to go home (implying that they did so in order to count without supervision). Fulton County staff tell me that the poll watchers and the media just left when Moss sent home everyone but the scanner team. A SOS investigator is involved, so the truth will come out, but if the party poll watchers are correct, then there is a serious problem.
- There were persistent chain of custody issues throughout the entire absentee ballot processing system. Aside from the problems with the system at Pryor St (see executive summary report), the fact that ballots were being delivered to State Farm Arena in unsecured mail carts is very concerning. Protocol for securing ballots exists not only to protect the ballots themselves but also to ensure that no ballot box stuffing occurred. This problem was exacerbated by poor managerial processes by Ralph Jones, who failed to do intake counts for the provisional ballots. Similar problems seem to exist at the



warehouse as well (e.g. poll pads for SC11). Fulton County must bolster these processes to retain faith in their process.

- The entirety of events on Saturday, Nov. 7 was plagued by the mismanagement issues. If there had been a clear process on Friday, then perhaps that mess may have been avoided, but the fact that no one verified the number of provisional ballots either at intake at State Farm or at adjudication is concerning. Therefore, there was a possibility that 1) not all provisional ballots made it to State Farm or that 2) some were missing because they never did an intake count. It turned out that both were true. If Santé had not gone back into the office to look up her file on provisional ballots, what would have happened to the 17 ballots that remained at Pryor St?
- The process for equipment delivery at the warehouse is in desperate need of an overhaul. SHS concurs with Barron that a digital check-in/out system would make the logistical job much smoother. Monday evening was far too chaotic for an operation of that size, and in the disorder, many mistakes were made that just caused more trouble for a team that was already underwater. As a result, SHS has received multiple complaints about a lack of sufficient numbers of ballot bags making it to precincts, which led to a chain of custody issue before tabulation. Additionally, SHS caught wind of missing CFs (e.g. Palmetto) after Election Day that had likely been misplaced due to inadequate check-in processes.
 - Furthermore, if Fulton County implements a new digital system, it must be used by both the poll managers and the Fulton County staff. The fact that a poll tech was able to show me that 157 polls were still “open” in Fulton County’s backend demonstrates that they were simply not utilizing a tool that they either developed or purchased. Working partially from two systems is a fantastic way to forget mission critical materials.
- Staff not using correct terminology caused confusion on multiple instances, including for this monitor attempting to audit Fulton County’s data. In pre-election reports, Fulton County reported that they had “processed and scanned” 127k ballots. The term “processed” was used multiple times and by different teams, which indicates organizational silos and led to confusion because SHS thought that “scanned” meant literally scanned instead of having the barcode read and processed through MVP. In actuality, few ballots had actually been scanned in the pre-election period.
 - This same problem was evident when a staffer told SHS that ballots had been “found” instead of “cured.” It is a distinction with dire consequences.
- The entire Fulton County team must be more aware of the optics of their actions in such a high-scrutiny environment. It was a judgment call, but I still think that bringing ballots in through the back door on 11/5 was the wrong call for transparency purposes. It would have ignited a media firestorm if the Fulton County team had not immediately held a press conference afterward. By far the worst maneuver for optics occurred on Saturday in using the OPEX cutters to count ballots. Aside from being slower than counting by hand, this gave the impression to everyone (myself included) that they had found more ballots after the deadline. I personally had to talk to the media and the party poll



watchers, who were all understandably concerned by what was appearing to happen, to tell them that those were empty ballots being counted.

- In the “Provisional Ballot Recap Notice,” Fulton County stated that 1,205 people were “Not found in Express Poll, researched and found to be registered in Fulton County, U.S. Citizens, and ballot not challenged.” Why were that many people not in the Fulton County system and required to vote provisional?
- The OPEX scanners require constant re-calibration. The machines being out of calibration and failing to operate properly generated more work for workers that were already exhausted and stretched thin. Fulton County should either insist that OPEX techs remain available for service calls during election crunch time or dispatch a large number of letter openers to vote processing centers as a backup plan for the inevitable failure of the technology.

III. The Risk-Limiting Audit

- There were persistent chain of custody issues throughout the entire RLA process. From ballots being left unattended in front of party audit monitors to unsealed bags being transported for storage to zip tie seals being left unattended to not recording the seal numbers placed on the ballot bags, Fulton County’s system is plagued with these procedural issues. They must strengthen their chain of custody systems to follow the strict guidance in the O.C.G.A. code given the (inter)national significance of the processes happening here.
- Additionally, regarding proper seals, Fulton County staff complained that the stickers provided by the Secretary of State’s office for sealing cardboard boxes do not stick to tape and cardboard. I even noticed a few that had just fallen off boxes of absentee ballots. Would it be possible to change vendors for these stickers and provide counties with something more robust?
- Transparency is of utmost importance, and the party audit monitors are completely necessary, but the parties must strengthen their vetting procedures for their monitors, train them on the process they are observing, and brief them on their roles. Furthermore, it is my suggestion that repeat offenders who show a frequent disregard for the rules should be barred from serving as monitors again.
- Fulton County was initially slow to report their numbers into Arlo because they only had one login. Then, to catch up they overcompensated and assigned too many staff to work on data entry. Is it possible to split the difference and provide Fulton County (and the other large population counties) with more Arlo logins from the beginning? Fulton County leaders were complaining that they should have more than the one they were initially assigned so that they could better manage the workload.
- There was a clear training deficit for auditors working through the new audit process. For future RLAs, additional guidance should be provided about how/when to use the manila



envelopes, what constitutes clear voter intent (checkmarks, bubbles, or x's), and large number batch counting best practices to remove as much confusion as possible from the audit process.

- Following the procedure detailed in the training video, audit teams quickly ran out of envelopes for write-ins, under-votes, undecideds, etc. It is imperative that the Fulton County team have a back-up supply of these envelopes for the next RLA so that their team does not have to scramble to help those working according to official procedure.
- Some of the precinct batches (particularly for early voting) were massive (3,500+), which increase human error due to fatigue as well as call into question the policies regarding leaving the audit table for necessary bathroom and food breaks. Is it possible to split batches larger than 1,500 to mitigate these issues if proper ballot manifests are kept?

III. The Recount

- Cardboard seems to be an insufficient storage method for document retention. Glancing at the boxes, it is clear to see that many of them have been crushed by the weight of the other boxes on the pallets upon which they were loaded. Additionally, the leak at State Farm Arena – though certainly anomalous – revealed the necessity for a more robust and potentially waterproof system for document retention. SHS recommends using plastic storage bins instead of cardboard for future election cycles.
- Generally poor records keeping led to a multitude of procedural problems for Fulton County throughout the recount process. The poor managerial decision at the Fulton County warehouse to reclaim ballot bags for then-upcoming December runoff and mix ballots of different types (e.g. early voting and Election Day) together for “deep storage” required additional rounds of scanning during the recount because the wrong ballots were scanned on two separate occasions.
 - In contravention to what they had done on Count 3 (during which they labelled all Election Day boxes with the precinct numbers on outer labels), all of Count 4's Election Day ballots were simply being placed in boxes marked “ELECTION DAY” but with no precinct information visible on the outside. This became a problem later when they had to retrieve particular batches because they had been overlooked during scanning. This may have produced a chain of custody issue at the end as two Fulton County leaders were sending out individual ballot batches instead of full boxes to make sure that each batch contained only Election Day ballots as expected. They were careful to correctly complete the coversheets for each batch, but it would not be difficult for a batch to be forgotten or fall to the wayside as it changed hands.
- Transparency is of utmost importance, and the party monitors are completely necessary, but the parties must strengthen their vetting procedures for their monitors, train them on the process they are observing, and brief them on their roles. Furthermore, it is my suggestion that repeat offenders who show a frequent disregard for the rules should be



barred from serving as monitors again. Throughout the time at GWCC, the party monitors flagrantly disobeyed guidance from Fulton County staff and GWCC police regarding the mask policy and taking photos/videos of the procedure. One monitor even yelled, “THIS IS TREASON UNDER PENALTY OF DEATH!” in the face of a Fulton County manager who was simply trying to check his party monitor credential – which he turned out to not have – for sign-in.

- SHS had received reports of several unsealed ballot bags, and hunted down the bag numbers to investigate. SHS found four unsealed ballot bags that were clearly marked with zero counts on the exterior labels. For future best practices, it is encouraged that staff seal every ballot bag regardless if it’s empty to mitigate accusations of “magic ballots” appearing from thin air. Additionally, if ballot bins are empty, it is a good idea to place the tops in them so that it is clear to monitors that the box is empty and is not an unsealed ballot bin.
- Technological issues abounded during the recount. The server crash on November 29 was a costly error caused by a failure to properly follow protocols for backing up and uploading data to the servers. This mistake cost Fulton County taxpayers several days’ worth of staff time as the entirety of the ballots had to be rescanned for a fourth time. Additionally, the small typographical mistake of accidentally naming two scanners “ICC16” on the fourth count led to a great deal of confusion and another full day of staff time for solving the problem. Fulton County technological team must work more slowly, carefully, and in accordance with all protocol to ensure that these mistakes do not happen in the future.

V. The Jan. 5 Runoff Election

- When it comes to communicating with monitors, it is encouraged to keep comments short and to the point without much editorialization. Early in runoff proceedings, Ralph Jones had a good faith conversation with several GOP monitors, one of which had declined to sign the sheet that said he would not record in the processing center. It turned out that that gentleman refused to sign because he was, in fact, wearing a recording device, and recorded Jones’ answers to his question without Jones’ knowledge. These monitors then submitted an eight page complaint to the SOS quoting long passages from their nearly 45 minute conversation.
- Monitors were very concerned about compact flash memory cards being left in scanners in the L&A side of the warehouse. Additional training regarding election security protocol is required to mitigate alarmist fears that these memory cards are arriving at precincts pre-loaded with votes.
- Parties must fully brief monitors on their role and the appropriate limit of their duties. Multiple monitors told me that they had been recording the license plates of the staff that parked in the deck as well as on the L&A side of the warehouse as “evidence.” This seems like a massive invasion of the privacy of the election workers. It is recommended



that Fulton County put pressure on the county wings of political parties to have greater accountability for the actions of the people to whom they provide monitoring credentials.

- Fulton County was having an accuracy problem due to the data entry required to verify the signatures on received ballot envelopes. In order to improve both speed and accuracy it is recommended that Fulton County provide barcode scanners to all signature verifiers in the future. These scanners allow workers to go directly to the correct voter page in ENET without worrying about typographical errors. This system was deployed with great success during the second half of the runoff.
- Fulton County staff must be careful to accurately enter data into ENET. SHS received several reports of voters receiving multiple absentee ballots (N.B. not ballot applications) during the runoff. Additionally, there were widespread stories of voters showing up at the polls and being told that they had already voted. Taking voters' claims of not having voted at face-value and as the entire system is built to catch double voting, the only logical explanation for this problem is that an election worker incorrectly pulled voter information in ENET at some point. Extra training on ENET accuracy must be conducted in future elections.
- While I vehemently disagree with the assertion that proximity is tantamount to transparency, it would have alleviated a great deal of stress on Election Day if Fulton County had initially provided more access to the party monitors. The floor was set up to allow more access, but the potential of the "cattle calls" was not utilized until it became a necessity. Additionally, SHS suggested that the blue barriers be removed from the UOCAVA duplication station on 12/30, but my suggestion was not followed for the worthy cause of ballot security. Unfortunately, the perceived lack of transparency led to a court order that immensely disrupted Election Day processes. If Fulton County had more actively allowed monitors to approach election processes, then it would have been easier for them to see that Fulton County had absolutely nothing to hide. The resultant overcompensating backlash left many staff fearing for their personal safety due to monitors violating the photography rules, staff receiving threats on social media, and astoundingly poor mask hygiene by monitors. Furthermore, the increased access to the ballot cage generated a considerable ballot security concern due to the proximity of partisan monitors to ballots being processed.
- A persistent impediment to continued processing was the rate at which ballots were transported from Pryor St to GWCC. While most days that can be attributed to sending all ballots that they had received, on Election Day there must be a faster turnaround. Though three ballot bins had been delivered at 7:04PM, it was not until 11:30PM on Jan. 5 that five bins arrived at GWCC from the 7pm collection of ballot drop boxes. At that point most of the election staff had already gone home due to a lack work, but the massive tide of ballots to be processed made it impossible to finish processing in its entirety on election night. If the Fulton County team had dispatched the ballots sooner – even in smaller batches – then perhaps everything could have been finalized on Election Day.



This same problem was repeated on Friday, Jan. 8. The tremendous GWCC team had waited all day for provisional ballots to arrive from Pryor St, but it was not until 3:47PM that four ballot bins were delivered. A large portion of the staff clocked out at 4:30PM, but the remaining team was left working until 8:15PM to handle the workload while short-handed. This could have been mitigated by sending smaller batches of ballots as they became available.

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2022 General Election Observation: Fulton County, Georgia

Prepared by The Carter Center for the Fulton County Board of Elections and Registration and the Georgia State Election Board's Performance Review Board on Dec. 15, 2022.

THE
CARTER CENTER



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Summary and Key Takeaways

The Carter Center, which has observed more than 100 elections in 39 countries since 1989, was invited by the Georgia State Election Board-appointed Performance Review Board (PRB) and the Fulton County Board of Elections and Registrations (BOER) to observe the Nov. 8, 2022, general election. This observation fell under the framework of the performance review provisions of a state law known as SB202. Although this observation was conducted at the invitation of both the Performance Review Board and the Fulton County Board of Elections and Registration, The Carter Center conducted its observation as an independent organization, and the conclusions herein are its own.

Carter Center nonpartisan observers collected firsthand data on early voting and election day processes, as well as processes within the Fulton County election offices. This report summarizes the findings of The Carter Center and is intended to assist Fulton County in the continued improvement of its election administration processes and to inform the report of the Performance Review Board as it completes the performance review of Fulton County.

Based on its observation of the November 2022 general elections, The Carter Center considers Fulton County to have successfully implemented the key aspects of the elections that it observed. Within the parameters of its observation efforts, The Carter Center did not observe any election administration irregularities that would call into question the ability of the Fulton County Department of Registrations and Elections to administer secure and accessible elections for the citizens of Fulton County. Indeed, the Center noted that the Nov. 8, 2022, election showed many improvements in Fulton County's election administration practices compared to those noted during 2020.¹ Election workers paid particular attention to reconciliation processes, quality assurance checks, and security measures like chain-of-custody documentation, which made a marked improvement on the overall trustworthiness of the election.

Recognizing that Fulton County strives for continuous improvement of its election administration processes, The Carter Center offers the following summary of our observations and recommendations for future elections:

Contextualized Training for Election Workers: Carter Center observers noted that Fulton County election workers are generally well-trained, as demonstrated by the effective and consistent implementation of most procedures. While some variation in the application of procedures is to be expected given the temporary nature of the workforce, this can be minimized through poll worker training that not only focuses on the steps of the process, but also helps workers understand the big-picture “why” of what they are doing. At times, it seemed that election workers didn't have a full understanding of the importance of particular administrative steps (checking seals, for example, or providing provisional ballots) to the overall security and accessibility of the election. A better understanding of how each step in the process fits into the multiple layers of safeguards could ensure more consistent application.

Training should also emphasize the following procedures:

- Announcing each step of the opening and closing processes, particularly for ballot security and chain-of-custody steps, to enhance transparency and public confidence;
- Optimal placement of voting equipment containers to ensure ballot secrecy;
- Processes associated with nonstandard situations (e.g., provisional balloting or challenged voters);
- Pulling seals tight and immediately recording seal numbers; and,
- Reminding voters to check their paper ballots before placing them in the scanner.

¹ Seven Hills Strategies, LLC (SHS) was contracted by the State Election Board (SEB) to serve as an independent, nonpartisan monitor for the pre-electoral processes in Fulton County leading up to the Nov. 3, 2020, general election and January 2021 runoffs. The report from that observation can be found here: <https://www.documentcloud.org/documents/20484973-fulton-county-state-election-board-report> (accessed Dec. 10, 2022).

- Training audit boards on the proper procedures before beginning the risk-limiting audit, ideally in the presence of observers.

Staffing: Overall, Carter Center observers reported that Fulton County staff and temporary election workers were enthusiastic, took their roles seriously, and wanted to provide voters with a good voting experience. The Carter Center notes that Fulton County met its staffing needs to administer the election, although the Thanksgiving holiday made it more challenging to recruit for advance voting for the Dec. 6 runoff election, as did confusion over whether Saturday voting would be allowed. Despite a long voting calendar that took its toll on election workers, Fulton County staff demonstrated a deep commitment to the process and the voters of Fulton County.

Voter Education about Voting Locations: On election day in both November and December, Carter Center observers noted many instances in which voters showed up to vote at the wrong voting location. In some cases, this resulted from confusion about the difference between voting during advance in-person voting (at vote centers) versus election day (at assigned precincts). In others, it appeared to be the result of changes to voting locations following redistricting. Fulton County mailed voters information about their correct voting location, but The Carter Center suggests that more be done by the county, the political parties, and others who conduct voter education to encourage voters to check their voting location in advance of going out to vote on election day.

Runoff Advance Voting Locations and Check-in Processes: During advance voting for the Nov. 8 elections, Carter Center observers generally reported smooth and efficient voting processes and short wait times. Advance voting for the Dec. 6 runoff, however, was characterized by wait times of over an hour. A number of factors likely contributed to the length of the lines (see below for additional detail). Going forward, the Center recommends that Fulton County open additional advance voting locations and have additional check-in stations inside early-voting locations for federal and statewide runoffs to facilitate faster movement of voters through the process.

Standard Operating Procedures: As Fulton County Registrations and Elections moves into its new facility in 2023, The Carter Center encourages the department to take the opportunity to revisit and update its standard operating procedures to help ensure consistency in procedure implementation. This was a priority already identified by the Fulton County Department of Elections for 2023.

Sequestration During Advance Vote Tabulation: Sequestration rules for early tabulation, governing the practice of restricting movement and communication of persons who could have knowledge of early vote totals prior to close of polls, were not effectively enforced during the Carter Center's observation. While we have no reason to think this affected the election, once Fulton County's purpose-built election space is complete next year, a dedicated space to sequester staff and observers should be made available for this purpose. Elections staff should also be trained to enforce the rules directly, rather than relying on temporary security staff.

Background and Context on the Carter Center's Fulton County Observation

In August 2021, in response to a request from the Georgia General Assembly, the Georgia State Election Board appointed a Performance Review Board (PRB) to conduct a performance review of the Fulton County Board of Elections and Registration (Fulton BOER) pursuant to OCGA § 21-2-106. The duty of the PRB is to make a thorough and complete investigation and issue a written report of its findings to the Secretary of State (SOS), the State Election Board (SEB), and the local governing authority that shall

include such evaluations, judgments, and recommendations as it deems appropriate. See OCGA § 21-2-106.

As part of the performance review process, the PRB conducted interviews of Fulton BOER staff and observed election processes, absentee ballot processing, early voting, and election day voting. To fulfill its duties under Georgia law, the PRB wanted to conduct further observation and analysis during the November 2022 general election in Fulton County. This observation effort would allow the PRB to complete its report by the end of the 2022 calendar year.

Recognizing the Carter Center's decades of experience with independent and impartial analysis of elections and election observation, the PRB, SEB, and Fulton BOER agreed that the Carter Center's independent and objective analysis would be beneficial to all parties within the framework of the ongoing performance review. To that end, and at the invitation of the PRB and Fulton BOER, The Carter Center agreed to conduct independent, nonpartisan observation of the Nov. 8, 2022, general election. This invitation was formalized in a memorandum of understanding (MOU) that was entered into on Oct. 13, 2022, following a 4-1 vote of approval by the Fulton BOER.

The Carter Center did not conduct this observation on behalf of the PRB, SEB, or Fulton BOER; this report makes its observations and analysis available to the PRB so that additional independent and objective analysis can inform the PRB's report to the SEB.

Under the MOU (see Appendix 1), the Carter Center's specific scope of work for this observation effort included observation of early voting, election day polling places, and procedures at the Fulton County election office before and after election day. Carter Center observation efforts began on Oct. 17, 2022, and continued through the Dec. 6 runoff. The Carter Center agreed to make its final report available to both the PRB and the Fulton BOER simultaneously on Dec. 15, 2022.

In conducting this observation effort, The Carter Center received the full cooperation of the Fulton County Department of Registrations and Elections. In particular, the Fulton County interim director of registrations and elections, Nadine Williams, and her deputy, Patrick Eskridge, made themselves and other staff available to The Carter Center team to respond to any and all questions.²

Observation Methods

Nonpartisan election observation is an impartial process where observers systematically gather data to determine whether an election was fair, peaceful, and credible. Unlike partisan observers — also called “challengers” or “poll watchers” — who generally look for activity that could undermine their own party's or candidate's interests, nonpartisan observers have no stake in the election outcome. They do not interfere in the election day process, even if they see something take place that should not happen. They are trained to understand the election process as specified by law and report on whether election day procedures are being correctly followed.

The Carter Center has observed more than 100 elections in 39 countries since 1989 and was a pioneer in establishing the election observation methods now widely used around the world. The Carter Center's election observation approach focuses not only on areas for improvement but also on strengths that should be replicated in the future to ensure the validity, fairness and accuracy of an election process that is secure and accessible for voters.

² Nadine Williams has served as the interim elections director since the departure of Richard Barron from the post on April 1, 2022.

The Carter Center's analysis is based on direct observation, desk analysis of documents provided by Fulton County, and conversations with Fulton County elections staff. This report captures the analysis of data collected over the eight weeks between Oct. 17 and Dec. 12, 2022.³

Observer Recruitment and Training

The Carter Center's election observation efforts were supported both by subject matter experts in the field of elections and election administration and by volunteers. Subject matter experts (often former election administrators or individuals who have worked closely with election administrators) observed processes within Fulton County's election office as well as some aspects of the voting process. Carter Center volunteer observers watched processes at voting locations only.

Carter Center volunteer observers were recruited through several channels, including from among the Carter Center's staff, volunteers, and interns; the Carter Center's Board of Councilors (made up of community and business leaders in the Atlanta area); the Democracy Resilience Network (a Georgia-based cross-partisan group of community leaders); and faculty and students from Atlanta area colleges and universities, including Emory, Georgia Tech, Georgia State, and Morehouse.

The Carter Center required all observers to attend training, virtually or in person, sign a code of conduct for nonpartisan election observers (see appendices), and receive proper observation credentials. Observer training focused on polling place procedures, data collection methods, the roles and responsibilities of nonpartisan observers, and the observer code of conduct. All Carter Center observers were U.S. citizens.

Polling Place Observer Deployment/Coverage

During the early voting period for the Nov. 8 election, The Carter Center deployed 64 observers to all 36 early voting locations (vote centers) and the four "outreach" advance voting locations, collecting over 330 observation reports on early voting. Each early voting center was observed at least six times. Each outreach location was observed at least once during early voting. Observers were deployed in approximately six-hour shifts to a cluster of four voting locations organized by geographic proximity to one another.⁴ Carter Center observers were not able to observe opening through closing of the polls in every location for every day of early voting or election day.⁵

On Nov. 8, the Center deployed 64 observers to 217 of 249 Fulton County polling locations. Each observer was assigned two to three polling places grouped by geographic proximity to one another. Of the 32 election day polling places not observed, 12 were early voting locations The Carter Center had already observed numerous times, leaving only 20 polling places unobserved.

Two Carter Center observers also attended the Nov. 17 risk-limiting audit in Fulton County.

For the Dec. 6 runoff, the Center's observation footprint was much smaller, with eight observers who followed up on a small number of preliminary findings from the Nov. 8 election observation effort. This smaller-scale effort was in part necessitated by the completion of this report by the Dec. 15 deadline.

³ The Carter Center notes that by Oct. 17, many preelection processes were already complete or near complete. As such, the Center is unable to offer an assessment of those processes. If similar observations are undertaken in the context of future reviews, an earlier start date for the effort is recommended to allow for additional areas of observation.

⁴ The Carter Center deployed observers every day of early voting, except for Oct. 18. This was due to volunteer shortages that day.

⁵ Carter Center observers were present for poll opening at 26 early voting locations and 63 election day locations and at poll closing at 23 early voting locations and 61 election day locations.

Data Collection

Carter Center election observers always use data collection instruments to ensure the systematic collection of information about the processes observed. For the Fulton County observation, Carter Center volunteer observers used paper checklists to avoid the use of mobile telephones in polling places. The checklists included questions about the exterior and interior of polling places, accessibility, staffing, equipment, voting procedures, efficiency, special circumstances, and a space for additional notes. Subject matter experts also collected qualitative information about the processes that they observed.⁶ The Carter Center also held multiple virtual debriefing sessions following both early voting and election day to collect more qualitative data about observation. This report summarizes and synthesizes the data collected through these methods.

Observations on Voting (Oct. 17 – Nov. 8, 2022)

Advance voting for the November general election took place in 36 early voting centers across Fulton County from Oct. 17 through Nov. 4, 2022. In addition, the county opened four outreach locations on college campuses. These outreach locations were open for two days each during the 19 days of early voting. Voting took place at 249 polling places on election day.

As outlined above, The Carter Center observed advance voting at each of the advance voting locations on multiple days in advance of the Nov. 8 elections, and at about 87% of election day locations. The Carter Center observations recorded here draw from data collected during the Oct. 17-Nov. 8 period. Observations regarding the runoff are included below.

General Atmosphere

Carter Center observers noted the calm and peaceful atmosphere that characterized both the early voting and election day processes. There were no reports of systematic voter intimidation or anyone blocking access to the polls. During early voting, there was only one report of unusual or potentially disruptive activity outside the early voting locations observed, and election workers promptly addressed the issue. Similarly, on election day, observers noted one instance of poll workers disrupting operations and arguing with a poll manager, but the offending parties were quickly removed and replaced. A security presence was standard across the majority of polling places both during early voting and on election day.

Voting Locations

Voting took place in a variety of locations in Fulton County, from schools to churches to art museums. The Carter Center observers noted that each location affected the voter experience differently.

Early voting locations were often public libraries, community or senior centers, gyms, government facilities, or public spaces (e.g., the High Museum). Carter Center observers reported that some locations were more suitable for use as voting locations than others. In some cases, there was adequate space to accommodate election equipment and facilitate the movement of voters; in other cases, the space was more restricted. Gyms and government buildings provided more space for voting, while libraries tended to be more challenging. Observers noted that the space in eight of the 17 libraries used for early voting affected the flow and movement of voters around the polling place but did not appear to deter voters from casting their ballots.

In some cases, the small space available for early voting limited the ability of party poll watchers and nonpartisan observers to easily observe the voting process, as they had to be seated out of the way. In a small number of cases, it was also noted that the space restrictions could make it more difficult for voters

⁶ Observations were entered into an Excel form in a secure environment (through Microsoft forms) for analysis by the Carter Center team.

in wheelchairs to maneuver around a polling place. Parking was noted as a specific challenge at a few locations, either because the lot was small or because there was a parking structure or other facility that was challenging to navigate or required parking validation.

On election day, two locations were highlighted as being especially hard to find: The Center for Civil & Human Rights and the Sandtown Middle School. Where only a portion of the area/campus is being used, especially an area away from the main access point, additional signage would be helpful. Observers reported adequate parking capacity in over 95% of locations but noted that three locations (West Manor Road Recreation Center, Dogwood Senior Center, and the Center for Civil & Human Rights) lacked capacity.

Locations using paid parking lots or garages for voter or poll worker parking on election day were uniquely problematic, with observers noting that it was often unclear whether free parking was available and where it was available. Observers also reported cars being booted or towed at two locations, requiring election officials to take time away from their duties to address the situation and, in at least one case at Morehouse College's Archer Hall, incur costs to retrieve their vehicles.

Accessibility of Voting Locations

Overall, the locations selected for voting appeared to be accessible for persons with disabilities. Clearly marked accessible parking, an easily accessible entrance, and a clear path to allow voters with disabilities access to the location were present at over 90% of voting locations observed on election day, and those percentages were even higher during advance voting. For urban locations using garages, Fulton County could consider temporary street parking right in front of the building as an alternative.

Most sites used the main entrance to the building as the accessible entrance. However, when separate entrances were used, observers noted that additional signage directing voters to the accessible entrance would have been useful (e.g., Dad's Garage Theater, Bethune Elementary, Birmingham Falls Elementary, New Prospect Elementary). Approximately 13% of election day sites lacked a working automatic door opener and had doors too heavy to open comfortably from a seated position; for these reasons, The Carter Center suggests propping exterior doors open (weather permitting) or stationing a poll worker at the entrance to assist voters.

Signage and Campaigning Outside the 150-foot Boundary

Most advance voting and election day locations for the Nov. 8 election were clearly marked with exterior signage. In a small number of early voting locations, signage was missing. The 150-foot boundary was marked in most locations during early voting and on election day. However, it was noted that the 150-foot campaigning boundary sign was sometimes hard to find and even harder to read. The Center recommends the state review the design of the sign, and Fulton County move to using lawn or A-frame signs to indicate the boundary.

Of the more than 330 observations over the 19 days of early voting, observers only noted eight instances of campaign materials being placed within the 150-foot boundary. During subsequent observation at those locations, the campaign materials were moved back outside the 150-foot radius, indicating that election teams were monitoring this and taking measures to ensure that rules were followed.

On election day, signs at locations where precincts had changed were helpful but also may have caused misunderstandings, with observers noting that it sometimes appeared that a location was not in use rather than simply being used for a different precinct. For the future, signs stating the precincts served at each location, in addition to any that are no longer in use, would be ideal.

Lines

During early voting for the Nov. 8 elections, lines were generally short at locations observed by the Center. Wait times varied from none to a maximum of 25 minutes at a handful of locations across the early voting period. The last day of early voting saw longer lines, with Metropolitan Library experiencing particularly long lines. This may have been exacerbated by a get-out-the-vote event nearby which was reportedly driving voters to that location to vote. Voters over the age of 75 and those with disabilities were consistently allowed to move to the front of the line.

Wait times observed at election day sites on Nov. 8 generally stayed under 15 minutes throughout the day, apart from lines at the beginning and end of the day. Most voters waited far less than 15 minutes, with 57% of sites observed having no wait at all and another 38% at five minutes or less during observation. Lines at opening were manageable at all locations observed on Nov. 8, with the longest line at 43 people, and observers reported that lines cleared quickly.

The voter throughput for polling places on Election Day was an average of 36 voters per hour, with an hourly distribution shown in Figure 1. This is faster than voting progressed during advance voting, which averaged around 32 voters per hour (Figure 2), chiefly due to the simplified check-in process on election day: no application requirement to vote in-person absentee; voter confirmation via ID scan rather than manual entry; and no precinct configuration requirement when programming ballot activation cards.

Figure 1

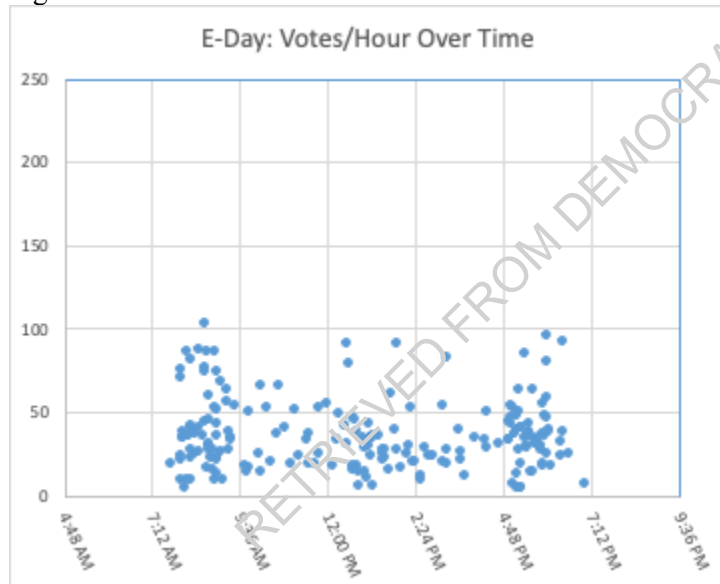
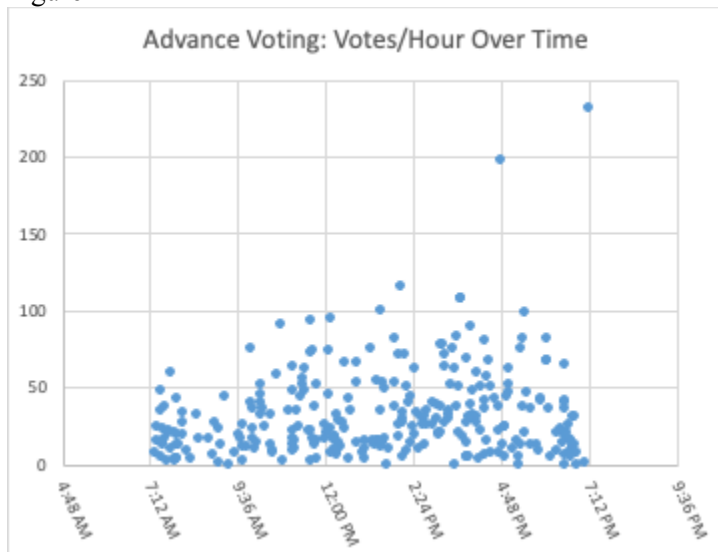


Figure 2



Staffing

Voting locations were staffed by teams that included a poll manager, assistant poll manager(s), clerks, a technician, a line manager, and a compliance officer. A public safety officer was present and visible at most locations observed.

Observers noted the friendly and enthusiastic attitudes of election workers at many voting locations, that they were helpful and supportive of voters, and that there was a strong emphasis on customer service. Observers commented that election administration staff took their roles seriously and recognized the significance of their work.

During advance voting, Carter Center observers found that many poll managers had considerable experience working the polls and that this was particularly beneficial in ensuring the smooth operation of advance voting centers — a difference from election day, when many more inexperienced staff were working. Even with the mix of experience among election workers on election day, the consistent grasp of their various tasks across locations indicated a successful training program. The emphasis placed on training workers for particular roles, rather than cross-training every worker in everything, paid dividends.

In particular, the presence of two specific roles — early voting compliance officers, tasked with performing quality assurance measures like ballot reconciliation throughout the day, and technical personnel, trained to troubleshoot machines — were especially helpful in streamlining processes and enhancing efficiency. On election day, several observers noted that locations reporting IT problems during setup waited for technical support when voting began. The Carter Center understands that Fulton County's goal is to have a trained technician at every voting location and agrees that having more technical personnel available, especially early on election day, would be helpful.

In almost all cases, the early voting locations had sufficient staff to ensure the smooth operation of the voting center. Likewise, the number of poll workers recruited for election day was adequate. Over 90% of locations observed had all assigned staff in attendance on Nov. 8, and the county ensured that replacements were available and ready to fill gaps where needed.

The use of staffing agencies for election worker recruitment continues to pose challenges regarding temporary election staff retention. This election, an increase in pay (minimum \$15/hour) for early voting

and election day workers appears to have helped to attract temporary workers. However, the 14-hour workdays over 19 days of early voting did take a toll. In addition, recruiting staff for the runoff was a challenge given the Thanksgiving holiday.

The Fulton County call center was staffed by 20-30 people (depending on whether it was the early voting period or election day). The call center appeared to be responsive to the needs of poll managers.

As noted above, Fulton County opened outreach locations on college campuses during early voting. Of the advance voting locations observed, the outreach locations appeared to have the most significant staffing challenges. Experienced poll managers were working with inexperienced staff — often students — at times giving them on-the-job training. At two outreach locations, observers reported that the flow of voters was confusing. Additional training for student poll workers would be helpful, with an emphasis on directing traffic in the polling location.

Poll Openings

The Carter Center observed 47 openings of advance voting locations across the county and 63 openings on Nov. 8. In several cases, observers arrived at the advance voting locations at 6:15 a.m. to find that the advance voting center was already set for the opening. Like the experience during early voting, observers arriving at 6 a.m. on election day often found voting sites already set up, as poll workers had arrived at 5 a.m.⁷

Ballot chain of custody and machine security measures, like checking and recording seal numbers, were generally consistent. However, it was clear that poll workers did not understand why these steps were required. They were simply focused on completing their paperwork and, without an understanding of why they were recording numbers on various “recap” sheets, often took simplifying shortcuts. For example, practices like cutting all the seals off at once and recording the seal numbers afterward, or recording the seal numbers before putting the seals on, streamline the process but also separate the act of checking/recording the seal number from opening/closing the machines. If an incorrect seal number had been found under these circumstances, for example, it might not have been discovered until after the seal was cut and the machine opened, which defeats the purpose. Additionally, poll workers need to pull the zip-tie-style seals tight, closing the loop of the seal as much as possible, to minimize the opportunity for tampering. Placing more emphasis on the purpose of recap paperwork and seal procedures during training would help poll workers better understand their role in the election security process.

In many instances, election workers moved through the opening procedures to maximize efficiency, following procedures but not taking the time to explain what they were doing to party poll watchers or observers. This would be a valuable and simple way to increase transparency in the process.

Wall space was often inadequate for the number of signs required, and election workers struggled to find space. Since many of the state-mandated signs are clearly perfunctory, with text that is both too small and too lengthy to read in the context of voting (see appendices), we recommend that the state reassess signage requirements in view of what is both practical and useful. Including nonessential signage may train voters to ignore signage altogether, missing notices that are necessary to read.

Over 80% of early voting locations and 90% of election day polling places were rated by Carter Center observers as “good” or “very good” on their opening procedures, and none were ranked below “average.”

⁷ In these cases, observers backfilled by asking questions where procedures appeared to have been completed before their arrival.

Voting Operations

Carter Center observers reported that early voting was largely well-run, with only one observation noting below-average ratings during the time of observation.⁸ Fulton County's election day voting locations were consistently well run, with 93% of observed locations rated as "very good" or "good" by Carter Center observers and no location rated below "average."

Check-in processes

During advance voting, Carter Center observers noted that check-in procedures were followed. There were a few instances where voters expressed confusion about the paper absentee ballot application form that needs to be completed during advance voting check-in. Election officials were generally able to explain the process to voters.

On election day, general procedures for voter check-in, including verifying voters' identity, confirming eligibility, and preparing a ballot activation card, were completed smoothly and consistently across the board.

Voting

Voting processes generally unfolded smoothly at locations where The Carter Center observed. Voters appeared able to use the ballot marking devices (BMDs) and ballot scanners without confusion — observers noted that there is now a level of familiarity with the equipment for many voters. Indeed, on election day, 95% of observers reported that both BMDs and scanners were used without confusion by voters, and poll workers were available to help answer questions that did arise. It was noted that at times acceptance of the ballot by scanners took several tries.

Carter Center observers noted that the equipment containers used by Fulton County made voting location setup efficient and easy for election workers. While equipment containers have many benefits with regard to ease of transportation and setup, observers also noted several challenges:

- The size of the containers in the smaller voting locations made the locations especially cramped (see points on size of locations — particularly for early voting — above);
- The height and angle of the BMD screen within the equipment container inadvertently undermined the secrecy of the voting process, especially in locations where tight space did not allow for optimal placement of the equipment containers (see voting location diagrams in Appendices). Voters' bodies could not always adequately shield the screen while they were voting, though Carter Center observers noted that this did not appear to deter voters from participating. Going forward, the doors to the containers should be more consistently used as privacy screens to block visibility from the side and, if possible, the angle of the screen adjusted to help increase voter privacy. Privacy filters for the screens could also be considered, although they would need to be tested to ensure that they did not negatively impact overall usability.

During early voting, Carter Center observers reported several instances where election workers quickly addressed voter cell phone usage inside the early voting locations. Unrestricted phone usage was much higher during election day than during early voting, with 43% of observers reporting that phones were used at their location.

Carter Center observers noted that election workers rarely verbally prompted voters to review their paper ballots before inserting them into the scanner, although they noted that some voters did so anyway. Forty

⁸ The below average rating was for the outreach location referenced above where there was more confusion about processes than at other locations observed. This did not appear to deter voters from voting or have other effects on the process.

percent of observations from early voting and 49% of election day observations record that voters were never asked to review their ballots. Given that voter review of the human-readable text on the paper ballot is essential to ensuring an auditable paper trail and codified by administrative rule,⁹ The Carter Center strongly recommends re-emphasizing this point in poll worker training and ensuring that this becomes a standard part of procedure for the staff working the scanner. (It should be noted that signage to this effect was present but has been shown to be relatively ineffective; verbal prompts, generally by the poll worker at the ballot scanner, are considered best practice.)

Nonstandard Processes

Nonstandard processes like voter challenges, provisional ballots, and canceling mail absentee ballots were rare, but the process widely varied from place to place. Many poll workers were unsure of how to proceed even after reviewing documentation and simply called their regional manager for guidance. The Carter Center recommends implementing that escalation path as the standard practice, as those who tried to complete these procedures alone were not always successful. In addition, providing very clear step-by-step checklists/decision trees for each scenario would be helpful.

Provisional ballots, in particular, create a burden for poll workers. Training on the subject was made significantly harder by SB202, which added complexity to the circumstances under which a provisional ballot should be completed. Despite these challenges, provisional ballots provide one of the best stopgaps against administrative problems that could otherwise disenfranchise voters. Fulton County can and should place greater emphasis on provisional ballot procedures and importance during poll worker training, to ensure that provisional ballots are readily available when voters need them.

Accessibility of Voting Procedures

In all locations, accessible BMDs and lower scanners were available for use by people with disabilities, though the angle of the screen at the accessible BMD was described as difficult for some as it required raising one's arm to head height or higher to vote.

Observers noted several instances of voters requiring assistance to vote. Election workers followed the procedures, requiring those giving assistance to sign the appropriate assistance form. In addition, during advance voting, observers reported a few instances where language assistance was requested. After a phone call and a short wait, an interpreter would arrive to help. On election day, language assistance was requested in 11 locations and generally provided. In a single instance, the poll manager expressed the view that voters didn't need translated ballots since it was "just names" that they needed to read (though we note that the general election ballot also contains instructions and ballot initiative text that should be translated).

Closings

The Carter Center collected 41 observations on the closing process during early voting for the Nov. 8 election and 61 on election day. Carter Center observers rated all advance voting closings but one as "average," "good," or "very good." On election day, all but three were rated at least "average," with the three locations rated negatively suffering from inexperienced poll managers who had difficulty completing the closing procedures in a timely manner after polls closed at 7 p.m.

As with openings, in many cases observers noted election workers moved through the closing process with efficiency as a key consideration. However, they often did not take the time to explain what they were doing as they moved through the closing process, making it difficult for party poll watchers and Carter Center observers to follow along. Where observers could follow the process more closely, they noted that while

⁹ Rule 183-1-12-.11 (8)

there was some variability in the implementation of closing procedures, steps related to the chain of custody and the integrity of the election equipment were generally consistently followed.

Transparency and Observer Access

Carter Center observers noted party poll watchers in about one-third of early voting observations for the Nov. 8 election. During advance voting, Democratic Party monitors were observed almost twice as frequently as Republican Party monitors. In less than 10% of reports did Carter Center observers note the presence of both parties. On election day, the number of Democratic and Republican party monitors was more even, but both parties were present in just 6% of polling places observed. In a small number of locations, representatives of third parties were present.

Throughout the process, party poll watchers largely conducted themselves according to Fulton County's observer guidelines at almost all locations observed. In three cases during early voting, Carter Center observers noted that poll watchers were disruptive — in particular, speaking loudly in the quieter environment of the polling location and sometimes promoting partisan views. Poll watcher credentials were not consistently checked in places where the Center observed.

As many as 12% of early voting observation reports mentioned some limitation on the ability of observers to watch the process. Often this was because party poll watchers and observers were seated in spaces that restricted their ability to observe key procedures due to space constraints. In these cases, observers were often allowed to move around and check scanner numbers etc. when there were no voters present.

In a few instances, Carter Center observers were not initially granted access to observe early voting by the poll manager. This was generally addressed by a phone call to the poll manager from the Fulton County interim elections director. On election day, poll workers were not always aware that observers were allowed to witness the voting location setup procedures and seemed uncomfortable allowing access to polling locations before 7 a.m., even to observers with credentials and badges. Several observers were denied entry and so were unable to observe opening procedures. In all cases, observer access was resolved.

Other Observations of Note

Wrong Locations

On election day, Carter Center observers at specific locations noted significant numbers of voters turned away because they were not at their correct polling place, including: Buckhead Library, North Fulton Annex, St. James UM Church, Adams Park Library, Therrell D.M. High School, Love T. Nolan Elementary, Springfield Missionary Baptist Church, Metropolitan Library, East Point First Mallalieu UM Church, and Roswell Library. Some confusion is generally present when moving from vote centers during early voting, where voters can choose to vote at any location, to assigned polling places on election day. However, the fact that this was a significant problem for large numbers of voters beyond the sites also in use for early voting indicates a larger issue. The most logical explanation is that changes to assigned locations due to redistricting were to blame. Redistricting after the 2020 census occurred between the primary and general elections this year, and we note that Fulton County notified voters whose precincts had changed via postcards mailed prior to the election. However, the impact of redistricting seemed to be largely ignored by the political parties. Parties provided the most widespread communications prior to the election but failed to warn voters that their assigned location may have changed.

Voter Credit Error

In one location, a Carter Center observer noted that poll workers had an "Application to Vote Early In-Person" form that they could not finish processing as the statewide voter registration database indicated the voter had already voted the day before at a different early voting location. The poll worker did not note the presence of an earlier ballot record during the check-in process for the voter (during which they added a

new ballot record in the statewide voter registration database but did not finish processing it), so the voter was allowed to vote. Only when poll workers did final data entry for that application later in the night, checking they had entered information correctly and processing the added ballot records in the database, did the system prevent them from entering a duplicate record. The poll manager at the early voting location responded quickly and effectively and immediately called her supervisors for assistance. The Carter Center also raised this case with the Fulton County Elections Department and was subsequently informed that the case had been elevated to the Office of the Secretary of State for further investigation (which is ongoing at the time of writing this report).

The Carter Center cannot confirm that this was a case of double voting. It could have been the result of data entry error at either of the early voting locations. The poll manager should be commended for identifying the error during her reconciliation process and taking the appropriate steps to ensure timely resolution of the issue through the correct channels. Looking forward, ensuring that the ballot record for the voter is completely created during voter check-in, with voter credit assigned is critical. The introduction of new early voting check-in practices (to be rolled out statewide in 2023 in advance of the 2024 elections) may also help reduce the opportunity for error.

The Runoff

The Carter Center deployed a smaller number of observers for the runoff to follow up on outstanding questions from the Nov. 8 observation effort. Carter Center observers found many aspects of the process on Dec. 6 to be like those observed in November. The principal difference, well reported in the press, was the longer wait times at early voting locations.

Early voting for the Dec. 6 runoff election took place in 24 locations around the county and at three outreach locations on college campuses. The outreach locations were open for two to three days during the seven days of early voting. According to Fulton County, the reduction in locations was the result of budgetary constraints and the considerable challenge of recruiting sufficient staff over the Thanksgiving holiday (the latter shared by other counties). Runoffs also tend to have significantly lower voter turnout, which may also have been a factor in deciding to open fewer locations.

During early voting for the Dec. 6 runoff election, lines were considerably longer than in November, with wait times of an hour or more at many of the locations on multiple days during the seven-day voting period. This may be explained by a number of factors, including: voter enthusiasm (news outlets reported voters lining up hours in advance of polls opening); the shorter timeframe for early voting for the runoff (seven days as opposed to 19 days); and the reduced number of early voting locations.¹⁰ It should be noted that several of the more populous counties around Georgia experienced longer wait times for the runoff than for the Nov. 8 elections.

Observers noted that the check-in process caused a bottleneck within polling places, as election workers completed the multistep process for a high volume of voters during the condensed early voting timeframe. Locations observed addressed this problem differently; some locations allowed voters to fill in most of the form while waiting in line, which allowed voters to move through the check-in process much more quickly. In other locations, the voters completed the form at the check-in table; observers noted that this slowed the check-in process considerably. The new check-in process to be rolled out statewide in 2023 should help address these delays by streamlining the process.¹¹ The Center also recommends that additional early voting

¹⁰ 188,003 people voted early in person for the Dec. 6, 2022, runoff election (<https://sos.ga.gov/data-hub-december-6-2022-runoff> accessed Dec. 11, 2022)

¹¹ For example, Cobb County, which piloted the use of the new check-in process in the 2022 midterm elections, appeared to have consistently shorter wait times at early voting locations.

locations be opened for federal and statewide runoffs in the future, and that appropriate budgetary allocations be made to accommodate this need.

Election day was markedly different from the early voting experience. Voters were processed quickly and seldom had to wait more than a few minutes.

Internal County Operations

Absentee ballot applications

Absentee ballot processing began with the applications, which were received from five different sources. Observers witnessed paper applications received by the mailroom, timestamped, opened, and batched in groups of 50 for processing. Batch cover sheets were used to track each group of 50 through the process, recording the total accepted or rejected, and counts were reconciled each night. Electronic applications were also printed, and all applications were scanned, ensuring both a paper and electronic record. Totals of applications received and processed were reconciled to the voter registration database each night.

Fulton County, like some other counties in Georgia, uses a process where rejected absentee ballot applications are returned to the voter with a provisional ballot included in addition to the paperwork needed to cure the application. This streamlines the process considerably as a voter can complete the cure paperwork and return a marked provisional ballot in a single step. Assuming the cure of the application is successful and no further errors are found, the provisional ballot can be counted.

Absentee Ballot Processing

Fulton County took full advantage of the opportunity to process absentee ballots prior to election day, beginning the process on Monday, October 31, after issuing a notice of its intent to do so. Carter Center observers and party poll watchers were in attendance during the process. This extra processing time ensured that mail ballots did not accumulate and could be dealt with promptly.

Observers witnessed absentee ballot processing from initial receipt, logging, and storage to the verification, opening of envelopes, ballot extraction and flattening, vote review and duplication (where necessary), and eventual tabulation. Best practices were evident at each step in the process, including using small batches (50 ballots), tracking each batch via a cover sheet that logged any ballots that were removed for further processing (e.g., rejected during verification, or needing to be duplicated before tabulation), and reconciling counts of ballots at various stages throughout the process.

Election law changes in SB202, requiring that both absentee applications and completed ballots include a driver's license/state ID number or other acceptable photo ID as proof of identity, have eliminated the need for election officials to match signatures. This has streamlined the process and made it easier for election officials since they can simply check that all the necessary information is present and correct.

Vote review panels, comprised of both a Republican and a Democrat, were comfortable with the process used to duplicate unreadable ballots and were able to review and interpret ballots efficiently. While most panels were following the standard procedure, having both members look at each vote on the ballot and both members confirm that it matched the vote entered on screen, a few teams had only one person reading the ballot and the other only entering data. Reminding panels of the importance of checking each other's work will ensure that each duplicated ballot goes through consistent checks and balances.

Election Night Drop-off

On election night, nine intermediate drop-off locations throughout the county were set up to receive materials from the precincts. Not only did this prevent a high number of people and cars at the main Election Preparation Center warehouse, but it also allowed for a detailed inventory of materials to be compiled very quickly after polls closed. Fulton County split the deliveries from the precincts into two groups; runners from each voting location, responsible only for the memory cards from the scanners, were dispatched to the drop-off location as soon as possible. All the other materials, including completed ballots, followed in a separate delivery. Once all the memory cards had been received at a particular drop-off location, they could be transferred to the Election Preparation Center — escorted by police — without delay. For the most part, this system worked well. Observers noted that some precincts went to the wrong drop-off location, so providing a phone list for the precincts would have been helpful in coordinating the proper destinations.

Sites consistently had problems with the handheld scanners used to log materials into the electronic inventory system, perhaps due to limited internet connectivity, but they had ample paper records as an alternative. Different drop-off sites also had varying procedures for fixing problems (e.g., a bag accidentally sealed inside another bag. Some site managers would break seals, noting the action on the chain-of-custody forms, remedy the situation, reseal the container, and note the new seal number on the form. Others were adamant about not breaking seals to fix anything, simply recording the problems on the chain-of-custody forms. Retraining personnel on which method is preferred would be helpful for future elections.

Early Tabulation & Sequestration

Sequestration — the practice of restricting movement and communication for those who could have knowledge of early vote totals until the close of polls when totals can legally be released — during early tabulation of absentee ballots on election day (required by O.C.G.A. § 21-2-386 (a)(6)) is one of the few areas where Fulton County could make considerable improvements. Due to space constraints, early tabulation was done in one section of the main floor at the Election Preparation Center warehouse rather than in an enclosed space. No attempt was made to sequester staff, and they were using cell phones throughout the day, often walking in and out of the tabulation area to attend to other duties. Observers were similarly not constrained and were allowed to use cell phones and walk in and out freely for most of the day. One member of the public was even soliciting in the area during the general election, handing business cards to observers and vote review panelists. A modest attempt was made to limit observers' cell phone use after a complaint was made, but unfortunately, the security guard informed observers that they could simply leave the room if they wanted to make a call.

During the runoff election, the processes improved somewhat, as cell phones were taken from observers before entering the room. However, both observers and staff were still allowed in and out of the sequestered area and able to retrieve and use their phones anytime they stepped outside. It should be noted that Carter Center observers did not report any ill-effects from this lapse in sequestration, and there is no evidence that any vote totals were revealed prematurely. Still, the public perception of such lapses is problematic and should be addressed when Fulton County moves to its new warehouse in 2023.

Observers also witnessed members of the public and party poll watchers at the Election Preparation Center being given name tags that said “Election Official” at the top, presumably because these were what the county had available. There was no evidence that inappropriate access was granted based on these name tags, but in the future, it would be best to avoid labeling anyone as an election official if they are not.

Results Reporting

Results reporting was efficient and orderly, with memory cards processed as soon as they arrived at the Election Preparation Center warehouse from the drop-off locations. Three tables of staff, set up in view of observers, logged receipt of each location's sealed transfer bags and had the transport team sign chain-of-custody paperwork. Staff then proceeded to inventory each returned bag, checking to see that each arrived appropriately sealed, with all the necessary memory cards, and contained the correct cards for the scanners in that location. Memory cards were then walked over to the election management server, housed in a corner of the warehouse's main room, and results were loaded onto the server. Results of all ballots tabulated through election night were available by midnight. Given the interest in this process from party poll watchers, it would be helpful to have an election staff member tasked with explaining the process stationed with the observers in the future.

Risk-limiting Audit

Fulton County participated in the Nov. 17, 2022, risk-limiting audit (RLA) of the secretary of state contest.¹² The audit began at 8 a.m., proceeded smoothly, and was completed by 10a.m.

Audit Premises

The Fulton County audit was conducted at the Georgia International Convention Center. There was ample space for the audit operations (17 audit boards, one vote review panel, ballot storage, a ballot check-in/check-out station, and data entry). There was a clearly defined space for public observers. The audit floor was well organized, with plenty of room for monitors to move around without crowding the audit boards. The ballot storage area was always secure and guarded and ballot containers were well organized in the storage area. Election workers checked batches in and out of storage, and runners carried containers between storage and audit boards.

Training for Audit Boards

No audit board training took place during the time observers were present; it is unknown whether any training was held earlier or whether audit board members were election staff familiar with handling ballots. The secretary of state's training video, which focused on counting procedures, was displayed (without audio) on two screens. Observers reported that audit boards asked supervisors many questions while auditing the first batches, and fewer questions as the day progressed. This training strategy was adequate for conveying "sort and stack" counting, and supervisors could easily handle questions, given the lack of time constraints and the small number of ballots to be audited. The Carter Center recommends that training be conducted before auditing begins to prepare auditors and election staff for their tasks.

Vote Review Panels

Fulton County staffed one bipartisan vote review panel, but there was nothing to adjudicate, since voter intent issues occur only on handwritten mail ballots. Of the audit boards observed, only one had a mail ballot batch, consisting of eight ballots. Most of the observed audited ballots were advance voting (2,302 ballots assigned to one audit board) and election day (847 ballots).

Data Entry

Tally sheets completed by audit boards were entered as soon as auditing was complete. Data entry was generally done by a team of two, with one checking the other, but observers were not consistently able to view the computer data entry screens. Best practice calls for both the tally sheet and computer screen to be readily viewed by observers. In some jurisdictions, this is done by overhead screen projection so that anyone

¹² The Carter Center deployed observers to 34 Georgia counties during the statewide RLA, including Fulton County.

can confirm the accuracy of data entry without interfering with the operators. Again, the process was adequate for the small amount of data to be entered, but future audits may be more challenging.

In sum, Fulton County conducted its RLA carefully, smoothly, and expeditiously. These findings should support citizen confidence in the reported outcome. Increased attention to systematizing procedures would ensure smooth audit operations should more challenging conditions occur in the future.

Conclusion

Overall and within the parameters of its observation efforts, The Carter Center did not observe any election administration irregularities that would call into question the ability of the Fulton County Department of Registrations and Elections to administer secure and accessible elections for the citizens of Fulton County. The minor issues observed and noted in this report are consistent with the kinds of small hiccups that occur within any complex election administration process; Fulton County residents should feel confident these snags did not affect the election results. The aspects of the election process the Center observed were clearly improved from 2020 and demonstrated the implementation of best practices (for example, frequent reconciliation and prioritization of chain of custody and security).

Election processes are complex logistical exercises. As such, there are always opportunities for continuous improvement of processes to bolster efficiency and maximize appropriate and contextualized transparency. This process of continuous improvement relies on the observation of systems and processes and the creation of monitoring feedback loops so that lessons from one election can be integrated into systems to improve future elections. It is in this spirit that the Center has offered recommendations and suggestions for improvement throughout this report.

Finally, The Carter Center notes that the Fulton County Department of Registrations and Elections cooperated fully with the observation effort and demonstrated an openness to transparency and learning that is to be commended. The Carter Center thanks the Performance Review Board and Fulton County Board of Elections and Registration for the invitation to observe the 2022 general election.

Appendices

1. Memorandum of Understanding
2. Sample Observer Checklists – Election Day
3. Code of Conduct of Nonpartisan Election Observers
4. Signage within the Polling Place
5. Voting Location Diagrams

**MEMORANDUM OF UNDERSTANDING
BETWEEN
PERFORMANCE REVIEW BOARD,
FULTON COUNTY BOARD OF ELECTIONS AND REGISTRATION,
AND
THE CARTER CENTER**

In August 2021, pursuant to a request from the Georgia General Assembly, the State Election Board appointed a Performance Review Board ("PRB") to conduct a performance review of the Fulton County Board of Elections and Registration ("Fulton BOER") pursuant to OCGA § 21-2-106. The duty of the PRB is to make a thorough and complete investigation and issue a written report of its findings to the Secretary of State ("SOS"), the State Election Board ("SEB"), and the local governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. See OCGA § 21-2-106.

To date, the PRB has conducted interviews of Fulton BOER staff, observed election processes, observed processing of absentee ballots, observed early voting, and observed Election Day voting. To fulfill its duties under Georgia law, the PRB would like to conduct further observation and analysis during the 2022 November General Election in Fulton County ("Election"). The Carter Center ("TCC") has a well-deserved reputation for independent and objective observation and analysis of election administration. Within the framework of the ongoing performance review, the PRB and Fulton BOER believe that the independent and objective analysis and observation that TCC is known for would be beneficial to all parties. The PRB would like to complete its report by the end of calendar year 2022 and believes that TCC observation will help the effort to finalize the performance review by that time. To that end, at the invitation of the PRB and Fulton BOER, TCC has agreed to conduct independent, non-partisan observation of the Election. TCC does not conduct this observation on behalf of the PRB, SOS, SEB, or Fulton BOER, but will make its observations and analysis available to the PRB so that additional independent and objective analysis can inform the PRB's report to the SEB.

Therefore, PRB and Fulton BOER invite TCC to conduct independent, non-partisan observation and analysis of the Election. TCC agrees that it will follow all guidelines and respect any restrictions, as determined by the parties, appropriate for an accredited independent non-partisan observation effort. TCC will also follow instructions given by Fulton BOER while observing the election process to ensure the observation does not interfere with day-to-day election activities.

As an accredited observer, TCC will be provided with adequate and meaningful access to all stages of the work involved in the election, so that TCC's observers can credibly report on the process, including:

- access to relevant training materials and training sessions, either for poll-workers or staff;

- access to speak with PRB and Fulton BOER officials about their work and processes;
- access to internal documentation and records about the elections process, including but not limited to chain-of-custody documentation, recap sheets, drop box ballot transfer forms etc.
- ability to observe and accompany Fulton BOER officials and staff through their work process from start to finish.

Observation by The Carter Center will begin on October 14, 2022 and will terminate on December 15, 2022 unless an extension of the observation effort is agreed by all parties.

The specific scope-of-work for this observation effort includes:

- Observation of pre-Election procedures at the Fulton County election office
- Observation of absentee ballot issuance and receipt procedures
- Observation of equipment preparation
- Observation of early voting
- Observation of Election Day polling places
- Observation of Election Day procedures at the Fulton County election office
- Observation of post-Election procedures
- Delivery of a final report of observations by December 15, 2022. The final report will be delivered to both the PRB and Fulton BOER simultaneously.

The Carter Center will deploy a sufficient number of observers to adequately assess the aforementioned processes. All Carter Center observers will receive training on Georgia's election rules and procedures.

TCC reserves the right to:

- Select the dates, times, and locations of the observation, subject to the availability of Fulton BOER officials.
- Provide all parties a preliminary statement about the observation by November 30, 2022 and a more detailed final report, including key findings and recommendations for future efforts, no later than December 15, 2022.
- In coordination with the PRB and Fulton BOER, release public statements in advance of the election to announce our observation efforts and educate the public on the purpose of nonpartisan election observation and the role of TCC in this effort.

TCC will not:

- Attempt observation beyond the specific scope included here
- Violate the Observer Code of Conduct included here
- Divulge any information protected from disclosure by state law
- Interfere in the elections process

- Handle ballots or other sensitive materials
- Divulge any documents or confidential information shared with them about the election process without approval from the PRB and Fulton BOER.
- Divulge any documents or confidential information to any person regarding the election process or observation if that person is adverse in litigation to the State of Georgia or any county elections office

Observer Code of Conduct

The purpose of election observation is to help ensure the integrity of the election process, by witnessing and reporting accurately and impartially on each aspect of the process to evaluate whether it is conducted in an open and transparent manner and in conformance with applicable laws and electoral regulations. Election observation and monitoring also seeks to ensure the integrity of the election process by calling on all electoral actors (including the candidates, political parties, those supporting or opposing referendum initiatives, election officials, other governmental authorities, mass media, and voters) to respect the laws and election-related rights of all citizens and to hold accountable those who violate the law or any person's election-related rights.

While serving as an election observer, I will:

- **Be an informed observer**
 - I will attend all required election observation training sessions and familiarize myself with relevant election law and processes prior to the election
- **Be an objective observer**
 - Report what I see – whether positive or negative - impartially, accurately, and in a timely manner, and include sufficient documentation of serious problems to allow for verification
- **Respect the election process**
 - I will respect state and federal laws governing elections, follow the instructions of election officials, and maintain a respectful attitude at all times
- **Remain politically neutral**
 - I will not publicly express any preference for or against any candidate, political party, or initiative, in accordance with laws prohibiting electioneering
- **Protect the integrity of the election**
 - I will not interfere unlawfully or inappropriately with election processes or procedures; where I have objections or concerns, I will elevate them through established channels

Appendix 2 – Sample Observer Checklist**Fulton County Election Day Observation Checklist – Cover Sheet***Instructions:*

*Please fill in Part A **as soon as you reach the voting location where you are observing**, and fill out Part B as you are leaving the voting location. You will need a separate checklist for each location you observe throughout the day. Please fill out only the parts applicable to the processes you observed, and thank you!*

PART A: Observer Info

Your Name: _____

Voting Location Name/Address: _____

Today's date (e.g. 10/31/22): _____

Time you arrive at the voting location (e.g. 2:30 PM): _____

Public count of votes cast on the scanner(s) when you arrive: _____

PART B: Post-observation Questions

Time you leave the voting location (e.g. 2:30 PM): _____

Public count of votes cast on the scanner(s) when you leave: _____

(If you answer "no" to any of these, please explain on the "Notes" form)

| | | |
|-----------|---|--|
| B1 | Were you allowed to observe? | <input type="radio"/> Yes <input type="radio"/> No |
| B2 | Were you able to observe all procedures without restrictions? | <input type="radio"/> Yes <input type="radio"/> No |
| B3 | Did the pollworkers cooperate with you? | <input type="radio"/> Yes <input type="radio"/> No |
| B4 | Were party pollwatchers able to observe in accordance with pollwatcher rules? | <input type="radio"/> Yes <input type="radio"/> No |

I have, to the best of my ability, conducted myself in accordance with the Carter Center's Code of Conduct for Observation and provided truthful, complete answers to these questions

(Sign on the above line)

PART C: Physical Space (Exterior)

(If you answer “no” to any of these, please explain on the Notes form)

| | | |
|------------|--|---|
| C1 | Is there adequate parking in the parking lot? (i.e. spaces are available if more voters arrive right now) | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C2 | Is the required exterior signage present? <i>This includes:</i> <ul style="list-style-type: none"> • A sign identifying the voting location (“Vote Here” etc.) • A sign marking the 150ft electioneering boundary | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C3 | Are there clearly-marked accessible parking spots? (i.e. blue lines and obvious signage) | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C4 | Is there an accessible path from the parking space to the building entrance (paved and clear of stairs, narrow doorways, and physical obstacles that would make it hard for a wheelchair user or visually-impaired person to enter)? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C5 | Is the wheelchair-accessible entrance to the building the main entrance or a side/back entrance? | <input type="radio"/> Main <input type="radio"/> Side/back |
| C6 | Is the wheelchair-accessible entrance clearly marked? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C7 | Is the wheelchair-accessible entrance unlocked? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C8 | Are the doors light enough to open easily *OR* have button-activated openers? (Either option is acceptable) | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C9 | Are there campaign materials or campaign activity <u>outside</u> the 150-foot radius of the voting location? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C10 | Are there campaign materials or campaign activity visible <u>inside</u> the 150-foot radius of the voting location? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C11 | Is there tension or unrest in the area around the voting location? (If yes, please describe in Notes section) | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C12 | Is there any indication of pressure/intimidation of voters in the area around the voting location? (If yes, please describe in Notes section) | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| C13 | Are people blocking access to the voting location or acting violently? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

| | | |
|--|--|--|
| | (If yes, please describe in Notes section) | |
|--|--|--|

PART D: Physical Space (Interior)

(If you answer “no” to any of these, please explain on the Notes form)

| | | |
|------------|---|---|
| D1 | Is there an accessible path through the building from the exterior door to the voting location? (e.g. smooth and clear of stairs, narrow doorways, and physical obstacles that would make it hard for a wheelchair user or visually-impaired person to navigate) | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D2 | How many check-in stations are set up? | Count: |
| D3 | How many voting stations are set up (including accessible stations)? | Count: |
| D4 | How many scanning stations are set up? | Count: |
| D5 | Is a separate station set up to process voters who need provisional ballots (separate from the normal check-in table)? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D6 | Is there a clear flow indicated in the room – where voters should go 1 st , 2 nd , 3 rd etc? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D7 | Are people able to move smoothly around the room to complete each step of the voting process? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D8 | Is there enough space for a wheelchair to maneuver through each station to complete the voting process? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D9 | Is a lower-height accessible voting station, suitable for a chair or wheelchair, available for use? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D10 | Are all voting stations, including the accessible station, placed to ensure ballot secrecy (no one should see the screen)? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D11 | Are accessibility aids (headphones, accessible keypads, etc) available at the accessible station? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| D12 | Is all appropriate signage present? <i>This includes:</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

| | | |
|--|---|--|
| | <p><i>(Outside Voting Location)</i></p> <ul style="list-style-type: none"> <i>a. Vote Here signs</i> <i>b. 150 ft No Campaigning</i> <i>c. Accessible parking signs</i> <p><i>(Inside Voting Location)</i></p> <ul style="list-style-type: none"> <i>d. Poll Worker Area</i> <i>e. No Leaving With Ballot</i> <i>f. Large Print Viewing</i> <i>g. Voter Notice (Wrong/Incorrect Ballot)</i> <i>h. Ballot Review</i> <i>i. Georgia Voting Information</i> <i>j. Card of Instructions</i> <i>k. Identification Required</i> <i>l. Notice of Penalties</i> <i>m. Sample Ballots (2)</i> <i>n. Prohibition of Electronics Notice</i> <i>o. Magnified Ballot Request</i> <i>p. Notice to Voters 75 Years & Older</i> <i>q. Acceptable Proof of Citizenship</i> <i>r. Video Surveillance</i> <p><i>(At Each Voting Station)</i></p> <ul style="list-style-type: none"> <i>s. Voting Instructions</i> <i>t. Large Print Viewing</i> <i>u. Voter Notice</i> <i>v. Return Voter Card</i> | |
|--|---|--|

D13: Draw the approximate layout of the voting area. Example:

Use arrows to indicate voter flow, be sure to mark entrances/exits, and indicate which voting booths are lower/accessible. If a drop box or separate provisional ballot processing station are used, draw those.

PART F: Pollworkers & Others

| | | |
|------------|---|---|
| F1 | How many pollworkers are present, including the head pollworker? <i>[2-digit number]</i> | Count: |
| F2 | How many party pollwatchers did you observe while you were there? | Count: |
| F3 | If pollwatchers are present, what parties did they represent (if you can tell)? <i>(Circle all that apply)</i> | DEM REP |
| F4 | Did a pollworker check the credentials of all pollwatchers present? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| F5 | Were any pollwatchers disruptive? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| F6 | Did pollwatchers attempt to challenge any voters? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| F7 | Are media present at this voting location? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| F8 | IF YES: what media outlet do they represent? | Outlet: |
| F9 | Are uniformed law enforcement or security present? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| F10 | Did anyone report a problem to you that you did not directly observe? <i>(If yes, describe on the Notes sheet)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| F11 | Did you witness anyone being removed from the voting location for any reason? <i>(If yes, describe on the Notes sheet)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

PART G: Voting Procedures

| | | |
|-----------|--|--|
| G1 | Are voters being asked to present valid photo ID at check-in (or providing one without being asked)? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G2 | Are pollworkers scanning the voter's ID into the Poll Pad OR manually entering their name to find the voter's record and verify that they are on the voter list? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |

| | | |
|------------|--|--|
| G3 | Are voters being asked to check their current information on the Poll Pad and then signing their name onscreen? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G4 | Are voters able to use the BMD without confusion/questions? (If no, describe in the Notes section) | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G5 | Are voters being prompted to check their printed summary ballot before inserting it into the scanner? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G6 | Are voters checking their summary ballot (any time after printing but before placing it into the scanner)? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G7 | Are voters placing their own ballot in the ballot scanner? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G8 | Are voters able to use the ballot scanner without confusion/questions? (If no, describe in the Notes section) | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G9 | How many times did you see the ballot scanner return a ballot to the voter/fail to scan the first time a ballot is inserted? | Count: |
| G10 | Are voters returning their voter card to a pollworker before leaving? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |
| G11 | How many times did a voter exit the voting location with either their paper summary ballot or their voter card instead of turning it in? | Count: |
| G12 | Are voters offered an "I Voted" sticker before they leave? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never |

| | | |
|------------|--|---|
| G13 | How many times did a voter ask for language assistance? | Count: |
| G14 | How many times did a voter ask for a caretaker or helper to assist with voting? | Count: |
| G15 | Did any voter(s) ask to spoil their ballot and start over after printing? <i>(If yes, describe why on Notes form – voter mistake, voter thinks printout is wrong, etc.)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| G16 | Did the scanner ballot box fill to capacity/need to be emptied at any point? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| G17 | IF YES, did pollworkers do the following in view of the public: announce what was happening, break the seal on the ballot box, remove ballots to the black ballot transport bag, seal the black ballot transport bag, seal the ballot box, and fill out the 'Voted Ballot Removal Form' and the 'Scanner Recap Sheet' with the new seal numbers and other appropriate information? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A |
| G18 | Did any voter use their phone in the voting location? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| G19 | Is anyone using derogatory or abusive language towards pollworkers or voters? <i>(If yes, describe the situation in Notes)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| G20 | Did anyone attempt to inappropriately access, manipulate, or otherwise interfere with any voting equipment? <i>(If yes, describe the situation in Notes)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| G21 | Were any voters above 75 years of age or voters with disabilities invited to skip the line? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A |
| G22 | Did anyone lodge an official complaint with the pollworkers while you were there? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| G23 | The overall voting process in this voting location is: | <input type="radio"/> Very Good <input type="radio"/> Good <input type="radio"/> Average <input type="radio"/> Bad <input type="radio"/> Very Bad |

PART H: Voting Procedures for Special Circumstances

| | | |
|-----------|---|---|
| H1 | <p>VOTER NOT ON LIST: Are voters not on the voter list (either via the Poll Pad or on the supplemental list) being redirected to the provisional ballot station and offered a provisional ballot?</p> | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never <input type="radio"/> N/A |
| | <p>VOTER IN WRONG PLACE: Are voters being redirected to the correct location or, if they want to vote at this location:</p> <ul style="list-style-type: none"> - BEFORE 5 PM, being told that they can cast a provisional ballot but it will not count - AFTER 5 PM, being told that they can cast a provisional ballot and the contests that they are eligible to vote in will count | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never <input type="radio"/> N/A |
| H2 | <p>NO ACCEPTABLE ID: Are voters who are told they lack acceptable ID being offered a provisional ballot?</p> | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never <input type="radio"/> N/A |
| H3 | <p>VOTER SENT MAIL BALLOT: If the Poll Pad shows voters were sent a mail ballot, are pollworkers asking voters to surrender/cancel their mail ballot before being allowed to vote?</p> | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never <input type="radio"/> N/A |
| H4 | <p>VOTER SENT MAIL BALLOT – CANNOT SURRENDER: If voters who were sent a mail ballot do not have their ballot with them, are pollworkers:</p> <ul style="list-style-type: none"> - confirming that the county has not received the mail ballot before allowing the voter to vote as normal, or - if the county has received the ballot/is not available, only allowing a voter to vote a provisional ballot (if they wish)? | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never <input type="radio"/> N/A |
| H5 | <p>VOTER ALREADY VOTED IN PERSON: If the Poll Pad shows voters have already voted early in-person, are pollworkers asking the voter whether they have already voted and:</p> <ul style="list-style-type: none"> - If the voter says yes, refusing them any ballot and providing contact information for the county to answer any questions | <input type="radio"/> Always <input type="radio"/> Mostly <input type="radio"/> Sometimes <input type="radio"/> Never <input type="radio"/> N/A |

| | | |
|-----------|--|--|
| | - If the voter says no, only allowing the voter to vote a provisional ballot (if they wish)? | |
| H6 | <p>CHALLENGED VOTER:</p> <p>If the Poll Pad shows voters have been challenged, are voters offered the chance to cure via an affidavit or, if they cannot cure, redirected to the provisional ballot station and offered a challenged provisional ballot?</p> | <p><input type="radio"/> Always</p> <p><input type="radio"/> Mostly</p> <p><input type="radio"/> Sometimes</p> <p><input type="radio"/> Never</p> <p><input type="radio"/> N/A</p> |

PART J: Efficiency

| | | |
|-----------|---|---|
| J1 | <p>How long did a typical voter have to wait in line before voting?</p> <p><i>(To measure, pick a voter who has just entered the line and time how long it takes until they reach the front of the line. E.g. "10 minutes")</i></p> | Time: |
| J2 | <p>How long did it take a typical voter to complete the voting process?</p> <p><i>(To measure, pick a voter who has just started to check in and time how long it takes until they cast their ballot and exit. E.g. "10 minutes")</i></p> | Time: |
| J3 | <p>What was the longest line you saw, and at what time did this occur?</p> <p><i>(e.g. "23 people, 7 am")</i></p> | <p>Length:</p> <p>Time:</p> |
| J4 | Was the number of pollworkers sufficient for a timely and orderly process? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

PART X: Notes and Other Observations

Use these pages to either:

- Give more detail on your answers to any question earlier on the form
- Describe other observations you feel are important to record

For each comment, include a reference to the **question ID** from the form. Start a **new row** for each question.

For comments **not related to any specific questions in the form**, put “0” in the question ID column.

EXAMPLE:

G13 10:30-11:00. Long discussions with challengers from another nonpartisan organization about the location of this polling station. It is located in a building owned by one of the candidates.

[illegible]

Fulton County Election Day Checklist – OPENING THE POLLS**PART E: Opening the Polls**

(If you answer “no” to any of these, please explain on the Notes form)

| | | |
|-----|---|---|
| E1 | Are all poll workers in attendance? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E2 | Are all poll workers sworn in? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E3 | Are all poll workers wearing name badges? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E4 | <i>(Check-in station)</i> Do poll workers check that the serial numbers on Poll Pad case and tablet match? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E5 | <i>(Check-in station)</i> Do poll workers check that the Poll Pad tablet is turned on and functioning correctly? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E6 | <i>(Check-in station)</i> Do poll workers check that the Poll Pad is set for the correct polling location? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E7 | <i>(Check-in station)</i> Do poll workers check that the check-in count reads zero? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E8 | <i>(Check-in station)</i> Is the supplemental voter list present? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E9 | <i>(Check-in station)</i> Is the paper backup voter list present? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E10 | <p><i>(Equipment carriers)</i> Do poll workers verify the seal numbers on the doors of the equipment carriers match the numbers on the “Equipment Carrier/Voting Booth Security Seals Form” before seals are broken/doors are opened?</p> <p><i>(This refers to the grey doors into the supply/scanner areas of the carriers, not the black doors over the voting stations)</i></p> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

| | | |
|-----|--|---|
| E11 | <i>(Scanner in equipment carrier)</i> Do poll workers verify that the seals on the Emergency Ballot Box door (above the scanner) and the Ballot Box door match the number on the “Scanner/Ballot Box Recap Form,” before opening both boxes, confirming that they are empty, resealing them, and noting the new seal numbers on the recap forms? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |
| E12 | <i>(Scanner in equipment carrier)</i> Do poll workers verify that the two seals on the front of the scanner are intact, and match the numbers on the Scanner/Ballot Box recap form? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |
| E13 | <i>(Voting Stations)</i> Do poll workers verify the seal numbers on the black doors securing the BMDs in the equipment carriers match the numbers on the “Equipment Carrier/Voting Booth Security Seals Form” before seals are broken/doors are opened? <i>(This refers to the black doors that enclose the touchscreens in the carriers, not the grey doors)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |
| E14 | <i>(Voting Stations)</i> Once the black doors are opened, do poll workers check the seal/serial numbers on the sides of the BMDs – <u>WITHOUT OPENING SEALS</u> - and record them on the recap sheet? <i>(two seals on the left side of the touchscreen, top and bottom, and one on the upper right side)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |
| E15 | <i>(Voting Stations)</i> Do poll workers check that the voting machines are turned on and functioning correctly? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |
| E16 | <i>(Voting Stations)</i> Do poll workers check that the date/time on each machine is correct? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |
| E17 | <i>(Voting Stations)</i> Do poll workers check that the public counter on each machine reads zero? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don’t know |

| | | |
|-----|---|--|
| | | |
| E18 | <i>(Standalone Scanning Station)</i> Do poll workers check the seals on both the Ballot Box and the Emergency Ballot Box match the recap form before opening both boxes, confirming that they are empty, resealing them, and noting the new seal numbers on the recap form? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E19 | <i>(Standalone Scanning Station)</i> Do poll workers check the rest of the existing seal numbers on the scanner – <u>WITHOUT OPENING THEM</u> - and record them on the recap sheet? <i>(Admin & Poll Worker memory card slots, scanner lock)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E20 | <i>(Standalone Scanning Station)</i> Do poll workers check that the date/time is correct? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E21 | <i>(Standalone Scanning Station)</i> Do poll workers check that the ballot counter is zeroed, and the two zero reports are printed & stored? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E22 | Are poll workers comfortable with the technology & setup process? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E23 | If poll workers had a problem, did they know how to contact HQ and resolve it? <i>(Please describe any issues on Notes form: missing materials, machine malfunctions, procedural confusion etc.)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E24 | Did the voting location open on time at 7 AM? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| E25 | IF NO: at what time did the voting location open for voting? | Time: |
| E26 | If the voting location opened <u>late</u> , what was the cause? | <input type="radio"/> Missing materials <input type="radio"/> Absent pollworkers <input type="radio"/> Locked facility |

| | | |
|-----|---|---|
| | | <input type="radio"/> Not set-up <input type="radio"/> Unrest <input type="radio"/> Other (add Notes) <input type="radio"/> N/A |
| E27 | How many people were in line at polls open? | Count: |
| E28 | The overall conduct of the opening of this voting location was: | <input type="radio"/> Very Good <input type="radio"/> Good <input type="radio"/> Average <input type="radio"/> Bad <input type="radio"/> Very Bad |

Fulton County Election Day Checklist – CLOSING THE POLLS

PART I: Closing the Polls

(If you answer “no” to any of these, please explain on the Notes form.)

| | | |
|----|--|---|
| I1 | At 7 PM, do pollworkers: <ul style="list-style-type: none"> - announce that polls are closed, - position a pollworker at the end of the line to ensure that no one in line after 7 pm is allowed to vote, and - allow voters already in line to vote? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I2 | If the county notifies pollworkers that a court has ordered polls to stay open longer, do the pollworkers comply? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I3 | At what time did the last voter cast their ballot? <i>(e.g. “7:04 pm”)</i> | Time: |
| I4 | (Check-in Stations) Do pollworkers note the final check-in number for each Poll Pad on the Poll Pad Recap Sheet before turning them off and storing them? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I5 | (Voting Stations) Do pollworkers record the total count of voters for each voting machine on the | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

| | | |
|-----|--|---|
| | Touchscreen Recap Sheets before turning off the machines? | |
| I6 | (Voting Stations) Do pollworkers recheck and/or replace the necessary seals and record seal numbers on the Touchscreen Recap Sheets when sealing the black doors in front of the touchscreens? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I7 | (Scanning Stations) Do pollworkers unseal the emergency ballot box on the scanner, scan any ballots found there through the scanner, and then reseal the emergency ballot box, noting the new seal number on the Scanner/Ballot box Recap Form? <i>(This must be done prior to printing the results tape)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I8 | (Scanning Stations) Do pollworkers record the public count on the Scanner/Ballot Box Recap Form and the Ballot Recap Sheet before printing the results tape and turning off the scanners? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I9 | (Scanning Station) Do pollworkers close polls and print 3 copies of the results tape, posting one copy on the door/window of the polling place? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I10 | (Scanning Station) Do pollworkers unseal & remove the memory card(s) from the scanner(s), sealing it in the yellow memory card transport bag and resealing the memory card slot on the scanner? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I11 | Do pollworkers unseal & remove ballots from the ballot box in the scanner(s), sealing them in the black ballot transport bag? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I12 | Did the sealed ballot bag and all other materials to be transferred remain in sight of the pollworkers until they were loaded into a vehicle for transfer? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I13 | Was the yellow memory card bag dispatched to a team of (2) runners to return to the election office? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |

| | | |
|-----|--|---|
| I14 | Are any spoiled or unaccompanied ballots documented on the Spoiled and Unaccompanied Ballot Recap Sheet and properly stored? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I15 | Are any provisional ballots documented on the Provisional Ballot Recap Sheet and properly stored? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I16 | Are Poll Pads, unused paper ballots, recap sheets and the numbered list of voters, the supplemental voters list and the backup paper voters list, spoiled/provisional/unaccompanied ballots and other materials securely sealed and stored? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I17 | Do pollworkers check to make sure that the number of check-ins from the Poll Pad(s) matches the public count on the BMDs and the public count on the scanner? <i>(Note that spoiled, emergency, & unaccompanied ballots may also need to be factored in.)</i> | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I18 | Did the pollworkers have difficulties in completing the closing procedure and paperwork? | <input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> Don't know |
| I19 | The overall closing process in this voting location is: | <input type="radio"/> Very Good <input type="radio"/> Good <input type="radio"/> Average <input type="radio"/> Bad <input type="radio"/> Very Bad |

Appendix 3 – Nonpartisan Observer Code of Conduct

Election Observer Code of Conduct

The purpose of election observation is to help ensure the integrity of the election process, by witnessing and reporting accurately and impartially on each aspect of the process to evaluate whether it is conducted in an open and transparent manner and in conformity with applicable laws and electoral regulations. Election observation and monitoring also seeks to ensure the integrity of the election process by calling on all electoral actors (including the candidates, political parties, those supporting or opposing referendum initiatives, election officials, other governmental authorities, mass media, and voters) to respect the laws and election-related rights of all citizens and to hold accountable those who violate the law or any person's election-related rights.

While serving as a Nonpartisan Election Observer, I will:

- **Be an informed observer**
 - I will complete all required election observation training, familiarize myself with relevant election law and processes prior to the election, and adhere to the observation methods used by The Carter Center.
- **Be an objective observer**
 - I will report what I see – whether positive or negative – impartially, accurately, and in a timely manner. I will adhere to the highest standards of accuracy of information and impartiality of analysis. I will document my observations and return this documentation to The Carter Center. If I report a serious problem, I will include documentation sufficient to allow for verification.
- **Respect the election process**
 - I will respect state and federal election laws, follow the instructions of election officials, and maintain a respectful and professional attitude at all times.
- **Remain politically neutral**
 - I will not publicly express or exhibit any preference for or against any candidate, political party, initiative, or public official.
- **Protect the integrity of the election**
 - I will not interfere with election processes or procedures. If I have objections or concerns, I will elevate them using the methods from my training.
- **Follow the rules and guidance of the observer organizations**
 - I will follow this code of conduct, and any written or verbal instructions given by the Carter Center's observation effort leadership. I will report any conflict of interest that I may have and report any improper behavior that I see conducted by any other observers that are part of this effort.

- **Refrain from speaking about the observation process on social media, to the media or to the public**
 - I will refrain from making any personal comments on my observations to the media or members of the public (including through social media). I will refer all media enquiries to The Carter Center leadership team.

I understand that my violation of this Code of Conduct may result in my accreditation as observer being withdrawn and my dismissal from the observation effort.

NAME (please print):

Signature:

Date:


RETRIEVED FROM DEMOCRACYDOCKET.COM

**Only
Poll Workers,
Poll Watchers
and Persons
Actively Voting
are permitted
in this area.**

**Do not
leave the
balloting area
with your
printed ballot.**

**FOR YOUR
CONVENIENCE,
THE BALLOT CAN
BE VIEWED IN
LARGER PRINT.**

**PLEASE SEE OUR
POLL OFFICIAL
FOR ASSISTANCE.**

 **SECURE
THE VOTE**

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IMPORTANT NOTICE TO VOTERS

PLEASE NOTIFY A POLL WORKER
IF YOU BELIEVE THAT:

- You have been given the wrong ballot.
- Your ballot does not contain all the candidate names I should.
- The voting unit is not operating properly.

OR IF you find a **"PRINTED BALLOT"** does not reflect your choices.

Once you have placed your ballot in the scanner ballot box, your vote has been recorded and is final.



BALLOT REVIEW





Review your printed ballot to confirm your choices prior to inserting into the scanner.

Contact Poll Official if assistance is needed.

Sample ballots are available for review upon request.



SECURE
THE VOTE

NOTICE

THIS LOCATION IS UNDER VIDEO SURVEILLANCE

Only the following individuals may possess or deliver an absentee ballot on behalf of a voter:

- ✓ The voter (ten or fewer)
- ✓ Voter's mother, father, grandparent, aunt, uncle, brother, sister, spouse or son, daughter, niece, nephew, grandchild, step-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law
- ✓ Individual residing in the same household as the voter, or
- ✓ Caretaker of a voter with disabilities

WARNING!!!

Unauthorized possession of an absentee ballot violates Georgia law and is punishable by a fine of up to \$1,000 and/or imprisonment for up to 1 year, or both. O.C.G.A. § 21-2-52

Unauthorized displaying, mailing or sending the absentee ballot is punishable by a fine of up to \$1,000 and/or imprisonment for up to 1 year, or both. O.C.G.A. § 21-2-53



SECURE

VOTE

[illegible]

NOTICE OF PENALTIES

[illegible][illegible]

Figure 1 shows two examples of instruction cards. The top card, titled "CARD OF INSTRUCTIONS", contains a list of instructions for the experiment. The bottom card, titled "INSTRUCTIONS", contains a list of instructions for the experiment.

[illegible]

NOTICE

ARBITRATOR VOTING PERIOD

ELECTORS WHO ARE 75 YEARS OF AGE OR OLDER OR WHO ARE DISABLED AND REQUIRE THE ASSISTANCE IN CASTING AN ARBITRATOR BALLOT ON PAPER, SHALL, UPON REQUEST TO A DESIGNATED OFFICE EMPLOYEE OR OTHER INDIVIDUAL, VOTE IMMEDIATELY AT THE NEXT AVAILABLE VOTING COMPARTMENT OR BOOTH WITHOUT WAITING IN LINE.

ELECTION DAY

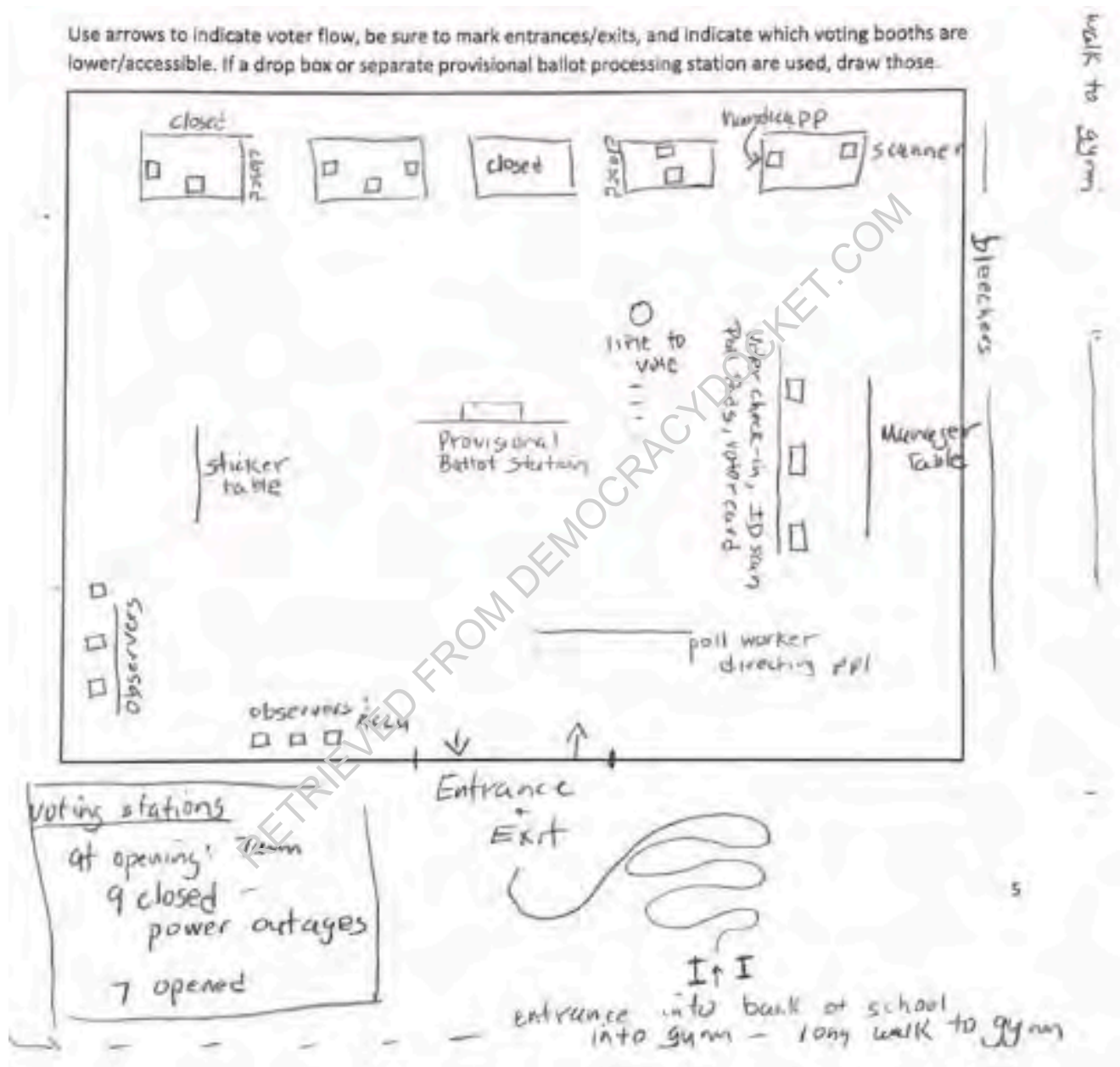
BETWEEN THE HOURS OF 9:00 A.M. AND 6:00 P.M., ELECTORS WHO ARE 75 YEARS OF AGE OR OLDER OR WHO ARE DISABLED AND REQUIRE ASSISTANCE IN VOTING, SHALL, UPON REQUEST TO THE PSAL OFFICER, BE ALLOWED TO VOTE IMMEDIATELY AT THE NEXT AVAILABLE VOTING COMPARTMENT OR BOOTH WITHOUT WAITING IN LINE.

(2024-0018) 2023.12.14.0401

17

Appendix 5: Voting Location Diagrams

As part of their checklist, observers were asked to make a rough sketch of the layout of each voting location they observed. They are included here to show variation in layout and placement of the equipment containers. From top to bottom, the diagrams show: Sutton Middle School, Roswell High School, and Buckhead Library.



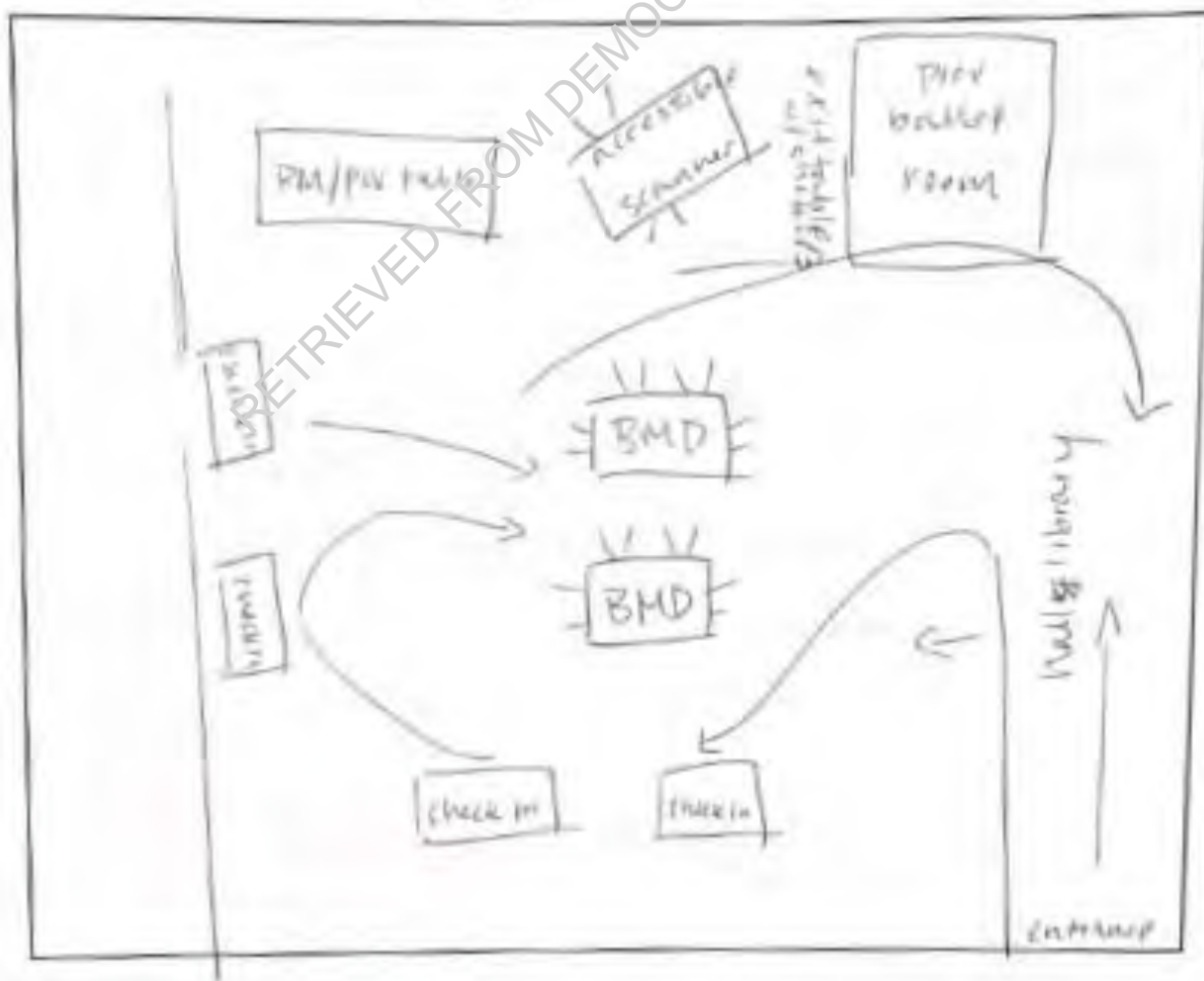
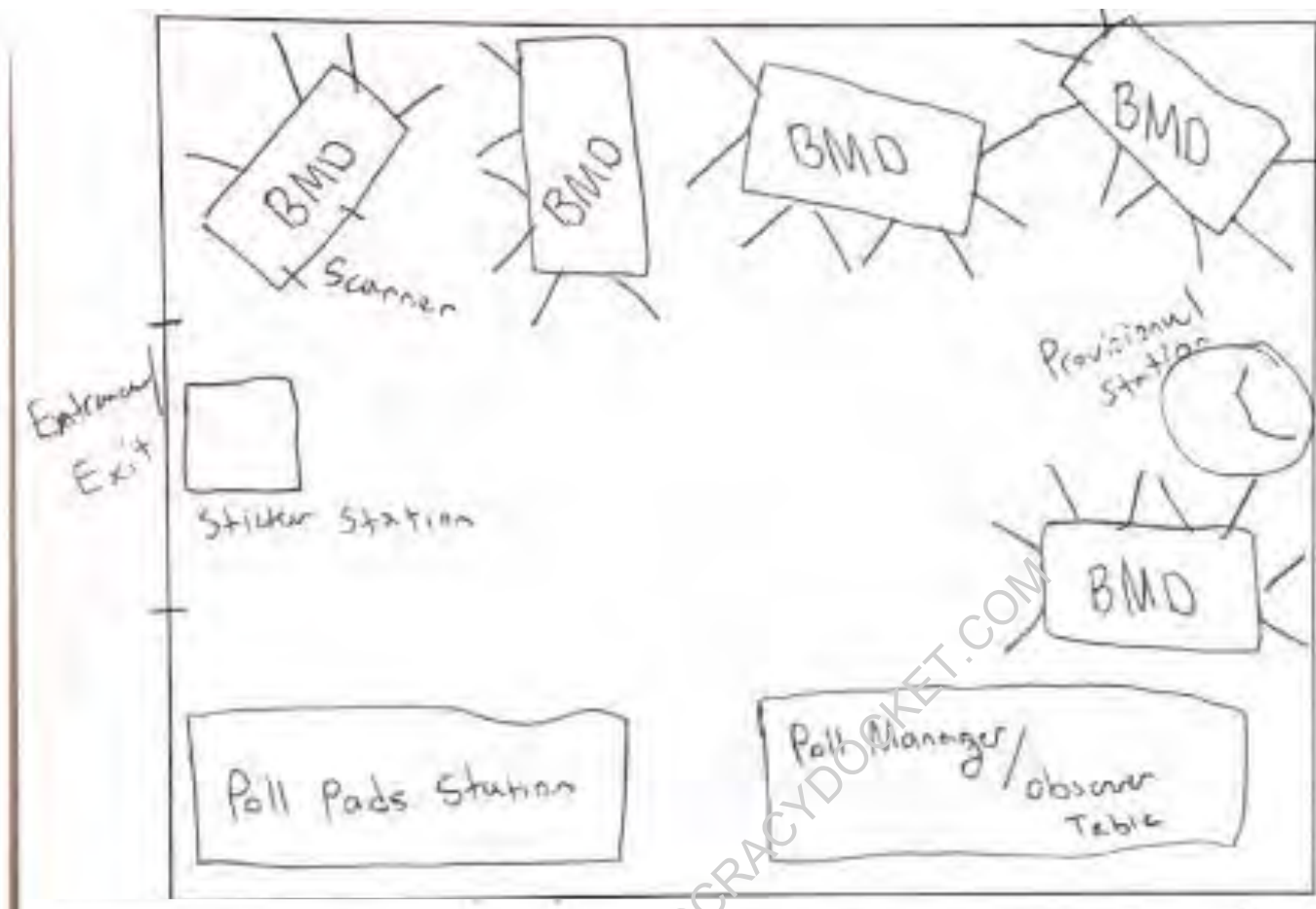


EXHIBIT 2

RETRIEVED FROM DEMOCRACYDOCKET.COM



Office of Secretary of State

Brad Raffensperger
SECRETARY OF STATE

C. Ryan Germany
GENERAL COUNSEL

May 18, 2020

VIA ELECTRONIC MAIL

Doris Cooley
Administrative Procedures Division
5800 Jonesboro Road
Morrow, GA 30260
Email: aparules@sos.ga.gov

Re: Letter of Transmittal
Rules of the State Election Board

Dear Ms. Cooley:

Please find transmitted electronic versions of the following rules for filing in accordance with the Georgia Administrative Procedures Act: Rule 183-1-14-0.7-.15.

Should questions arise about these rules, please contact me at (470) 312-2808 or rgermany@sos.ga.gov.

Sincerely,

Ryan Germany

Attachments

**RULES
OF
STATE ELECTION BOARD**

**CHAPTER 183-1
GEORGIA ELECTION CODE**

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

TABLE OF CONTENTS

183-1-14-0.7-.15 Processing Absentee Ballots Prior to Election Day

RULE 183-1-14-0.7-.15 Processing Absentee Ballots Prior to Election Day

(1) For the Elections held on June 9, 2020, beginning at 8:00 a.m. on the second Monday prior to Election Day, county election superintendents shall be authorized to open the outer envelope of accepted absentee ballots, remove the contents including the absentee ballot, and scan the absentee ballot using one or more ballot scanners, in accordance with this rule, and may continue until all accepted absentee ballots are processed. However, no person shall tally, tabulate, estimate or attempt to tally, tabulate or estimate or cause the voting equipment to produce any tally or tabulation, partial or otherwise, of the absentee votes cast until the time for the closing of the polls on Election Day.

(2) Absentee ballots shall be processed in batches of not more than 100. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present at all times during the processing of a batch of absentee ballots.

(3) Outer envelopes shall be opened in such a manner as not to destroy the oath and signature of the voter.

(4) All outer envelopes in a batch shall be counted and recorded on a reconciliation form prior to opening the outer envelopes of a batch. Upon opening the outer envelopes of a batch, the contents shall be removed in a manner that ensures that the contents of the envelope cannot be matched back to the outer envelope. Once all of the outer envelopes of a batch have been opened and the contents removed, the inner envelopes and/or secrecy sleeves shall be opened and the absentee ballots removed. Once all of the absentee ballots have been removed, the number of ballots shall be counted and recorded on a reconciliation form and compared to the original count of outer envelopes in the batch. Any discrepancy shall be investigated and recorded on a reconciliation form. The form shall be signed by the officials processing the batch of ballots. The absentee ballots shall then be scanned on a ballot scanner. A batch number assigned by the ballot scanner shall be recorded on the reconciliation form for that batch. Any ballot that is so torn, bent, or otherwise defective that it cannot be processed by the scanner shall be duplicated pursuant to O.C.G.A. § 21-2-483. Vote review panels shall be established, as needed, to adjudicate any rejected ballots per O.C.G.A. § 21-2-483 and Rule 183-1-15-.02. Once

successfully scanned, the batch of ballots shall be bound together with the reconciliation form (or a copy thereof) and the official who scanned the ballots shall notate on the reconciliation form that the batch has been scanned, including the date and location of the scanning, and initial the notation. The scanned absentee ballots shall then be secured in a container. More than one batch of scanned absentee ballots may be placed in the container, but the individual batches must be separately bound. A security seal shall be placed on the container. The batch number(s), the number of scanned absentee ballots in each batch, and the security seal number shall be recorded on the container.

(5) If the county election superintendent chooses to scan absentee ballots prior to Election Day according to this Rule, the superintendent shall notify the Secretary of State in writing at least seven days prior to processing absentee ballots.

(6) The proceedings described in this rule shall be open to the view of the public, but no person except one employed and designated for the purpose by the superintendent shall touch any ballot or ballot container. The state executive committee of each political party and political body having candidates whose names appear on the ballot in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot in such county shall have the right to designate one person to act as monitors for such process. The designated monitors shall be given a letter by the designating entity containing the name of the monitor, his or her address, and the county in which he or she may monitor the process. A copy of the letter designating the monitor shall be delivered to the county elections superintendent prior to the monitor being allowed to monitor the process. Each monitor shall wear a name tag indicating their name and the entity that designated them while monitoring the process. Any other observer shall be required to wear a name tag that indicates their name and that they are a public observer. The superintendent may make reasonable regulations, including regulations regarding social distancing measures and required personal protective equipment, that designated monitors and observers shall follow so that they do not interfere in any way with the processing of ballots or conduct of the election. If a monitor or observer interferes with the processing of the ballots or conduct of the election after being duly warned by an election official or superintendent, or if he or she violates any of the prohibited activities in this rule, the superintendent may revoke the person's designation to monitor the process, remove them from any further monitoring or observing, and refer the incident to the Secretary of State's office for investigation. Any infraction or irregularity observed by a monitor or observer shall be reported to the superintendent or to the Secretary of State. No person whose name is on the ballot shall be eligible to serve as a designated monitor.

(7) While viewing the process set forth in this rule, monitors and observers are prohibited from:

- (a) In any way interfering with the processing of absentee ballots or conduct of the election;
- (b) Using or bringing in to the room any photographic or other electronic monitoring or recording devices, cellular telephones, or computers;
- (c) Engaging in any form of campaigning or campaign activity;

- (d) Taking any action that endangers the secrecy and security of the ballots;
- (e) Touching any ballot or ballot container;
- (f) Tallying, tabulating, estimating, or attempting to tally, tabulate, or estimate, whether partial or otherwise, any of the votes on the absentee ballots cast; and
- (g) Communicating any information that they see, whether intentionally or inadvertently, about any ballot, vote, or selection to anyone other than to an election official who needs to such information to lawfully carry out his or her official duties.

(8) Before being allowed to view the process set forth in this rule, each designated monitor and observer shall execute an oath swearing or affirming, under penalty of perjury, that they understand the prohibitions set forth above, that they will not engage in any prohibited activity, and that they understand any violations of this rule will be punishable by the State Election Board.

(9) The county election superintendent shall publish a written notice, containing the date, time and location where absentee ballots will be processed. Such notice shall be posted in the superintendent's office and on the home page of the county election website at least seven days prior to scanning ballots in accordance with this rule. The Secretary of State shall publish on his website the information he receives from counties stating the dates, times and locations where absentee ballots will be processed.

(10) Any person involved in processing absentee ballots according to this rule shall swear an oath, in the same form as the oath for poll officers set forth in O.C.G.A. § 21-2-95, prior to beginning the processing of absentee ballots.

(11) All cell phones, laptops, audio or video recording devices, and other communication devices shall be prohibited from the room where processing of absentee ballots is taking place, except for county election computers necessary to carry out this rule or otherwise conduct the election. No information concerning the tally of votes, or any partial tally of votes, shall be communicated until the time for the closing of the polls on Election day.

(12) The county superintendent shall be permitted to designate locations where public observers may view the process described in this rule to protect the security and secrecy of the ballots. Monitors designated by political parties, political bodies, and independent and non-partisan candidates shall be allowed to monitor the process described in this rule, but they must do so in a way that does not interfere with election officials. The superintendent may designate locations that allow designated monitors to monitor the process set forth in this rule, and such locations shall include areas that allow credentialed monitors to view the batching of the ballots, reconciliation of envelopes to ballots, scanning the ballots, duplication of ballots, adjudication of ballots by vote review panels, sealing the ballots after scanning, and other such areas as the superintendent may deem necessary to the assurance of fair and honest procedures in the carrying out of the procedures set forth in this rule.

Authority: O.C.G.A. § 21-2-31

CERTIFICATION
OF ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE
BRAD RAFFENSPERGER

(Pursuant to the Official Code of Georgia Annotated, Sections 50-13-3, 50-13-4, and 50-13-6.)

I do hereby certify that the attached emergency rule is a correct copy as promulgated and adopted on the day of May 18, 2020.

RULES OF THE STATE ELECTION BOARD

FILED: May 18, 2020

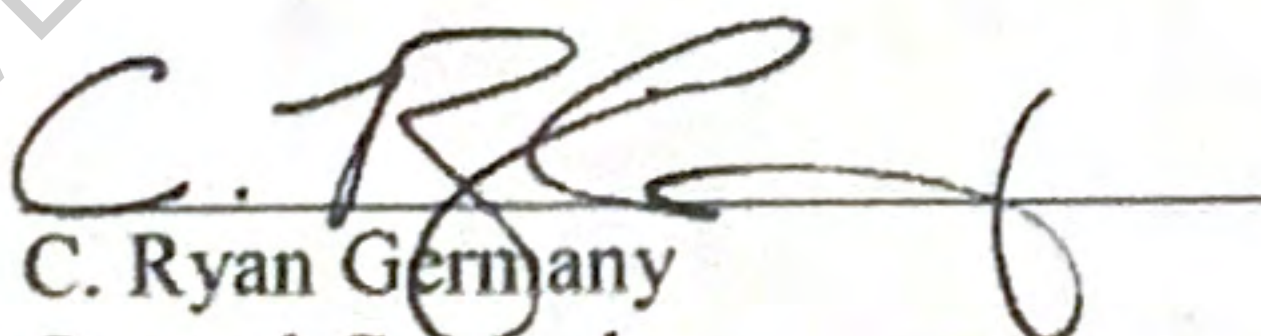
Rule 183-1-14-0.7-.15 "Processing Absentee Ballots Prior to Election Day" is adopted as attached hereto to become effective on the date of adoption and to remain in effect for a period of 120 days.

STATUTORY AUTHORITY:


O.C.G.A. §§ 21-2-31

Due to the ongoing public health emergency related to the COVID-19 pandemic, the State Election Board adopts the above Emergency Rule pursuant to O.C.G.A. § 50-13-4(b).

This 18th day of May, 2020.


C. Ryan Germany
General Counsel
Office of the Secretary of State

Sworn and subscribed before me this 18th day of May, 2020.


Notary Public:

My commission expires:

Ari Schaffer
NOTARY PUBLIC
DeKalb County, GEORGIA
My Commission Expires 01/30/2024

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

COALITION FOR GOOD
GOVERNANCE, *et al.*

Plaintiffs,

v.

BRIAN KEMP, in his official capacity
as Governor of the State of Georgia, *et
al.*

Defendants.

Civil Action No.:
1:21-CV-02070-JPB

**DEFENDANTS' RESPONSES AND OBJECTIONS TO
PLAINTIFF COALITION FOR GOOD GOVERNANCE'S FIRST
INTERROGATORIES, FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS, AND FIRST REQUESTS FOR
ADMISSION**

Defendants Brian Kemp, in his official capacity as Governor of the State of Georgia; Brad Raffensperger, in his official capacity as Georgia Secretary of State; and Sara Ghazal, Matthew Mashburn, Edward Lindsey, and Janice Johnston, in their official capacities as members of the Georgia State Election Board (collectively, "Defendants"), hereby serve the following responses and objections ("Responses") to Plaintiff Coalition for Good Governance's ("CGG") First Interrogatories, First Requests for the Production of Documents and

prepared in anticipation of litigation or trial and thus protected as attorney work product and/or information or documents that are protected by the attorney-client privilege.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1. Identify any investigation, reprimand, fine, penalty, enforcement action, or referral for prosecution undertaken by you, any county election official, local law enforcement official, or, to your knowledge, anyone else, relating to an alleged or suspected violation of any of the Rules, and, with respect to any such action, identify every person having knowledge of such action and every document reflecting or relating to such action.

RESPONSE: Defendants objects to this interrogatory on the basis “investigation, reprimand, fine, penalty, enforcement action, or referral for prosecution undertaken by you” is vague, undefined, and not reasonably limited in time or scope. Defendants further object on the basis that “any county election official, local law enforcement official, or...anyone else” is vague, undefined, not reasonably limited in time or scope, and seeks information pertaining to actions by third parties and officials, including independent county and municipal employees, that do not fall within the Defendants’ agency or control. Defendants also object to this interrogatory on the basis it requests information that is protected by the active investigation

privilege, requests legal conclusions, and/or seeks the mental impressions of counsel.

Subject to and without waiving the foregoing objections, and only withholding information that is privileged or is covered by active investigations, Defendants are not aware of any investigations, reprimands, fines, penalties, enforcement actions, or referrals for prosecution regarding the Rules, but there are active investigations regarding use of photography at polling places, including SEB2020-089, SEB2020-266, SEB2020-004, and SEB2020-009.

Interrogatory No. 2. Without limiting the generality of the foregoing, identify every person who has been charged of either civil or criminal violation of any of the Rules.

RESPONSE: Defendants object to this interrogatory on the basis it seeks information pertaining to actions by third parties, including independent county and municipal employees, that do not fall within Defendants' agency or control, namely, district attorneys in counties and circuits of the State of Georgia. Defendants further object on the basis that the term "charged" is vague and confusing. Defendants also object to this interrogatory on the basis it requests information that is protected by the active investigation privilege.

Subject to and without waiving the foregoing objections, no such individual cases related to the Rules have been referred by the SEB to the Attorney General.

Interrogatory No. 3. Describe how the State, the SEB, or, to your knowledge anyone else, trains or provides guidance to those persons or organizations responsible for investigation of violations or enforcement of the Rules with respect to the investigation of violations or enforcement of the Rules.

RESPONSE: Defendants object to this interrogatory on the basis that it is overbroad, vague, confusing, compound, and does not define key terms such as “provides guidance” and “persons or organizations responsible.” Defendants further object to this interrogatory because it seeks information outside the scope of the Federal Rules of Civil Procedure, specifically, Defendants have no way of knowing how “anyone else” trains officials responsible for investigation.

Defendants also object to this interrogatory on the basis it seeks information pertaining to actions by third parties, including independent officers, namely, county and local election officials and law enforcement officers.

Subject to and without waiving the foregoing objections, Defendants train county election superintendents pursuant to O.C.G.A. §§ 21-2-100 and

EXHIBIT C

RETRIEVED FROM DEMOCRACYDOCKET.COM

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

COALITION FOR GOOD
GOVERNANCE, *et al.*,

Plaintiffs,

v.

BRIAN KEMP, Governor of the State
of Georgia, in his official capacity, *et*
al.,

Defendants.

CIVIL ACTION

FILE NO. 1:21-CV-02070-JPB

DECLARATION OF J. BLAKE EVANS

Pursuant to 28 U.S.C. § 1746, I, JOSEPH BLAKE EVANS, make the
following declaration:

1.

My name is J. Blake Evans. I am over the age of 21 years, and I am
under no legal disability which would prevent me from giving this
declaration. If called to testify, I would testify under oath to these facts.

2.

I currently am the Deputy Director of Elections for the Secretary of
State of Georgia. I have held that position since July 2020. From March 2019
to July 2020, I was the Elections Chief for the Fulton County Department of

Registration and Elections. I have worked in the administration of Georgia election processes for more than two years.

3.

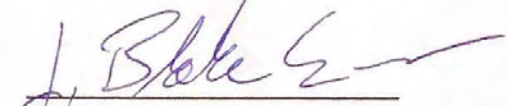
As part of the training and implementation related to Georgia's Dominion voting equipment, the Secretary's office provided counties with guidance about the proper setup of precincts to ensure voter privacy. On February 13, 2020, former Elections Director Chris Harvey uploaded a set of diagrams to the communication system used to communicate with election officials across the state. The post of that document and the document itself are attached to this declaration as Exhibit 1.

4.

Under Georgia law as modified by SB 202, voters can apply for an absentee ballot up to 78 days before an election. SB 202 at 38:927-933. There is no limitation in Georgia law about applying for an absentee ballot only after certification. Indeed, military and overseas voters regularly applied for runoff ballots before the changes made by SB 202.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24th day of June, 2021.



J. BLAKE EVANS

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EXHIBIT 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

Welcome, Gabrielle Holland

Election Portal Information Center

Search this site

**State
Elections
Calendar**

**Election
Planner**

**Elections
Directory**

FAQ

**Official
Communications**

The Buzz

Training

Polling Place Privacy for Voters

0 replies



Harvey, Chris

I've uploaded three diagrams that illustrate potential problems and solutions to securing voter privacy. This is based on reported concerns and our own observations. Simply said, having the BMD screens facing areas where observers or people waiting to vote decreases the privacy of the voter. Simple solutions involving turning the BMDs so that face *away* from the public are illustrated in the diagrams. See also O.C.G.A. 21-2-267(a)

The diagrams can be found on Firefly under Training>Polling Place Information

Chris Harvey

February 13 Reply

Add a reply

Reply

Download

GAVREO

Links

**Poll Worker
Training**

Uploads

Webinars

Certification


Veterans

Students

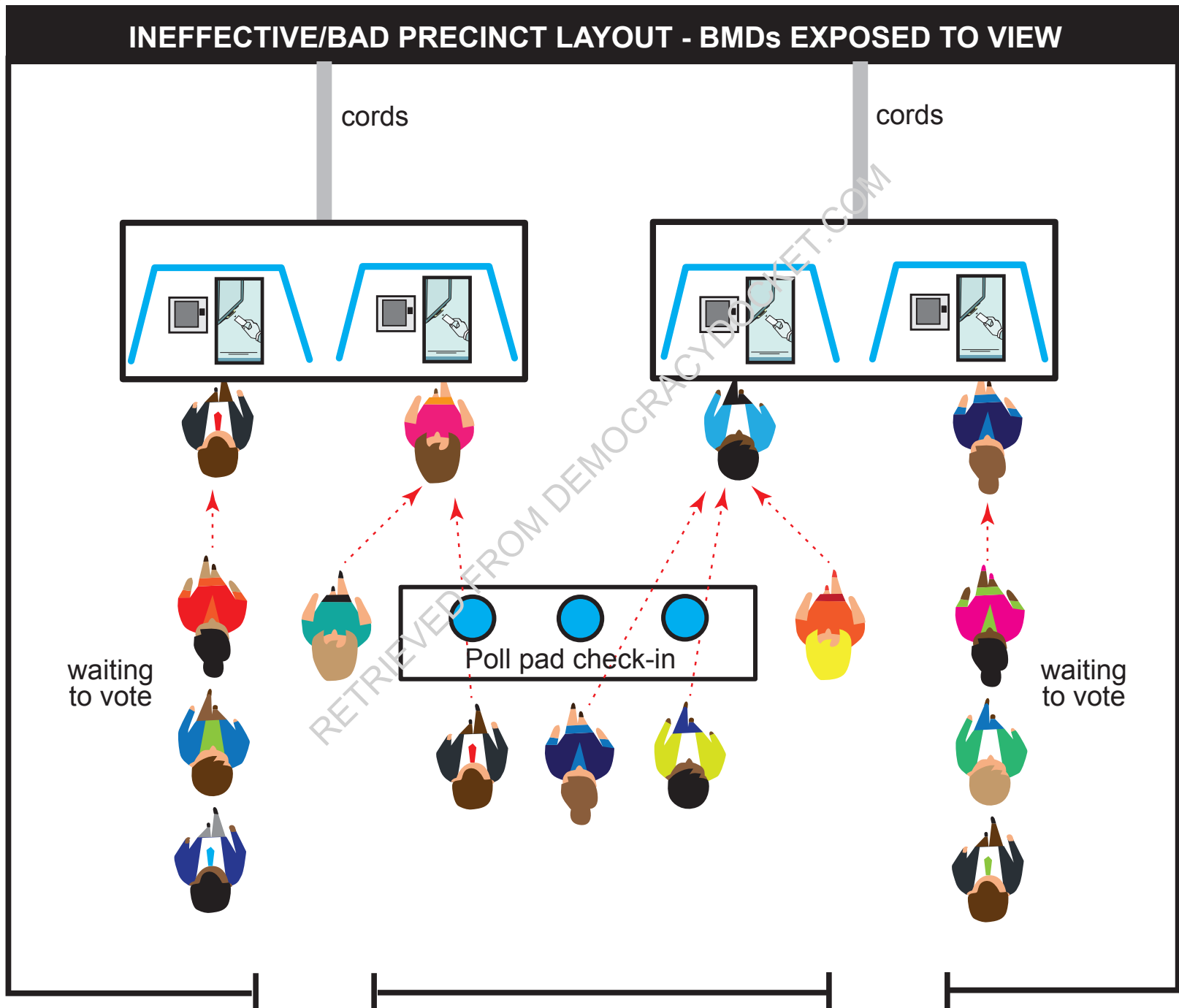
Secretary of State Elections Division
Tim K. Jr. Drive Suite 802 West Tower
Atlanta, GA 30334 | 404.656.2871

Dynamo

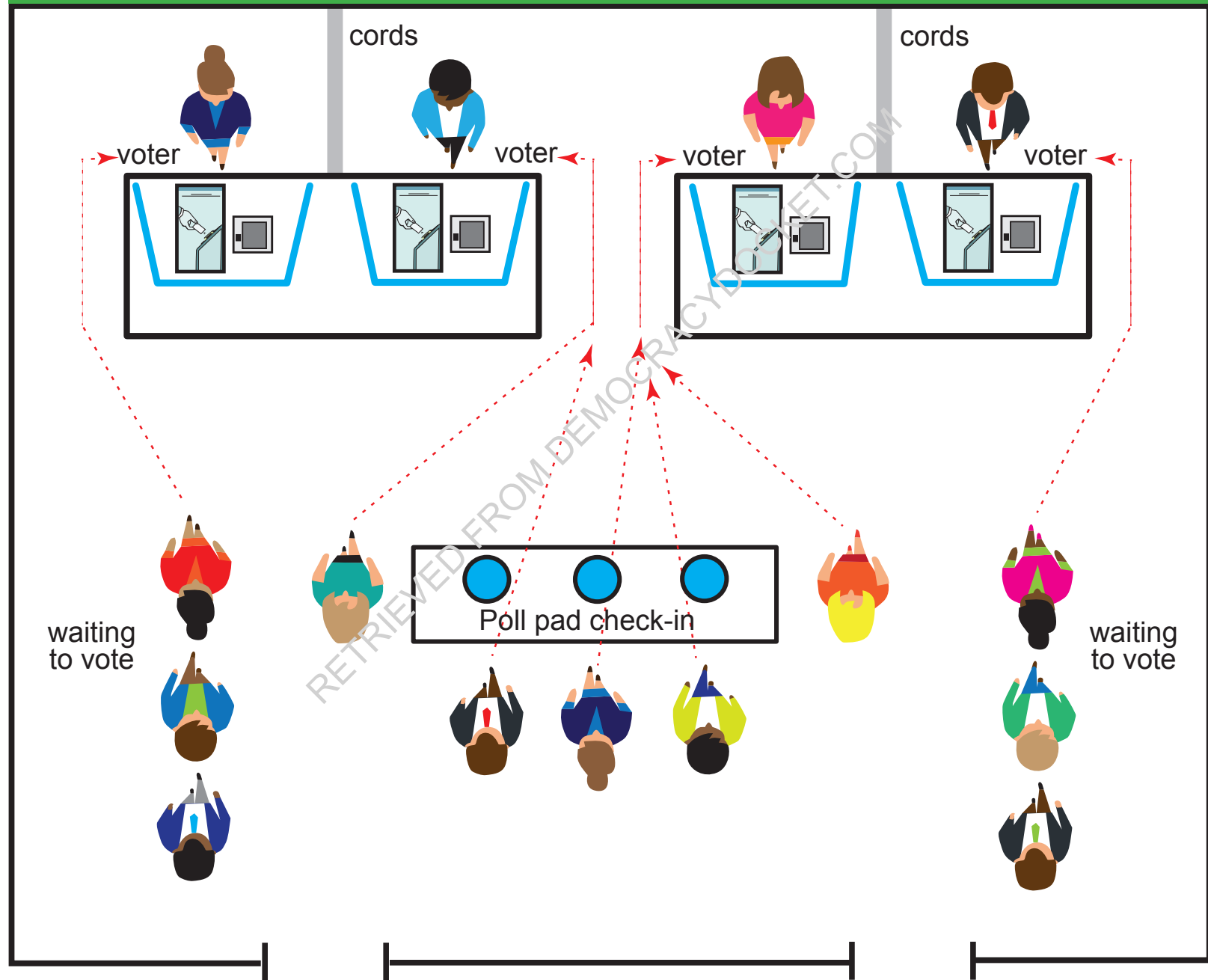
SECURE THE VOTE



**Precinct Layout
to Aid with Privacy Training**



EFFECTIVE/PREFERRED PRECINCT LAYOUT - BMD SCREENS SHIELDED



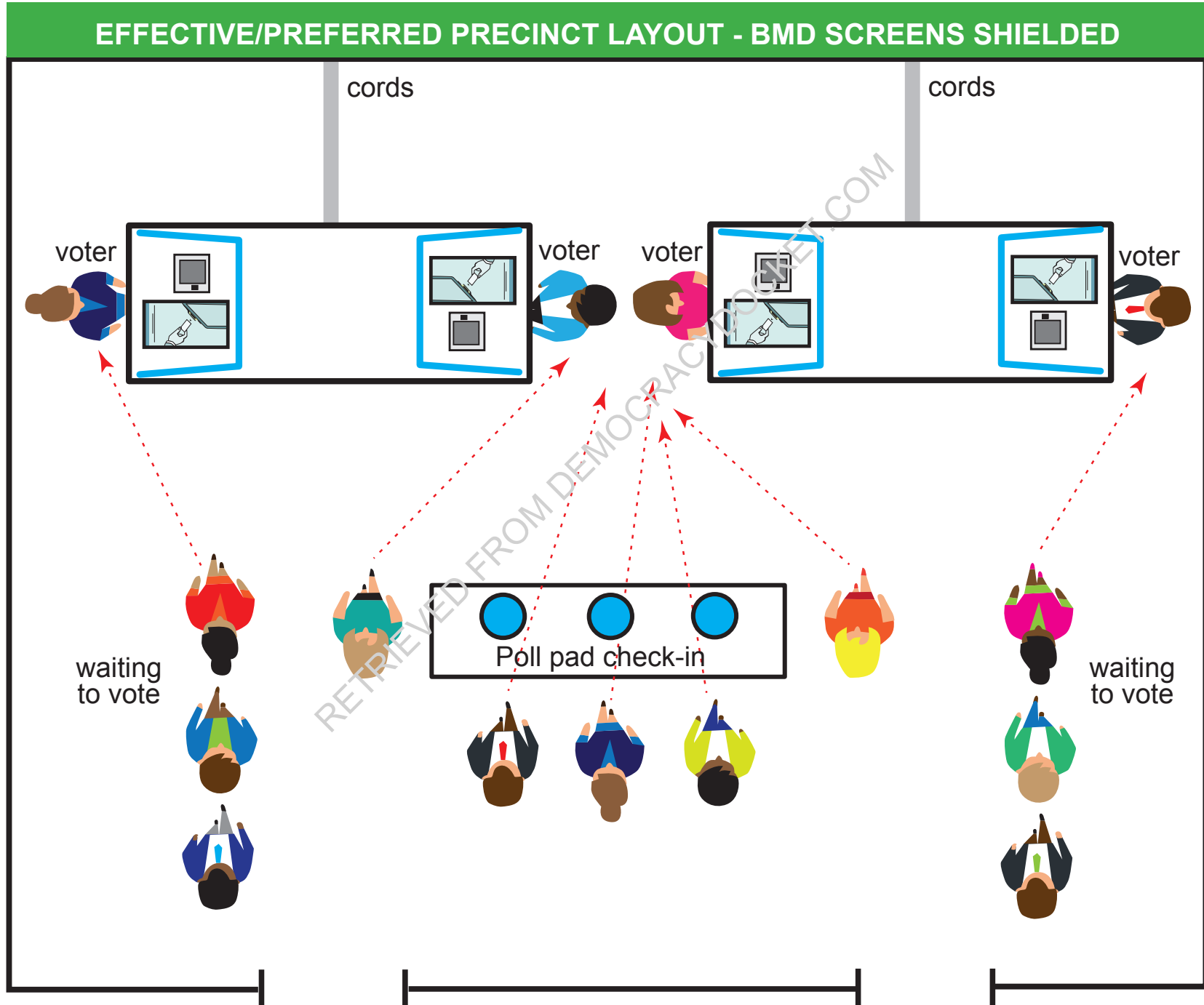


EXHIBIT D

RETRIEVED FROM DEMOCRACYDOCKET.COM

Senate Bill 202

By: Senators Burns of the 23rd, Miller of the 49th, Dugan of the 30th, Ginn of the 47th,
Anderson of the 24th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To comprehensively revise elections and voting; to amend Chapter 2 of Title 21 of the
2 Official Code of Georgia Annotated, relating to elections and primaries generally, so as to
3 revise a definition; to provide for the establishment of a voter intimidation and illegal
4 election activities hotline; to limit the ability of the State Election Board and the Secretary
5 of State to enter into certain consent agreements, settlements, and consent orders; to provide
6 that the Secretary of State shall be a nonvoting ex officio member of the State Election
7 Board; to provide for the appointment, confirmation, term, and removal of the chairperson
8 of the State Election Board; to revise provisions relating to a quorum of such board; to
9 require the Secretary of State to support and assist the State Election Board; to provide for
10 the appointment of temporary and permanent replacement superintendents; to provide for
11 procedures; to provide for performance reviews of local election officials requested by the
12 State Election Board or local governing authorities; to provide for a definition; to provide for
13 appointment and duties of performance review boards; to provide for reports of performance
14 review boards; to provide for promulgation of rules and regulations; to provide additional
15 requirements on the State Election Board's power to adopt emergency rules and regulations;
16 to provide that no election superintendents or boards of registrars shall accept private
17 funding; to provide that the State Election Board shall develop methods for distribution of
18 donations; to provide that certain persons may serve as poll workers in other than the county

S. B. 202

19 of their residence; to provide for the appointment of acting election superintendents in the
20 event of a vacancy or incapacitation in the office of judge of the probate court of counties
21 without a board of elections; to provide for resumption of the duties of election
22 superintendent upon the filling of such vacancy; to provide for the compensation of such
23 acting election superintendents; to provide for the reduction in size of certain precincts under
24 certain circumstances; to provide for notice when polling places are relocated; to provide for
25 certain reports; to provide limitations on the use of buses and other moveable facilities; to
26 provide that the name and designation of the precinct appears on every ballot; to provide for
27 allocation of voting equipment by counties and municipalities; to provide for the manner of
28 handling the death of a candidate prior to a nonpartisan election; to provide that no candidate
29 shall take or be sworn into any elected public office unless such candidate has received a
30 majority of the votes cast for such office except as otherwise provided by law; to provide for
31 participation in a multistate voter registration system; to revise procedures and standards for
32 challenging electors; to provide for the printing of ballots on safety paper; to provide for the
33 time and manner for applying for absentee ballots; to provide for certain limitations and
34 sanctions on the distribution of absentee ballot applications; to provide for the manner of
35 processing of absentee ballot applications; to provide for absentee ballot drop boxes and the
36 requirements therefor; to provide for the time and manner of issuing absentee ballots; to
37 provide for the manner of voting and returning absentee ballots; to revise the times for
38 advance voting; to limit changes to advance voting locations in the period prior to an
39 election; to provide notice requirements for changes of advance voting locations; to provide
40 for the processing and tabulation of absentee ballots; to provide sanctions for improperly
41 opening an absentee ballot; to provide for certain elector identification for absentee balloting;
42 to provide for monitors and observers; to provide for poll watcher training; to provide for
43 restrictions on the distribution of certain items within close proximity to the polls on election
44 days; to provide for the voting and processing of provisional ballots; to provide for
45 duplication panels for defective ballots that cannot be processed by tabulating machines; to

46 provide for ranked choice voting for military and overseas voters; to revise the time for
47 runoffs; to revise eligibility to vote in runoffs; to provide for the deadline for election
48 certification; to provide for a pilot program for the scanning and publishing of ballots; to
49 provide for the inspection and copying of original ballots by certain persons following the
50 completion of a recount; to provide for special primaries and special elections to fill
51 vacancies in certain offices; to provide for public notice and observation of preparation of
52 voting equipment; to provide for observation of elections and ballot processing and counting;
53 to provide for the filling of vacancies in certain offices; to prohibit observing or attempting
54 to observe how a voter marks or has marked his or her ballot or inducing a voter to do so; to
55 prohibit the acceptance of a ballot for return without authorization; to prohibit the
56 photographing or other recording of ballots and ballot markers; to amend Chapter 35 of Title
57 36 of the Official Code of Georgia Annotated, relating to home rule powers, so as to provide
58 for the delay of reapportionment of municipal corporation election districts when census
59 numbers are delayed; to amend Title 50 of the Official Code of Georgia Annotated, relating
60 to general provisions regarding state government, so as to provide for the submission and
61 suspension of emergency rules by the State Election Board; to provide that scanned ballot
62 images are public records; to provide for legislative findings; to provide a short title; to
63 provide for related matters; to provide for effective dates; to repeal conflicting laws; and for
64 other purposes.

65 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

66 **SECTION 1.**

67 This Act shall be known and may be cited as the "Election Integrity Act of 2021."

SECTION 2.

The General Assembly finds and declares that:

- (1) Following the 2018 and 2020 elections, there was a significant lack of confidence in Georgia election systems, with many electors concerned about allegations of rampant voter suppression and many electors concerned about allegations of rampant voter fraud;
- (2) Many Georgia election processes were challenged in court, including the subjective signature-matching requirements, by Georgians on all sides of the political spectrum before and after the 2020 general election;
- (3) The stress of the 2020 elections, with a dramatic increase in absentee-by-mail ballots and pandemic restrictions, demonstrated where there were opportunities to update existing processes to reduce the burden on election officials and boost voter confidence;
- (4) The changes made in this legislation in 2021 are designed to address the lack of elector confidence in the election system on all sides of the political spectrum, to reduce the burden on election officials, and to streamline the process of conducting elections in Georgia by promoting uniformity in voting. Several examples will help explain how these goals are achieved;
- (5) The broad discretion allowed to local officials for advance voting dates and hours led to significant variations across the state in total number of hours of advance voting, depending on the county. More than 100 counties have never offered voting on Sunday and many counties offered only a single day of weekend voting. Requiring two Saturday voting days and two optional Sunday voting days will dramatically increase the total voting hours for voters across the State of Georgia, and all electors in Georgia will have access to multiple opportunities to vote in person on the weekend for the first time;
- (6) Some counties in 2020 received significant infusions of grant funding for election operations, while other counties received no such funds. Promoting uniformity in the distribution of funds to election operations will boost voter confidence and ensure that there

is no political advantage conferred by preferring certain counties over others in the distribution of funds;

(7) Elections in Georgia are administered by counties, but that can lead to problems for voters in counties with dysfunctional election systems. Counties with long-term problems of lines, problems with processing of absentee ballots, and other challenges in administration need accountability, but state officials are limited in what they are able to do to address those problems. Ensuring there is a mechanism to address local election problems will promote voter confidence and meet the goal of uniformity;

(8) Elections are a public process and public participation is encouraged by all involved, but the enthusiasm of some outside groups in sending multiple absentee ballot applications in 2020, often with incorrectly filled-in voter information, led to significant confusion by electors. Clarifying the rules regarding absentee ballot applications will build elector confidence while not sacrificing the opportunities for electors to participate in the process;

(9) The lengthy absentee ballot process also led to elector confusion, including electors who were told they had already voted when they arrived to vote in person. Creating a definite period of absentee voting will assist electors in understanding the election process while also ensuring that opportunities to vote are not diminished, especially when many absentee ballots issued in the last few days before the election were not successfully voted or were returned late;

(10) Opportunities for delivering absentee ballots to a drop box were first created by the State Election Board as a pandemic response. The drop boxes created by rule no longer existed in Georgia law when the emergency rules that created them expired. The General Assembly considered a variety of options and constructed a system that allows the use of drop boxes, while also ensuring the security of the system and providing options in emergency situations;

(11) The lengthy nine-week runoffs in 2020 were exhausting for candidates, donors, and electors. By adding ranked choice voting for military and overseas voters, the run-off

period can be shortened to a more manageable period for all involved, easing the burden on election officials and on electors;

(12) Counting absentee ballots in 2020 took an incredibly long time in some counties. Creating processes for early processing and scanning of absentee ballots will promote elector confidence by ensuring that results are reported quickly;

(13) The sanctity of the precinct was also brought into sharp focus in 2020, with many groups approaching electors while they waited in line. Protecting electors from improper interference, political pressure, or intimidation while waiting in line to vote is of paramount importance to protecting the election system and ensuring elector confidence;

(14) Ballot duplication for provisional ballots and other purposes places a heavy burden on election officials. The number of duplicated ballots has continued to rise dramatically from 2016 through 2020. Reducing the number of duplicated ballots will significantly reduce the burden on election officials and creating bipartisan panels to conduct duplication will promote elector confidence;

(15) Electors voting out of precinct add to the burden on election officials and lines for other electors because of the length of time it takes to process a provisional ballot in a precinct. Electors should be directed to the correct precinct on election day to ensure that they are able to vote in all elections for which they are eligible;

(16) In considering the changes in 2021, the General Assembly heard hours of testimony from electors, election officials, and attorneys involved in voting. The General Assembly made significant modifications through the legislative process as it weighed the various interests involved, including adding further weekend voting, changing parameters for out-of-precinct voting, and adding transparency for ballot images; and

(17) While each of the changes in this legislation in 2021 stands alone and is severable under Code Section 1-1-3, the changes in total reflect the General Assembly's considered judgment on the changes required to Georgia's election system to make it "easy to vote and

147 hard to cheat," applying the lessons learned from conducting an election in the 2020
148 pandemic.

149 **SECTION 3.**

150 Chapter 2 of Title 21 of the Official Code of Georgia Annotated, relating to elections and
151 primaries generally, is amended by revising paragraph (35) of Code Section 21-2-2, relating
152 to definitions, as follows:

153 "(35) 'Superintendent' means:

154 (A) Either the judge of the probate court of a county or the county board of elections,
155 the county board of elections and registration, the joint city-county board of elections,
156 or the joint city-county board of elections and registration, if a county has such;

157 (B) In the case of a municipal primary, the municipal executive committee of the
158 political party holding the primary within a municipality or its agent or, if none, the
159 county executive committee of the political party or its agent;

160 (C) In the case of a nonpartisan municipal primary, the person appointed by the proper
161 municipal executive committee; and

162 (D) In the case of a municipal election, the person appointed by the governing
163 authority pursuant to the authority granted in Code Section 21-2-70; and

164 (E) In the case of the State Election Board exercising its powers under subsection (f)
165 of Code Section 21-2-33.1, the individual appointed by the State Election Board to
166 exercise the power of election superintendent."

167 **SECTION 4.**

168 Said chapter is further amended by revising Code Section 21-2-3, which was previously
169 reserved, as follows:

170 "21-2-3.

171 The Attorney General shall have the authority to establish and maintain a telephone hotline
 172 for the use of electors of this state to file complaints and allegations of voter intimidation
 173 and illegal election activities. Such hotline shall, in addition to complaints and reports
 174 from identified persons, also accept anonymous tips regarding voter intimidation and
 175 election fraud. The Attorney General shall have the authority to review each complaint or
 176 allegation of voter intimidation or illegal election activities within three business days or
 177 as expeditiously as possible and determine if such complaint or report should be
 178 investigated or prosecuted. Reserved."

179 **SECTION 5.**

180 Said chapter is further amended by revising Code Section 21-2-30 relating to creation,
 181 composition, terms of service, vacancies, quorum, seal, bylaws, and meetings of the State
 182 Board of Elections as follows:

183 "21-2-30.

184 (a) There is created a state board to be known as the State Election Board, to be composed
 185 ~~of the Secretary of State~~ a chairperson elected by the General Assembly, an elector to be
 186 elected by a majority vote of the Senate of the General Assembly at its regular session held
 187 in each odd-numbered year, an elector to be elected by a majority vote of the House of
 188 Representatives of the General Assembly at its regular session held in each odd-numbered
 189 year, and a member of each political party to be nominated and appointed in the manner
 190 provided in this Code section. No person while a member of the General Assembly shall
 191 serve as a member of the board.

192 (a.1)(1) The chairperson shall be elected by the General Assembly in the following
 193 manner: A joint resolution which shall fix a definite time for the nomination and election
 194 of the chairperson may be introduced in either branch of the General Assembly. Upon
 195 passage of the resolution by a majority vote of the membership of the Senate and House
 196 of Representatives, it shall be the duty of the Speaker of the House of Representatives to

call for the nomination and election of the chairperson at the time specified in the resolution, at which time the name of the qualified person receiving a majority vote of the membership of the House of Representatives shall be transmitted to the Senate for confirmation. Upon the qualified person's receiving a majority vote of the membership of the Senate, he or she shall be declared the duly elected chairperson; and the Governor shall be notified of his or her election by the Secretary of the Senate. The Governor is directed to administer the oath of office to the chairperson and to furnish the chairperson with a properly executed commission of office certifying his or her election.

(2) The chairperson of the board shall be nonpartisan. At no time during his or her service as chairperson shall the chairperson actively participate in a political party organization or in the campaign of a candidate for public office, nor shall he or she make any campaign contributions to a candidate for public office. Furthermore, to qualify for appointment as chairperson, in the two years immediately preceding his or her appointment, a person shall not have qualified as a partisan candidate for public office, participated in a political party organization or the campaign of a partisan candidate for public office, or made any campaign contributions to a partisan candidate for public office.

(3) The term of office of the chairperson shall continue until a successor is elected as provided in paragraph (1) of this subsection. In the event of a vacancy in the position of chairperson at a time when the General Assembly is not in session, it shall be the duty of the Governor and the Governor is empowered and directed to appoint a chairperson possessing the qualifications as provided in this subsection who shall serve as chairperson until the next regular session of the General Assembly, at which time the nomination and election of a chairperson shall be held by the General Assembly as provided in paragraph (1) of this subsection.

(b) A member elected by a house of the General Assembly shall take office on the day following the adjournment of the regular session in which elected and shall serve for a term

of two years and until his or her successor is elected and qualified, unless sooner removed. An elected member of the board may be removed at any time by a majority vote of the house which elected him or her. In the event a vacancy should occur in the office of such a member of the board at a time when the General Assembly is not in session, then the President of the Senate shall thereupon appoint an elector to fill the vacancy if the prior incumbent of such office was elected by the Senate or appointed by the President of the Senate; and the Speaker of the House of Representatives shall thereupon appoint an elector to fill the vacancy if the prior incumbent of such office was elected by the House of Representatives or appointed by the Speaker of the House of Representatives. A member appointed to fill a vacancy may be removed at any time by a majority vote of the house whose presiding officer appointed him or her.

(c) Within 30 days after April 3, 1968, the state executive committee of each political party shall nominate a member of its party to serve as a member of the State Election Board and, thereupon, the Governor shall appoint such nominee as a member of the board to serve for a term of two years from the date of the appointment and until his or her successor is elected and qualified, unless sooner removed. Thereafter, such state executive committee shall select a nominee for such office on the board within 30 days after a vacancy occurs in such office and shall also select a nominee at least 30 days prior to the expiration of the term of each incumbent nominated by it; and each such nominee shall be immediately appointed by the Governor as a member of the board to serve for the unexpired term in the case of a vacancy, and for a term of two years in the case of an expired term. Each successor, other than one appointed to serve an unexpired term, shall serve for a term of two years; and the terms shall run consecutively from the date of the initial gubernatorial appointment. No person shall be eligible for nomination by such state executive committee unless he or she is an elector and a member in good standing of the political party of the committee. Such a member shall cease to serve on the board and his or her office shall be

abolished if and when his or her political organization shall cease to be a 'political party' as defined in Code Section 21-2-2.

(d) The Secretary of State shall be ~~the chairperson of the board~~ an ex officio nonvoting member of the board. Three voting members of the board shall constitute a quorum, and no vacancy on the board shall impair the right of the quorum to exercise all the powers and perform all the duties of the board. The board shall adopt a seal for its use and bylaws for its own government and procedure.

(e) Meetings shall be held whenever necessary for the performance of the duties of the board on call of the chairperson or whenever any two of its members so request. Minutes shall be kept of all meetings of the board and a record kept of the vote of each member on all questions coming before the board. The chairperson shall give to each member of the board prior notice of the time and place of each meeting of the board.

(f) If any member of the board, other than the Secretary of State, shall qualify as a candidate for any public office which is to be voted upon in any primary or election regulated by the board, that member's position on the board shall be immediately vacated and such vacancy shall be filled in the manner provided for filling other vacancies on the board."

SECTION 6.

Said chapter is further amended in Code Section 21-2-33.1, relating to enforcement of chapter, by adding new subsections to read as follows:

"(f) After following the procedures set forth in Code Section 21-2-33.2, the State Election Board may suspend county or municipal superintendents and appoint an individual to serve as the temporary superintendent in a jurisdiction. Such individual shall exercise all the powers and duties of a superintendent as provided by law, including the authority to make all personnel decisions related to any employees of the jurisdiction who assist with carrying

out the duties of the superintendent, including, but not limited to, the director of elections, the election supervisor, and all poll officers.

(g) At no time shall the State Election Board suspend more than four county or municipal superintendents pursuant to subsection (f) of this Code section.

(h) The Secretary of State shall, upon the request of the State Election Board, provide any and all necessary support and assistance that the State Election Board, in its sole discretion, determines is necessary to enforce this chapter or to carry out or conduct any of its duties."

SECTION 7.

Such chapter is further amended in Subpart 1 of Part 1 of Article 2, relating to the State Election Board, by adding a new Code section to read as follows:

"21-2-33.2.

(a) The governing authority of a county or municipality, as applicable, following a recommendation based on an investigation by a performance review board pursuant to Code Section 21-2-106 may petition the State Election Board, through the Secretary of State, for extraordinary relief pursuant to this Code section. In addition, the State Election Board, on its own motion or following a recommendation based on an investigation by a performance review board pursuant to Part 5 of this article, may pursue the extraordinary relief provided in this Code section.

(b) Upon receiving a petition or taking appropriate action pursuant to subsection (a) of this Code section, the State Election Board shall conduct a preliminary investigation to determine if sufficient cause exists to proceed to a full hearing on the petition. Such preliminary investigation shall be followed by a preliminary hearing which shall take place not less than 30 days nor more than 90 days after the Secretary of State receives the petition. Service of the petition shall be made by hand delivery or by statutory overnight delivery to the Secretary of State's office. At such preliminary hearing, the State Election Board shall determine if sufficient cause exists to proceed to a full hearing on the petition

301 or if the petition should be dismissed. The State Election Board shall promulgate rules and
302 regulations for conducting such preliminary investigation and preliminary hearing.

303 (c) Following the preliminary hearing described in subsection (b) of this Code section, the
304 State Election Board may suspend a county or municipal superintendent pursuant to this
305 Code section if at least three members of the board find, after notice and hearing, that:

306 (1) By a preponderance of the evidence, a county or municipal superintendent has
307 committed at least three violations of this title or of State Election Board rules and
308 regulations, in the last two general election cycles; and the county or municipal
309 superintendent has not sufficiently remedied the violations; or

310 (2) By clear and convincing evidence, the county or municipal superintendent has, for
311 at least two elections within a two-year period, demonstrated nonfeasance, malfeasance,
312 or gross negligence in the administration of the elections.

313 (d) A majority of the members of a board of elections, board of elections and registration,
314 or county commission; a probate judge who serves as election superintendent, or, for a sole
315 commissioner form of government, a sole commissioner may petition the Secretary of State
316 to continue any hearing scheduled pursuant to this Code section. Upon a showing of good
317 cause, the State Election Board may in its sound discretion continue any such hearing.
318 Notwithstanding any other provision of law, deliberations held on such petition by the State
319 Election Board shall not be open to the public; provided, however, that testimony shall be
320 taken in an open meeting and a vote on the recommendation shall be taken in an open
321 meeting following the hearing or at the next regularly scheduled meeting.

322 (e)(1) If the State Election Board makes a finding in accordance with subsection (c) of
323 this Code section, it may suspend the superintendent or board of registrars with pay and
324 appoint an individual to serve as the temporary superintendent. The temporary
325 superintendent who is appointed shall be otherwise qualified to serve or meet the
326 necessary qualifications within three months of appointment.

(2) Any superintendent suspended under this Code section may petition the State Election Board for reinstatement no earlier than 30 days following suspension and no later than 60 days following suspension. In the event that a suspended superintendent or registrar does not petition for reinstatement within the allotted time period, his or her suspension shall be converted into permanent removal, and the temporary superintendent shall become a permanent superintendent subject to removal by the jurisdiction not less than nine months after his or her appointment.

(3) If, after the expiration of the nine-month period following the appointment, the jurisdiction removes the permanent superintendent, any provisions of local or general law governing appointment of the superintendent shall govern the appointment of the superintendent.

(4) If, at any time after the expiration of the nine-month period following the appointment, at least three members of the State Election Board find, after notice and hearing, that the jurisdiction no longer requires a superintendent appointed under this Code section, any provisions of local or general law governing appointment of the superintendent shall govern the appointment of the superintendent.

(f) Upon petition for reinstatement by a superintendent suspended pursuant to a finding under paragraph (1) of subsection (c) of this Code section, the State Election Board shall conduct a hearing for the purpose of receiving evidence relative to whether the superintendent's continued service as superintendent is more likely than not to improve the ability of the jurisdiction to conduct elections in a manner that complies with this chapter. The suspended superintendent shall be given at least 30 days' notice prior to such hearing and such hearing shall be held no later than 90 days after the petition is filed in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that the State Election Board shall have the power to call witnesses and request documents on its own initiative. If the State Election Board denies the petition, it shall be deemed a final agency decision under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

354 and it may be appealed in a manner consistent with Code Section 50-13-19. The Attorney
355 General or his or her designee shall represent the interests of the State Election Board in
356 any such judicial review.

357 (g) A local government shall not expend any public funds for attorneys' fees or expenses
358 of litigation relating to the proceedings initiated pursuant to this Code section except to the
359 extent such fees and expenses are incurred prior to and through the recommendation of the
360 State Election Board as provided in subsection (c) of this Code section; provided, however,
361 that nothing in this subsection shall be construed to prohibit an insurance provider from
362 covering attorneys' fees or expenses of litigation under an insurance policy. Any
363 suspended superintendent who is reinstated by the State Election Board pursuant to this
364 Code section may be reimbursed by the local government for his or her reasonable
365 attorneys' fees and related expenses incurred in pursuing such reinstatement.

366 (h) For purposes of this Code section, where a judge of probate court serves as the
367 superintendent, the suspension authorized by this Code section shall apply only to the judge
368 of probate court's duties as a superintendent and not as a judge of probate court.

369 (i) When the State Election Board exercises its authority under subsection (f) of Code
370 Section 21-2-33.1, the jurisdiction involved shall not diminish or reduce the funds already
371 budgeted or appropriated by the jurisdiction pursuant to Code Section 21-2-71 and shall
372 pay any necessary and reasonable funds over that amount, as determined by the temporary
373 superintendent, to faithfully carry out their obligations under Code Section 21-2-70."0

374 **SECTION 8.**

375 Said chapter is further amended in Subpart 1 of Part 1 of Article 2, relating to the State
376 Election Board, by adding new Code sections to read as follows:

377 "21-2-35.

378 (a) Notwithstanding any other provision of this chapter, Chapter 3 of Title 38, relating to
379 emergency management, or Chapter 13 of Title 50, the "Georgia Administrative Procedure

Act," to the contrary, the State Election Board may only adopt emergency rules or regulations in circumstances of imminent peril to public health, safety, or welfare. To adopt any such emergency rule or regulation, in addition to any other rule-making requirement of this chapter or Chapter 13 of Title 50, the State Election Board shall:

(1) Give notice to the public of its intended action;

(2) Immediately upon the setting of the date and time of the meeting at which such emergency rule or regulation is to be considered give notice by email of its intended action to:

(A) The Governor;

(B) The Lieutenant Governor;

(C) The Speaker of the House of Representatives;

(D) The chairpersons of the standing committees of each house of the General Assembly tasked with election matters;

(E) Legislative counsel; and

(F) The chief executive officer of each political party registered pursuant to subsection (a) of Code Section 21-2-110; and

(3) State in the notices required by paragraphs (1) and (2) of this subsection the nature of the emergency and the manner in which such emergency represents an imminent peril to public health, safety, or welfare.

(b) Upon adoption or promulgation of any emergency rule or regulation pursuant to this Code section, a majority of the State Election Board shall certify in writing that such emergency rule or regulation was made in strict and exact compliance with the provisions of this chapter and subsection (e) of Code Section 50-13-4.

(c) In the event of any conflict between this Code section and any provision of Chapter 13 of Title 50, this Code section shall govern and supersede any such conflicting provision.

405 21-2-36.
406 The State Election Board, the members thereof, the Secretary of State, and any of their
407 attorneys or staff, at least five business days prior to entering into any consent agreement,
408 settlement, or consent order that limits, alters, or interprets any provision of this chapter,
409 shall notify the House of Representatives and Senate Committees on the Judiciary of such
410 proposed consent agreement, settlement, or consent order."

411 **SECTION 9.**

412 Said chapter is further amended by revising Code Section 21-2-71, relating to payment by
413 county or municipality of superintendent's expenses, as follows:

414 "21-2-71.

415 (a) The governing authority of each county or municipality shall appropriate annually and
416 from time to time, to the superintendent of such county or municipality, the funds that it
417 shall deem necessary for the conduct of primaries and elections in such county or
418 municipality and for the performance of his or her other duties under this chapter,
419 including:

420 (1) Compensation of the poll officers, custodians, and other assistants and employees
421 provided for in this chapter;

422 (2) Expenditures and contracts for expenditures by the superintendent for polling places;

423 (3) Purchase or printing, under contracts made by the superintendent, of all ballots and
424 other election supplies required by this chapter, or which the superintendent shall
425 consider necessary to carry out the provisions of this chapter;

426 (4) Maintenance of all voting equipment required by this chapter, or which the
427 superintendent shall consider necessary to carry out this chapter; and

428 (5) All other expenses arising out of the performance of his or her duties under this
429 chapter.

(b) No superintendent shall take or accept any funding, grants, or gifts from any source other than from the governing authority of the county or municipality, the State of Georgia, or the federal government.

(c) The State Election Board shall study and report to the General Assembly a proposed method for accepting donations intended to facilitate the administration of elections and a method for an equitable distribution of such donations state wide by October 1, 2021."

SECTION 10.

Said chapter is further amended in Part 3 of Article 2, relating to superintendents, by adding a new Code section to read as follows:

"21-2-74.1.

(a) If a county does not have a board of elections and:

(1) There is a vacancy in the office of judge of the probate court that has not been filled pursuant to Code Section 15-9-10 or 15-9-11; or

(2) The judge of the probate court is incapacitated and unable to perform the duties of the election superintendent for a period of more than five days;

The chief judge of the superior court in the circuit to which the county is assigned shall appoint a qualified individual to serve as the acting election superintendent during such vacancy or incapacitation.

(b) Upon the filling of a vacancy in the office of judge of the probate court pursuant to Code Section 15-9-10 or 15-9-11, the judge of the probate court shall resume the duties of the election superintendent.

(c) The sole county commissioner or the board of county commissioners shall fix the compensation of the individual who serves as acting election superintendent until the vacancy is filled or the incapacitation ends. The compensation shall be paid from the general funds of the county."

SECTION 11.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-92, relating to qualifications of poll officers, service during municipal election or primary, and Student Teen Election Participant (STEP) program, as follows:

"(a)(1) Poll officers appointed pursuant to Code Sections 21-2-90 and 21-2-91 shall be judicious, intelligent, and upright citizens of the United States, residents of or otherwise employed by the county in which they are appointed except as otherwise provided in paragraph (2) of this subsection or, in the case of municipal elections, residents of or otherwise employed by the municipality in which the election is to be held or of the county in which that municipality is located, 16 years of age or over, and shall be able to read, write, and speak the English language. No poll officer shall be eligible for any nomination for public office or to be voted for at a primary or election at which the poll officer shall serve. No person who is otherwise holding public office, other than a political party office, shall be eligible to be appointed as or to serve as a poll officer. A parent, spouse, child, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of a candidate shall not be eligible to serve as a poll officer in any precinct in which such candidate's name appears on the ballot in any primary or election.

(2) A poll officer may be allowed to serve in a county that adjoins the county in which such poll officer resides if, in the discretion of the election superintendent of the county in which such person resides, the waiver of such county residency or county employment requirements of paragraph (1) of this subsection do not impair the ability of the county to provide adequate staff for the performance of election duties under this chapter and if, in the discretion of the county election superintendent in which such person wishes to serve, sufficient need for more poll officers exists."

SECTION 12.

Said chapter is further amended in Article 2, relating to supervisory boards and officers, by adding a new part to read as follows:

"Part 521-2-105.

As used in this part, the term 'local election official' means:

(1) A county board of elections or a county board of elections and registration established pursuant to Code Section 21-2-40;

(2) A judge of the probate court fulfilling the role of election superintendent; or

(3) A municipal election superintendent.

21-2-106.

(a) The following officials may request that a performance review of a local election official be conducted:

(1) The governing authority of the same jurisdiction as the local election official;

(2) For counties represented by more than three members of the Georgia House of Representatives and Georgia Senate, at least two members of the Georgia House of Representatives and two members of the Georgia Senate who represent the county; and

(3) For counties represented by fewer than four members of the Georgia House of Representatives and Georgia Senate, at least one member of the Georgia House of Representatives and one member of the Georgia Senate who represent the county.

Such request shall be transmitted to the State Election Board which shall appoint an independent performance review board within 30 days after receiving such resolution. The State Election Board shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the elections division of

the Secretary of State and two of whom shall be local election officials, provided that no such appointee shall be a local election official for the county or municipality, as applicable, under review.

(b) It shall be the duty of a performance review board to make a thorough and complete investigation of the local election official with respect to all actions of the local election official regarding the technical competency in the maintenance and operation of election equipment, proper administration and oversight of registration and elections, and compliance with state law and regulations. The performance review board shall issue a written report of its findings to the Secretary of State, the State Election Board, and the local governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The local governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

(c) The findings of the report of the review board under subsection (b) of this Code section or of any audit or investigation performed by the State Election Board may be grounds for removal of one or more local election officials pursuant to Code Section 21-2-33.2.

21-2-107.

(a) The State Election Board shall appoint an independent performance review board on its own motion if it determines that there is evidence which calls into question the competence of a local election official regarding the oversight and administration of elections, voter registration, or both, with state law and regulations.

(b) The State Election Board shall appoint three competent persons to serve as members of the performance review board, one of whom shall be an employee of the elections division of the office of Secretary of State and two of whom shall be local election officials, provided that none of the three appointees shall be a local election official for the county or municipality under review.

530 (c) The performance review board shall issue a written report of its findings to the State
531 Election Board and the Secretary of State and the applicable local governing authority,
532 which shall include such evaluations, judgments, and recommendations as it deems
533 appropriate. The local governing authority shall reimburse the members of the
534 performance review board for reasonable expenses incurred in the performance of their
535 duties, including mileage, meals, lodging, and costs of materials.
536 (d) The findings of the report of the performance review board under subsection (c) of this
537 Code section or of any audit or investigation performed by the State Election Board may
538 be grounds for removal of a local election official pursuant to Code Section 21-2-33.2.
539 21-2-108.
540 The State Election Board shall promulgate such rules and regulations as may be necessary
541 for the administration of this part."

542 **SECTION 13.**

543 Said chapter is further amended in Code Section 21-2-134, relating to withdrawal, death, or
544 disqualification of candidate for office, return of qualifying fee, and nomination certificate,
545 by adding a new subsection to read as follows:

546 "(g) In the event of the death of a candidate on the ballot in a nonpartisan election prior to
547 such nonpartisan election, such candidate's name shall remain on the ballot and all votes
548 cast for such candidate shall be counted. If the deceased candidate receives the requisite
549 number of votes to be elected, such contest shall be handled as a failure to fill the office
550 under Code Section 21-2-504. If the deceased candidate receives enough votes to be in a
551 run-off election, such run-off election shall be conducted as provided in Code
552 Section 21-2-501 and the candidates in such runoff shall be determined in accordance with
553 paragraph (2) of subsection (a) of Code Section 21-2-501."

SECTION 14.

Said chapter is further amended by revising subsection (f) of Code Section 21-2-212, relating to county registrars, appointment, certification, term of service, vacancies, compensation and expenses of chief registrar, registrars, and other officers and employees, and budget estimates, as follows:

"(f) The board of registrars of each county shall prepare annually a budget estimate in which it shall set forth an itemized list of its expenditures for the preceding two years and an itemized estimate of the amount of money necessary to be appropriated for the ensuing year and shall submit the same at the time and in the manner and form other county budget estimates are required to be filed. No board of registrars shall take or accept any funding, grants, or gifts from any source other than from the governing authority of the county, the State of Georgia, or the federal government."

SECTION 15.

Said chapter is further amended by revising Code Section 21-2-229, relating to challenge of applicant for registration by other electors, notice and hearing, and right of appeal, as follows:

"21-2-229.

(a) Any elector of a county or municipality may challenge the qualifications of any person applying to register to vote in the county or municipality and may challenge the qualifications of any elector of the county or municipality whose name appears on the list of electors. Such challenges shall be in writing and shall specify distinctly the grounds of the challenge. There shall not be a limit on the number of persons whose qualifications such elector may challenge.

(b) Upon such challenge being filed with the board of registrars, the registrars shall set a hearing on such challenge within ten business days after serving notice of the challenge.

Notice of the date, time, and place of the hearing shall be served upon the person whose

qualifications are being challenged along with a copy of such challenge and upon the elector making the challenge within ten business days following the filing of the challenge.

The person being challenged shall receive at least three days' notice of the date, time, and place of the hearing. Such notice shall be served either by first-class mail addressed to the mailing address shown on the person's voter registration records or in the manner provided in subsection (c) of Code Section 21-2-228.

(c) The burden shall be on the elector making the challenge to prove that the person being challenged is not qualified to remain on the list of electors. The board of registrars shall have the authority to issue subpoenas for the attendance of witnesses and the production of books, papers, and other material upon application by the person whose qualifications are being challenged or the elector making the challenge. The party requesting such subpoenas shall be responsible to serve such subpoenas and, if necessary, to enforce the subpoenas by application to the superior court. Any witness so subpoenaed, and after attending, shall be allowed and paid the same mileage and fee as allowed and paid witnesses in civil actions in the superior court.

(d) After the hearing provided for in this Code section, the registrars shall determine said challenge and shall notify the parties of their decision. If the registrars uphold the challenge, the person's application for registration shall be rejected or the person's name removed from the list of electors, as appropriate. The elector shall be notified of such decision in writing either by first-class mail addressed to the mailing address shown on the person's voter registration records or in the manner provided in subsection (c) of Code Section 21-2-228 for other notices.

(e) Either party shall have a right of appeal from the decision of the registrars to the superior court by filing a petition with the clerk of the superior court within ten days after the date of the decision of the registrars. A copy of such petition shall be served upon the other parties and the registrars. Unless and until the decision of the registrars is reversed by the court, the decision of the registrars shall stand.

607 (f) Failure to comply with the provisions of this Code section by the board of registrars
608 shall subject such board to sanctions by the State Election Board."

609 **SECTION 16.**

610 Said chapter is further amended by revising Code Section 21-2-230, relating to challenge of
611 persons on list of electors by other electors, procedure;, hearing, and right of appeal, as
612 follows:

613 "21-2-230.

614 (a) Any elector of the county or municipality may challenge the right of any other elector
615 of the county or municipality, whose name appears on the list of electors, to vote in an
616 election. Such challenge shall be in writing and specify distinctly the grounds of such
617 challenge. Such challenge may be made at any time prior to the elector whose right to vote
618 is being challenged voting at the elector's polling place or, if such elector cast an absentee
619 ballot, prior to 5:00 P.M. on the day before the election absentee ballots are to begin to be
620 scanned and tabulated; provided, however, that challenges to persons voting by absentee
621 ballot in person at the office of the registrars or the absentee ballot clerk shall be made prior
622 to such person's voting. There shall not be a limit on the number of persons whose
623 qualifications such elector may challenge.

624 (b) Upon the filing of such challenge, the board of registrars shall immediately consider
625 such challenge and determine whether probable cause exists to sustain such challenge. If
626 the registrars do not find probable cause, the challenge shall be denied. If the registrars
627 find probable cause, the registrars shall notify the poll officers of the challenged elector's
628 precinct or, if the challenged elector voted by absentee ballot, notify the poll officers at the
629 absentee ballot precinct and, if practical, notify the challenged elector and afford such
630 elector an opportunity to answer.

631 (c) If the challenged elector appears at the polling place to vote, such elector shall be given
632 the opportunity to appear before the registrars and answer the grounds of the challenge.

(d) If the challenged elector does not cast an absentee ballot and does not appear at the polling place to vote and if the challenge is based on grounds other than the qualifications of the elector to remain on the list of electors, no further action by the registrars shall be required.

(e) If the challenged elector cast an absentee ballot and it is not practical to conduct a hearing prior to the close of the polls and the challenge is based upon grounds other than the qualifications of the elector to remain on the list of electors, the absentee ballot shall be treated as a challenged ballot pursuant to subsection (e) of Code Section 21-2-386. No further action by the registrars shall be required.

(f) If the challenged elector does not cast an absentee ballot and does not appear at the polling place to vote and the challenge is based on the grounds that the elector is not qualified to remain on the list of electors, the board of registrars shall proceed to hear the challenge pursuant to Code Section 21-2-229.

(g) If the challenged elector cast an absentee ballot and the challenge is based upon grounds that the challenged elector is not qualified to remain on the list of electors, the board of registrars shall proceed to conduct a hearing on the challenge on an expedited basis prior to the certification of the consolidated returns of the election by the election superintendent. The election superintendent shall not certify such consolidated returns until such hearing is complete and the registrars have rendered their decision on the challenge. If the registrars deny the challenge, the superintendent shall proceed to certify the consolidated returns. If the registrars uphold the challenge, the name of the challenged elector shall be removed from the list of electors and the ballot of the challenged elector shall be rejected and not counted and, if necessary, the returns shall be adjusted to remove any votes cast by such elector. The elector making the challenge and the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229.

(h) If the challenged elector appears at the polls to vote and it is practical to conduct a hearing on the challenge prior to the close of the polls, the registrars shall conduct such hearing and determine the merits of the challenge. If the registrars deny the challenge, the elector shall be permitted to vote in the election notwithstanding the fact that the polls may have closed prior to the time the registrars render their decision and the elector can actually vote, provided that the elector proceeds to vote immediately after the decision of the registrars. If the registrars uphold the challenge, the challenged elector shall not be permitted to vote and, if the challenge is based upon the grounds that the elector is not qualified to remain on the list of electors, the challenged elector's name shall be removed from the list of electors.

(i) If the challenged elector appears at the polls to vote and it is not practical to conduct a hearing prior to the close of the polls or if the registrars begin a hearing and subsequently find that a decision on the challenge cannot be rendered within a reasonable time, the challenged elector shall be permitted to vote by casting a challenged ballot on the same type of ballot that is used by the county or municipality for provisional ballots. Such challenged ballot shall be sealed in double envelopes as provided in subsection (a) of Code Section 21-2-419 and, after having the word 'Challenged,' the elector's name, and the alleged cause of the challenge written across the back of the outer envelope, the ballot shall be deposited by the person casting such ballot in a secure, sealed ballot box notwithstanding the fact that the polls may have closed prior to the time the registrars make such a determination, provided that the elector proceeds to vote immediately after such determination of the registrars. In such cases, if the challenge is based upon the grounds that the challenged elector is not qualified to remain on the list of electors, the registrars shall proceed to finish the hearing prior to the certification of the consolidated returns of the election by the election superintendent. If the challenge is based on other grounds, no further action shall be required by the registrars. The election superintendent shall not certify such consolidated returns until such hearing is complete and the registrars have

rendered their decision on the challenge. If the registrars deny the challenge, the superintendent shall proceed to certify the consolidated returns. If the registrars uphold the challenge, the name of the challenged elector shall be removed from the list of electors and the ballot of the challenged elector shall be rejected and not counted and, if necessary, the returns shall be adjusted to remove any votes cast by such elector. The elector making the challenge and the challenged elector may appeal the decision of the registrars in the same manner as provided in subsection (e) of Code Section 21-2-229.

(j) Failure to comply with the provisions of this Code section by the board of registrars shall subject such board to sanctions by the State Election Board."

SECTION 17.

Said chapter is further amended in subsection (b) of Code Section 21-2-232, relating to removal of elector's name from list of electors, by adding a new paragraph to read as follows:

"(3) Once becoming a member of the nongovernmental entity described in subsection (d) of Code Section 21-2-225, the Secretary of State shall obtain regular information from such entity regarding electors who may have moved to another state, died, or otherwise become ineligible to vote in Georgia. The Secretary of State shall use such information to conduct list maintenance on the list of eligible electors."

SECTION 18.

Said chapter is further amended by revising Code Section 21-2-263, relating to reduction in size of, or provision of additional voting equipment or poll workers to, precincts containing more than 2,000 electors when voting in such precincts at previous general election not completed one hour after closing of polls, as follows:

708 "21-2-263.

709 (a) If, at the previous general election, a precinct contained more than 2,000 electors and
710 if all those electors desiring to vote had not completed voting one hour following the
711 closing of the polls, the superintendent shall either reduce the size of said precinct so that
712 it shall contain not more than 2,000 electors in accordance with the procedures prescribed
713 by this chapter for the division, alteration, and consolidation of precincts no later than 60
714 days before the next general election or provide additional voting equipment or poll
715 workers, or both, before the next general election. For administering this Code section, the
716 chief manager of a precinct which contained more than 2,000 electors at the previous
717 general election shall submit a report thereof, under oath, to the superintendent as to the
718 time required for completion of voting by all persons in line at the time the polls were
719 closed. Any such change in the boundaries of a precinct shall conform with the
720 requirements of subsection (a) of Code Section 21-2-261.1.

721 (b) If, at the previous general election, a precinct contained more than 2,000 electors and
722 if electors desiring to vote on the day of the election had to wait in line for more than one
723 hour before checking in to vote, the superintendent shall either reduce the size of such
724 precinct so that it shall contain not more than 2,000 electors in accordance with the
725 procedures prescribed by this chapter for the division, alteration, and consolidation of
726 precincts no later than 60 days before the next general election or provide additional voting
727 equipment or poll workers, or both, before the next general election. For administering this
728 Code section, the chief manager of a precinct which contained more than 2,000 electors at
729 the previous general election shall submit a report thereof to the superintendent of the
730 reported time from entering the line to checking in to vote. Such wait time shall be
731 measured no fewer than three different times throughout the day (in the morning, at
732 midday, and prior to the close of polls) and such results shall be recorded on a form
733 provided by the Secretary of State. Any such change in the boundaries of a precinct shall
734 conform with the requirements of subsection (a) of Code Section 21-2-261.1."

SECTION 19.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-265, relating to duty of superintendent to select polling places, change, petition objecting to proposed change, space for political parties holding primaries, facilities for disabled voters, selection of polling place outside precinct to better serve voters, and restriction on changing polling place on or near date of election, as follows:

"(a) The superintendent of a county or the governing authority of a municipality shall select and fix the polling place within each precinct and may, either on his, her, or its own motion or on petition of ten electors of a precinct, change the polling place within any precinct. Except in case of an emergency or unavoidable event occurring within ten days of a primary or election, which emergency or event renders any polling place unavailable for use at such primary or election, the superintendent of a county or the governing authority of a municipality shall not change any polling place until notice of the proposed change shall have been published for once a week for two consecutive weeks in the legal organ for the county or municipality in which the polling place is located. Additionally, ~~on the first election~~ during the seven days before and on the day of the first election following such change, a notice of such change shall be posted on the previous polling place and at three other places in the immediate vicinity thereof. Each notice posted shall state the location to which the polling place has been moved and shall direct electors to the new location. At least one notice at the previous polling place shall be a minimum of four feet by four feet in size. The occupant or owner of the previous polling place, or his or her agent, shall be notified in writing of such change at the time notice is published in the legal organ."

SECTION 20.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 21-2-266, relating to use of public buildings as polling places, use of portable or movable facilities, and unrestricted access to residential communities, as follows:

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

(b) The superintendent of a county or the governing authority of a municipality shall have discretion to procure and provide portable or movable polling facilities of adequate size for any precinct; provided, however, that buses and other readily movable facilities shall only be used in emergencies declared by the Governor pursuant to Code Section 38-3-51 to supplement the capacity of the polling place where the emergency circumstance occurred."

SECTION 20A.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-284, relating to form of official primary ballot and attestation regarding receiving value in exchange for vote, as follows:

783 "(a) In each primary separate official ballots shall be prepared for the political party
 784 holding the primary. At the top of each ballot shall be printed in prominent type the words
 785 'OFFICIAL PRIMARY BALLOT OF _____ PARTY FOR,' followed by the
 786 name and designation of the precinct for which it is prepared and the name and date of the
 787 primary."

788 **SECTION 20B.**

789 Said chapter is further amended by revising Code Section 21-2-284.1, relating to form of
 790 ballot in nonpartisan municipal primaries, as follows:

791 "21-2-284.1.

792 In the case of nonpartisan municipal primaries, the form of the official nonpartisan primary
 793 ballot shall conform insofar as practicable to the form of the official primary ballot as
 794 detailed in Code Section 21-2-284, including the printing of the name and designation of
 795 the precinct on the top of the ballot, except that:

796 (1) The following shall be printed at the top of each ballot in prominent type:

797 'OFFICIAL NONPARTISAN PRIMARY BALLOT OF

798 _____
 799 (Name of Municipality)';

800 (2) There shall be no name or designation of any political organization nor any words,
 801 designation, or emblems descriptive of a candidate's political affiliation printed under or
 802 after any candidate's name which is printed on the ballot; and

803 (3) The incumbency of a candidate seeking election for the public office he or she then
 804 holds shall be indicated on the ballot."

SECTION 20C.

Said chapter is further amended by revising subsection (a) of Code Section 21-2-285, relating to form of official election ballot, attestation on receipt of benefit in exchange for vote, and when an election is not required, as follows:

"(a) At the top of each ballot for an election shall be printed in prominent type the words 'OFFICIAL BALLOT,' followed by the name and designation of the precinct for which it is prepared and the name and date of the election."

SECTION 21.

Said chapter is further amended by revising Code Section 21-2-285.1, relating to form of ballot, run-off election, and declaration of prevailing candidate in nonpartisan elections, as follows:

"21-2-285.1.

The names of all candidates for offices which the General Assembly has by general law or local Act provided for election in a nonpartisan election shall be printed on each official primary ballot; and insofar as practicable such offices to be filled in the nonpartisan election shall be separated from the names of candidates for party nomination to other offices by being listed last on each ballot, with the top of that portion of each official primary ballot relating to the nonpartisan election to have printed in prominent type the words 'OFFICIAL NONPARTISAN ELECTION BALLOT.' In addition, there shall be a ballot that contains just the official nonpartisan election ballot available for electors who choose not to vote in a party primary. Such ballot shall have printed at the top the name and designation of the precinct. Directions that explain how to cast a vote, how to write in a candidate, and how to obtain a new ballot after the elector spoils his or her ballot shall appear immediately under the caption, as specified by rule or regulation of the State Election Board. Immediately under the directions, the name of each such nonpartisan candidate shall be arranged alphabetically by last name under the title of the office for

which they are candidates and be printed thereunder. The incumbency of a candidate seeking election for the public office he or she then holds shall be indicated on the ballot. No party designation or affiliation shall appear beside the name of any candidate for nonpartisan office. An appropriate space shall also be placed on the ballot for the casting of write-in votes for such offices. In the event that no candidate in such nonpartisan election receives a majority of the total votes cast for such office, there shall be a nonpartisan election runoff between the candidates receiving the two highest numbers of votes; and the names of such candidates shall be placed on the official ballot at the general primary runoff in the same manner as prescribed in this Code section for the nonpartisan election and there shall be a separate official nonpartisan election runoff run-off ballot for those electors who do not choose or are not eligible to vote in the general primary runoff. In the event that only nonpartisan candidates are to be placed on a run-off ballot, the form of the ballot shall be as prescribed by the Secretary of State or election superintendent in essentially the same format as prescribed for the nonpartisan election. Except as provided in subsection (g) of Code Section 21-2-134, the The candidate having a majority of the votes cast in the nonpartisan election or the candidate receiving the highest number of votes cast in the nonpartisan election runoff shall be declared duly elected to such office."

SECTION 21A.

Said chapter is further amended by revising paragraph (3) of subsection (b) of Code Section 21-2-286, relating to printing specifications, numbering, and binding of ballots, as follows:

"(3) Ballots printed by an electronic ballot marker shall be designed as prescribed by the Secretary of State to ensure ease of reading by electors, provided that each ballot shall have the name and designation of the precinct printed at the top."

SECTION 21B.

Said chapter is further amended by revising Code Section 21-2-287, relating to form of absentee ballot, as follows:

"21-2-287.

The form for the absentee ballot shall be in substantially the same form as the official ballots used in the precincts, except it shall be printed with only the name stub and without a number strip and ~~may~~ shall have the precinct name and designation printed or stamped thereon."

SECTION 22.

Said chapter is further amended by revising subsection (b) of Code Section 21-2-367, relating to installation of systems, number of systems, and good working order, as follows:

"(b)(1) In each precinct in which optical scanning voting systems are used in a state-wide general election, the county ~~or municipal governing authority, as appropriate,~~ election superintendent shall provide at least one voting booth or enclosure for each 250 electors therein, or fraction thereof.

(2) For any other primary, election, or runoff, the county or municipal election superintendent may provide a greater or lesser number of voting booths or enclosures if, after a thorough consideration of the type of election, expected turnout, the number of electors who have already voted by advance voting or absentee ballot, and other relevant factors that inform the appropriate amount of equipment needed, such superintendent determines that a different amount of equipment is needed or sufficient. Such determination shall be subject to the provisions of Code Section 21-2-263."

SECTION 23.

Said chapter is further amended by revising Code Section 21-2-372, relating to ballot description, as follows:

"21-2-372.

Ballots shall be of suitable design, size, and stock to permit processing by a ballot scanner and shall be printed in black ink on clear, white, or colored material. Other than ballots delivered electronically to qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., the ballots shall be printed on security paper that incorporates features which can be used to authenticate the ballot as an official ballot but which do not make the ballot identifiable to a particular elector."

SECTION 23A.

Said chapter is further amended in Code Section 21-2-379.23, relating to requirements for ballot display for electronic ballot markers, role of Secretary of State, and printed paper ballot controls during recount, by adding a new subsection to read as follows:

"(e) Each ballot printed by an electronic ballot marker shall include the name and designation of the precinct at the top."

SECTION 24.

Said chapter is further amended by revising subsection (c) of Code Section 21-2-379.25, relating to programming for ballot design and style, verification, appointment of custodians, and role of custodians, as follows:

"(c) On or before the third day preceding a primary or election, including special primaries, special elections, and referendum elections, the superintendent shall have each electronic ballot marker tested to ascertain that it will correctly record the votes cast for all offices and on all questions and produce a ballot reflecting such choices of the elector in a manner that

the State Election Board shall prescribe by rule or regulation. Public notice of the time and place of the test shall be made at least five days prior thereto; ~~provided, however, that, in the case of a runoff, the public notice shall be made at least three days prior thereto.~~ The superintendent of each county or municipality shall publish such notice on the homepage of the county's or municipality's publicly accessible website associated with elections, if the county or municipality maintains a publicly accessible website, and in a newspaper of general circulation in the county or municipality and by posting in a prominent location in the county or municipality. Such notice shall state the date, time, and place or places where preparation and testing of the voting system components for use in the primary or election will commence, that such preparation and testing shall continue from day to day until complete, and that representatives ~~Representatives~~ of political parties and bodies, news media, and the public shall be permitted to observe such tests. The superintendent of the county or municipality shall also provide such notice to the Secretary of State who shall publish on his or her website the information received from superintendents stating the dates, times, and locations for preparation and testing of voting system components. However, such representatives of political parties and bodies, news media, and the public shall not in any manner interfere with the preparation and testing of voting system components. The advertisement in the newspaper of general circulation shall be prominently displayed, shall not be less than 30 square inches, and shall not be placed in the section of the newspaper where legal notices appear."

SECTION 25.

Said chapter is further amended by revising Code Section 21-2-381, relating to making of application for absentee ballot, determination of eligibility by ballot clerk, furnishing of applications to colleges and universities, and persons entitled to make application, as follows:

"21-2-381.

(a)(1)(A) Except as otherwise provided in Code Section 21-2-219 or for advance voting described in subsection (d) of Code Section 21-2-385, not more earlier than 180
78 days or less than 11 days prior to the date of the primary or election, or runoff of either, in which the elector desires to vote, any absentee elector may make, either by mail, by facsimile transmission, by electronic transmission, or in person in the registrar's or absentee ballot clerk's office, an application for an official ballot of the elector's precinct to be voted at such primary, election, or runoff. To be timely received, an application for an absentee-by-mail ballot shall be received by the board of registrars or absentee ballot clerk no later than 11 days prior to the primary, election, or runoff. For advance voting in person, the application shall be made within the time period set forth in subsection (d) of Code Section 21-2-385.

(B) In the case of an elector residing temporarily out of the county or municipality or a physically disabled elector residing within the county or municipality, the application for the elector's absentee ballot may, upon satisfactory proof of relationship, be made by such elector's mother, father, grandparent, aunt, uncle, sister, brother, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law of the age of 18 or over.

(C)(i) Any person applying for an absentee-by-mail ballot shall make application in writing on the form made available by the Secretary of State. In order to confirm the identity of the voter, such form shall require the elector to provide his or her name, date of birth, address as registered, address where the elector wishes the ballot to be mailed, and the number of his or her Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40. If such elector does not have a Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the elector shall affirm this fact in the manner prescribed in the application and the elector shall provide a copy of a form of identification listed in subsection (c) of Code Section 21-2-417. The form made available by the Secretary of State shall

954 include a space to affix a photocopy or electronic image of such identification. The
955 Secretary of State shall develop a method to allow secure electronic transmission of
956 such form. The application shall be in writing and shall contain sufficient information
957 for proper identification of the elector; the permanent or temporary address of the
958 elector to which the absentee ballot shall be mailed; also include the identity of the
959 primary, election, or runoff in which the elector wishes to vote; and the name and
960 relationship of the person requesting the ballot if other than the elector; and an oath
961 for the elector or relative to write his or her usual signature with a pen and ink
962 affirming that the elector is a qualified Georgia elector and the facts presented on the
963 application are true. Submitting false information on an application for an absentee
964 ballot shall be a violation of Code Sections 21-2-560 and 21-2-571.

965 (ii) A blank application for an absentee ballot shall be made available online by the
966 Secretary of State and each election superintendent and registrar, but neither the
967 Secretary of State, election superintendent, board of registrars, other governmental
968 entity, nor employee or agent thereof shall send absentee ballot applications directly
969 to any elector except upon request of such elector or a relative authorized to request
970 an absentee ballot for such elector. No person or entity other than a relative
971 authorized to request an absentee ballot for such elector or a person signing as
972 assisting an illiterate or physically disabled elector shall send any elector an absentee
973 ballot application that is prefilled with the elector's required information set forth in
974 this subparagraph. No person or entity other than the elector, a relative authorized to
975 request an absentee ballot for such elector, a person signing as assisting an illiterate
976 or physically disabled elector with his or her application, a common carrier charged
977 with returning the ballot application, an absentee ballot clerk, a registrar, or a law
978 enforcement officer in the course of an investigation shall handle or return an elector's
979 completed absentee ballot application. Handling a completed absentee ballot
980 application by any person or entity other than as allowed in this subsection shall be

a misdemeanor. Any application for an absentee ballot sent to any elector by any person or entity shall utilize the form of the application made available by the Secretary of State and shall clearly and prominently disclose on the face of the form: 'This is NOT an official government publication and was NOT provided to you by any governmental entity and this is NOT a ballot. It is being distributed by [insert name and address of person, organization, or other entity distributing such document or material].'

(iii) The disclaimer required by division (ii) of this subparagraph shall be:

(I) Of sufficient font size to be clearly readable by the recipient of the communication;

(II) Be contained in a printed box set apart from the other contents of the communication; and

(III) Be printed with a reasonable degree of color contrast between the background and the printed disclaimer.

(D) Except in the case of physically disabled electors residing in the county or municipality or electors in custody in a jail or other detention facility in the county or municipality, no absentee ballot shall be mailed to an address other than the permanent mailing address of the elector as recorded on the elector's voter registration record or a temporary out-of-county or out-of-municipality address. Upon request, electors held in jails or other detention facilities who are eligible to vote shall be granted access to the necessary personal effects for the purpose of applying for and voting an absentee ballot pursuant to this chapter.

(E) Relatives applying for absentee ballots for electors must also sign an oath stating that facts in the application are true.

(F) If the elector is unable to fill out or sign such elector's own application because of illiteracy or physical disability, the elector shall make such elector's mark, and the

person filling in the rest of the application shall sign such person's name below it as a witness.

(G) Any elector meeting criteria of advance age or disability specified by rule or regulation of the State Election Board or any elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, et seq., as amended, may request in writing on one application a ballot for a presidential preference primary held pursuant to Article 5 of this chapter and for a primary as well as for any runoffs resulting therefrom and for the election for which such primary shall nominate candidates as well as any runoffs resulting therefrom. If not so requested by such person, a separate and distinct application shall be required for each primary, run-off primary, election, and run-off election. Except as otherwise provided in this subparagraph, a separate and distinct application for an absentee ballot shall always be required for any special election or special primary.

(2) A properly executed registration card submitted under the provisions of subsection (b) of Code Section 21-2-219, if submitted within 180 days of a primary or election in which the registrant is entitled to vote, shall be considered to be an application for an absentee ballot under this Code section, or for a special absentee ballot under Code Section 21-2-381.1, as appropriate.

(3)(A) All persons or entities, other than the Secretary of State, election superintendents, boards of registrars, and absentee ballot clerks, that send applications for absentee ballots to electors in a primary, election, or runoff shall mail such applications only to individuals who have not already requested, received, or voted an absentee ballot in the primary, election, or runoff. Any such person or entity shall compare its mail distribution list with the most recent information available about which electors have requested, been issued, or voted an absentee ballot in the primary, election, or runoff and shall remove the names of such electors from its mail distribution list. A person or entity shall not be liable for any violation of this

subparagraph if such person or entity relied upon information made available by the Secretary of State within five business days prior to the date such applications are mailed.

(B) A person or entity in violation of subparagraph (A) of this paragraph shall be subject to sanctions by the State Election Board which, in addition to all other possible sanctions, may include requiring such person or entity to pay restitution to each affected county or municipality in an amount up to \$100.00 per duplicate absentee ballot application that is processed by the county or municipality due to such violation or the actual cost incurred by each affected county or municipality for the processing of such duplicate absentee ballot applications. Reserved.

(4) In extraordinary circumstances as described in Code Section 21-2-543.1, the registrar or absentee ballot clerk shall determine if the applicants are eligible to vote under this Code section and shall either mail or issue the absentee ballots for the election for representative in the United States Congress to an individual entitled to make application for absentee ballot under subsection (d) of this Code section the same day any such application is received, so long as the application is received by 3:00 P.M., otherwise no later than the next business day following receipt of the application. Any valid absentee ballot shall be accepted and processed so long as the ballot is received by the registrar or absentee ballot clerk not later than 45 days after the ballot is transmitted to the absent uniformed services voter or overseas voter, but in no event later than 11 days following the date of the election.

(b)(1) Upon receipt of a timely application for an absentee ballot, a registrar or absentee ballot clerk shall enter thereon the date received. The registrar or absentee ballot clerk shall verify the identity of the applicant and determine, in accordance with the provisions of this chapter, if the applicant is eligible to vote in the primary or election involved. In order to ~~be found eligible to vote an absentee ballot by mail~~ verify the identity of the applicant, the registrar or absentee ballot clerk shall compare the ~~identifying information~~

1061 applicant's name, date of birth, and number of his or her Georgia driver's license or
1062 identification card issued pursuant to Article 5 of Chapter 5 of Title 40 on the application
1063 with the information on file in the registrar's office and, if the application is signed by the
1064 elector, ~~compare the signature or mark of the elector on the application with the signature~~
1065 ~~or mark of the elector on the elector's voter registration card.~~ If the application does not
1066 contain the number of the applicant's Georgia driver's license or identification card issued
1067 pursuant to Article 5 of Chapter 5 of Title 40, the registrar or absentee ballot clerk shall
1068 verify that the identification provided with the application identifies the applicant. In
1069 order to be found eligible to vote an absentee ballot in person at the registrar's office or
1070 absentee ballot clerk's office, such person shall show one of the forms of identification
1071 listed in Code Section 21-2-417 and the registrar or absentee ballot clerk shall compare
1072 the identifying information on the application with the information on file in the
1073 registrar's office.

1074 (2) If found eligible, the registrar or absentee ballot clerk shall certify by signing in the
1075 proper place on the application and then:

1076 (A) Shall mail the ballot as provided in this Code section;

1077 (B) If the application is made in person, shall issue the ballot to the elector within the
1078 confines of the registrar's or absentee ballot clerk's office as required by Code
1079 Section 21-2-383 if the ballot is issued during the advance voting period established
1080 pursuant to subsection (d) of Code Section 21-2-385; or

1081 (C) May deliver the ballot in person to the elector if such elector is confined to a
1082 hospital.

1083 (3) If found ineligible or if the application is not timely received, the clerk or the board
1084 of registrars shall deny the application by writing the reason for rejection in the proper
1085 space on the application and shall promptly notify the applicant in writing of the ground
1086 of ineligibility, a copy of which notification should be retained on file in the office of the
1087 board of registrars or absentee ballot clerk for at least one year. However, an absentee

ballot application shall not be rejected ~~solely~~ due to an ~~apparent~~ mismatch between the ~~signature~~ identifying information of the elector on the application and the ~~signature~~ identifying information of the elector on file with the board of registrars. In such cases, the board of registrars or absentee ballot clerk shall send the elector a provisional absentee ballot with the designation 'Provisional Ballot' on the outer oath envelope and information prepared by the Secretary of State as to the process to be followed to cure the ~~signature~~ discrepancy. If such ballot is returned to the board of registrars or absentee ballot clerk prior to the closing of the polls on the day of the primary or election, the elector may cure the ~~signature~~ discrepancy by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted as other absentee ballots. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be insufficient, then the procedure contained in Code Section 21-2-386 shall be followed for rejected absentee ballots.

(4) If the registrar or clerk is unable to determine the identity of the elector from information given on the application or if the application is not complete or if the oath on the application is not signed, the registrar or clerk should promptly ~~write~~ contact the elector in writing to request the necessary additional information and a signed copy of the oath.

(5) In the case of an unregistered applicant who is eligible to register to vote, the clerk or the board shall immediately mail a blank registration card as provided by Code Section 21-2-223, and such applicant, if otherwise qualified, shall be deemed eligible to vote by absentee ballot in such primary or election, if the registration card, properly completed, is returned to the clerk or the board on or before the last day for registering

1115 to vote in such primary or election. ~~If the closing date for registration in the primary or~~
1116 ~~election concerned has not passed, the clerk or registrar shall also mail a ballot to the~~
1117 ~~applicant, as soon as it is prepared and available, and the ballot shall be cast in such~~
1118 ~~primary or election if returned to the clerk or board not later than the close of the polls~~
1119 ~~on the day of the primary or election concerned.~~

1120 (c) In those counties or municipalities in which the absentee ballot clerk or board of
1121 registrars provides application forms for absentee ballots, the clerk or board shall provide
1122 such quantity of the application form to the dean of each college or university located in
1123 that county as said dean determines necessary for the students of such college or university.

1124 (d)(1) A citizen of the United States permanently residing outside the United States is
1125 entitled to make application for an absentee ballot from Georgia and to vote by absentee
1126 ballot in any election for presidential electors and United States senator or representative
1127 in Congress:

1128 (A) If such citizen was last domiciled in Georgia immediately before his or her
1129 departure from the United States; and

1130 (B) If such citizen could have met all qualifications, except any qualification relating
1131 to minimum voting age, to vote in federal elections even though, while residing outside
1132 the United States, he or she does not have a place of abode or other address in Georgia.

1133 (2) An individual is entitled to make application for an absentee ballot under paragraph
1134 (1) of this subsection even if such individual's intent to return to Georgia may be
1135 uncertain, as long as:

1136 (A) He or she has complied with all applicable Georgia qualifications and requirements
1137 which are consistent with 42 U.S.C. Section 1973ff concerning absentee registration for
1138 and voting by absentee ballots;

1139 (B) He or she does not maintain a domicile, is not registered to vote, and is not voting
1140 in any other state or election district of a state or territory or in any territory or
1141 possession of the United States; and

(C) He or she has a valid passport or card of identity and registration issued under the authority of the Secretary of State of the United States or, in lieu thereof, an alternative form of identification consistent with 42 U.S.C. Section 1973ff and applicable state requirements, if a citizen does not possess a valid passport or card of identity and registration.

(e) The State Election Board is authorized to promulgate reasonable rules and regulations for the implementation of paragraph (1) of subsection (a) of this Code section. Said rules and regulations may include provisions for the limitation of opportunities for fraudulent application, including, but not limited to, comparison of voter registration records with death certificates."

SECTION 26.

Said chapter is further amended by revising Code Section 21-2-382, relating to additional sites as additional registrar's office or place of registration for absentee ballots, as follows: "21-2-382.

(a) Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish ~~additional sites as~~ additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of ~~voting absentee ballots~~ advance voting under Code Section 21-2-385, provided that any such site is a building that is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a ~~location~~ building that is used as an election day polling place, notwithstanding that such ~~location~~ building is not a government building.

(b) Any other provisions of this chapter to the contrary notwithstanding, in all counties of this state having a population of 550,000 or more according to the United States decennial census of 1990 or any future such census, any building that is a branch of the county

courthouse or courthouse annex established within any such county shall be an additional registrar's or absentee ballot clerk's office or place of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of ~~voting~~ ~~absentee ballots~~ advance voting under Code Section 21-2-385.

(c)(1) A board of registrars or absentee ballot clerk shall establish at least one drop box as a means for absentee by mail electors to deliver their ballots to the board of registrars or absentee ballot clerk. A board of registrars or absentee ballot clerk may establish additional drop boxes, subject to the limitations of this Code section, but may only establish additional drop boxes totaling the lesser of either one drop box for every 100,000 active registered voters in the county or the number of advance voting locations in the county. Any additional drop boxes shall be evenly geographically distributed by population in the county. Drop boxes established pursuant to this Code section shall be established at the office of the board of registrars or absentee ballot clerk or inside locations at which advance voting, as set forth in subsection (d) of Code Section 21-2-385, is conducted in the applicable primary, election, or runoff and may be open during the hours of advance voting at that location. Such drop boxes shall be closed when advance voting is not being conducted at that location. All drop boxes shall be closed when the advance voting period ends, as set forth in subsection (d) of Code Section 21-2-385. The drop box location shall have adequate lighting and be under constant surveillance by an election official or his or her designee, law enforcement official, or licensed security guard. During an emergency declared by the Governor pursuant to Code Section 38-3-51, drop boxes may be located outside the office of the board of registrars or absentee ballot clerk or outside of locations at which advance voting is taking place, subject to the other limitations of this Code section.

(2) The opening slot of a drop box shall not allow ballots to be tampered with or removed and shall be designed to minimize the ability for liquid or other substances that may damage ballots to be poured into the drop box. A drop box shall be labeled

1195 "OFFICIAL ABSENTEE BALLOT DROP BOX" and shall clearly display the signage
1196 developed by the Secretary of State pertaining to Georgia law with regard to who is
1197 allowed to return absentee ballots and destroying, defacing, or delaying delivery of
1198 ballots.

1199 (3) The board of registrars or absentee ballot clerk shall arrange for the collecting and
1200 return of ballots deposited at each drop box at the conclusion of each day where advance
1201 voting takes place. Collection of ballots from a drop box shall be made by a team of at
1202 least two people. Any person collecting ballots from a drop box shall have sworn an oath
1203 in the same form as the oath for poll officers set forth in Code Section 21-2-95. The
1204 collection team shall complete and sign a ballot transfer form upon removing the ballots
1205 from the drop box which shall include the date, time, location, number of ballots,
1206 confirmation that the drop box was locked after the removal of the ballots, and the
1207 identity of each person collecting the ballots. The collection team shall then immediately
1208 transfer the ballots to the board of registrars or absentee ballot clerk, who shall process
1209 and store the ballots in the same manner as absentee ballots returned by mail are
1210 processed and stored. The board of registrars, absentee ballot clerk, or a designee of the
1211 board of registrars or absentee ballot clerk shall sign the ballot transfer form upon receipt
1212 of the ballots from the collection team. Such form shall be considered a public record
1213 pursuant to Code Section 50-18-70.

1214 (4) At the beginning of voting at each advance location where a drop box is present, the
1215 manager of the advance voting location shall open the drop box and confirm on the
1216 reconciliation form for that advance voting location that the drop box is empty. If the
1217 drop box is not empty, the manager shall secure the contents of the drop box and
1218 immediately inform the election superintendent, board of registrars, or absentee ballot
1219 clerk, who shall inform the Secretary of State."

SECTION 27.

Said chapter is further amended by revising Code Section 21-2-384, relating to preparation and delivery of supplies, mailing of ballots, oath of absentee electors and persons assisting absentee electors, master list of ballots sent, challenges, and electronic transmission of ballots, as follows:

"21-2-384.

(a)(1) The superintendent shall, in consultation with the board of registrars or absentee ballot clerk, prepare, obtain, and deliver before the date specified in paragraph (2) of this subsection an adequate supply of official absentee ballots to the board of registrars or absentee ballot clerk for use in the primary or election or as soon as possible prior to a runoff. Envelopes and other supplies as required by this article may be ordered by the superintendent, the board of registrars, or the absentee ballot clerk for use in the primary or election.

(2) The board of registrars or absentee ballot clerk shall mail or issue official absentee ballots to all eligible applicants not more than ~~49~~ 29 days but not less than ~~45~~ 25 days prior to any presidential preference primary, general primary other than a municipal general primary, general election other than a municipal general election, or special primary or special election in which there is a candidate for a federal office on the ballot; 22 days prior to any municipal general primary or municipal general election; and as soon as possible prior to any runoff. In the case of all other special primaries or special elections, the board of registrars or absentee ballot clerk shall mail or issue official absentee ballots to all eligible applicants within three days after the receipt of such ballots and supplies, but no earlier than 22 days prior to the election; provided, however, that ~~should~~ official absentee ballots shall be issued to any elector of the jurisdiction ~~be permitted to vote by absentee ballot who is entitled to vote by absentee ballot under the~~ federal Uniformed and Overseas Citizen Absentee Voting Act, 52 U.S.C. Section 20301, et seq., as amended, beginning 49 days prior to a federal primary or election, all eligible

~~applicants of such jurisdiction shall be entitled to vote by absentee ballot beginning 49 days prior to such primary or election and not later than 45 days prior to a federal primary or election.~~ As additional applicants who submitted timely applications for an absentee ballot are determined to be eligible, the board or clerk shall mail or issue official absentee ballots to such additional applicants immediately upon determining their eligibility; ~~provided, however, that no absentee ballot shall be mailed by the registrars or absentee ballot clerk on the day prior to a primary or election and provided, further, that no absentee ballot shall be issued on the day prior to a primary or election.~~ For all timely received applications for absentee ballots, the board of registrars or absentee ballot clerk shall mail or issue absentee ballots, provisional absentee ballots, and notices of rejection as soon as possible upon determining their eligibility within the time periods set forth in this subsection. During the period for advance voting set forth in Code Section 21-2-385, the board of registrars or absentee ballot clerk shall make such determinations and mail or issue absentee ballots, provisional absentee ballots, and notices of rejection of application within three days after receiving a timely application for an absentee ballot. The board of registrars or absentee ballot clerk shall, within the ~~same~~ time periods specified in this subsection, electronically transmit official absentee ballots to all electors who have requested to receive their official absentee ballot electronically and are entitled to vote such absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, ~~42 U.S.C. Section 1973ff~~ 52 U.S.C. Section 20301, et seq., as amended.

(3) The date a ballot is voted in the registrar's or absentee ballot clerk's office or the date a ballot is mailed or issued to an elector and the date it is returned shall be entered on the application record therefor.

(4) Notwithstanding any other provision of this chapter, an elector confined in a hospital may make application for an absentee ballot ~~The delivery of an absentee ballot to a person confined in a hospital may be made by the registrar or clerk on the day of a primary or election or during a five-day ten-day period immediately preceding the day~~

of such primary or election. Such application shall immediately be processed and, if such applicant is determined to be eligible, the board of registrars or absentee ballot clerk may deliver the absentee ballot to such elector.

(5) In the event an absentee ballot which has been mailed by the board of registrars or absentee ballot clerk is not received by the applicant, the applicant may notify the board of registrars or absentee ballot clerk and sign an affidavit stating that the absentee ballot has not been received. The board of registrars or absentee ballot clerk shall then issue a second absentee ballot to the applicant and cancel the original ballot issued. The affidavit shall be attached to the original application. A second application for an absentee ballot shall not be required.

(b) Except for ballots voted within the confines of the registrar's or absentee ballot clerk's office, in addition to the mailing envelope addressed to the elector, the superintendent, board of registrars, or absentee ballot clerk shall provide two envelopes for each official absentee ballot, of such size and shape as shall be determined by the Secretary of State, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed the words 'Official Absentee Ballot' and nothing else. ~~On the back of the~~ The larger of the two envelopes to be enclosed within the mailing envelope shall ~~be printed~~ contain the form of oath of the elector and the oath for persons assisting electors, as provided for in Code Section 21-2-409, and the penalties provided for in Code Sections 21-2-568, 21-2-573, 21-2-579, and 21-2-599 for violations of oaths; ~~and on a place for the elector to print his or her name; a signature line; a space for the elector to print the number of his or her Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40; a space for the elector to mark to affirm that he or she does not have a Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40; a space for the elector to print his or her date of birth; and a space for the elector to print the last four digits of his or her social security number, if the elector does not have a~~

Georgia driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40. The envelope shall be designed so that the number of the elector's Georgia driver's license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the last four digits of the elector's social security number, and the elector's date of birth shall be hidden from view when the envelope is correctly sealed. Any person other than the elector who requested the ballot, an authorized person who is assisting the elector entitled to assistance in voting pursuant to Code Section 21-2-409, an absentee ballot clerk, registrar, or law enforcement officer in the course of an investigation who knowingly unseals a sealed absentee ballot envelope shall be guilty of a felony. On the face of such envelope shall be printed the name and address of the board of registrars or absentee ballot clerk. The larger of the two envelopes shall also display the elector's name and voter registration number. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, the uniform instructions for the manner of preparing and returning the ballot, in form and substance as provided by the Secretary of State, provisional absentee ballot information, if necessary, and a notice in the form provided by the Secretary of State of all withdrawn, deceased, and disqualified candidates and any substitute candidates pursuant to Code Sections 21-2-134 and 21-2-155 and nothing else. The uniform instructions shall include information specific to the voting system used for absentee voting concerning the effect of overvoting or voting for more candidates than one is authorized to vote for a particular office and information concerning how the elector may correct errors in voting the ballot before it is cast including information on how to obtain a replacement ballot if the elector is unable to change the ballot or correct the error. The uniform instructions shall prominently include specific instructions stating that the elector shall mark his or her ballot in private and sign the oath by writing his or her usual signature with a pen and ink under penalty of false swearing that the elector has not allowed any person to observe the marking of his or her ballot other than an authorized person lawfully assisting the elector if the elector is entitled to assistance, the elector's child under 18 years

of age, or any child under 12 years of age and that the elector will not permit any unauthorized person to deliver or return the voted ballot to the board of registrars. The uniform instructions shall include a list of authorized persons who may deliver or return the voted ballot to the board of registrars on behalf of the elector as provided in subsection (a) of Code Section 21-2-385. The uniform instructions shall include the contact information of the Secretary of State which may be used by the elector to report any unauthorized person requesting to observe the elector voting his or her ballot or the elector's voted ballot or any unauthorized person offering to deliver or return the voted ballot to the board of registrars.

(c)(1) The oaths referred to in subsection (b) of this Code section shall be in substantially the following form:

I, the undersigned, do swear (or affirm) under penalty of false swearing that I am a citizen of the United States and of the State of Georgia; that I possess the qualifications of an elector required by the laws of the State of Georgia; that I am entitled to vote in the precinct containing my residence in the primary or election in which this ballot is to be cast; that I am eligible to vote by absentee ballot; that I have not marked or mailed any other absentee ballot, nor will I mark or mail another absentee ballot for voting in such primary or election; nor shall I vote therein in person; and that I have read and understand the instructions accompanying this ballot; ~~and~~ that I have carefully complied with such instructions in completing this ballot; that I have marked and sealed this ballot in private and have not allowed any unauthorized person to observe the voting of this ballot or how this ballot was voted except those authorized under state and federal law; and that I will not give or transfer this ballot to any person not authorized by law to deliver or return absentee ballots. I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law.

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Signature or Mark of Elector_____
Printed Name of Elector

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Oath of Person Assisting Elector (if any):

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I, the undersigned, do swear (or affirm) that I assisted the above-named elector in marking such elector's absentee ballot as such elector personally communicated such elector's preference to me; and that such elector is entitled to receive assistance in voting under provisions of subsection (a) of Code Section 21-2-409.

This, the _____ day of _____, _____.

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Signature of Person Assisting
Elector_____
Printed Name of Person
Assisting Elector

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Reason for assistance (Check appropriate square):

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☐ Elector is unable to read the English language.

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☐ Elector requires assistance due to physical disability.

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The forms upon which such oaths are printed shall contain the following information:

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Georgia law provides that any person who knowingly falsifies information so as to vote illegally by absentee ballot or who illegally gives or receives assistance in voting, as specified in Code Section 21-2-568 or 21-2-573, shall be guilty of a felony.

(2) In the case of absent uniformed services or overseas voters, if the presidential designee under Section 705(b) of the federal Help America Vote Act promulgates a standard oath for use by such voters, the Secretary of State shall be required to use such oath on absentee ballot materials for such voters and such oath shall be accepted in lieu of the oath set forth in paragraph (1) of this subsection.

(d) Each board of registrars or absentee ballot clerk shall maintain for public inspection a master list, arranged by precincts, setting forth the name and residence of every elector to whom an official absentee ballot has been sent. Absentee electors whose names appear on the master list may be challenged by any elector prior to 5:00 P.M. on the day before ~~the primary or election~~ absentee ballots are to begin being scanned and tabulated.

(e)(1) The election superintendent shall prepare special absentee run-off ballots for general primaries and general elections for use by qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq.

(2) Such special absentee run-off ballots for the general primary shall list the titles of all offices being contested at the general primary and the candidates qualifying for such general primary for each office and shall permit the elector to vote in the general primary runoff by indicating his or her order of preference for each candidate for each office. A separate ballot shall be prepared for each political party, but a qualified elector under this subsection shall be mailed only the ballot of the political party in whose primary such elector requests to vote. The Secretary of State shall prepare instructions for use with such special absentee run-off ballots, including instructions for voting by mail using an electronically transmitted ballot. Such ballot shall be returned by the elector in the same manner as other absentee ballots by such electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq.

(3) Such special absentee run-off ballots for the general election shall list the titles of all offices being contested at the general election and the candidates qualifying for such general election for each office and shall permit the elector to vote in the general election runoff by indicating his or her order of preference for each candidate for each office.

(4) To indicate order of preference for each candidate for each office to be voted on, an elector shall put the numeral '1' next to the name of the candidate who is the elector's first choice for such office, the numeral '2' for the elector's second choice, and so forth, in consecutive numerical order, such that a numeral indicating the elector's preference is written by the elector next to each candidate's name on the ballot. An elector shall not be required to indicate preference for more than one candidate for an office if the elector so chooses.

(5) A special absentee run-off ballot shall be enclosed with each general primary absentee ballot sent to an elector who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., along with instructions on how to cast the special absentee run-off ballot and the two envelopes to be used in returning such ballot as provided in subsection (b) of this Code section, provided that the envelopes bear the notation of 'Official Overseas/Military General Primary Run-off Ballot.' An elector shall be sent only the ballot containing the candidates of the political party in whose primary such elector desires to vote.

(6) A special absentee run-off ballot shall be enclosed with each general election absentee ballot sent to an elector entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq., along with instructions on how to cast the special absentee run-off ballot and the two envelopes to be used in returning such ballot as provided in subsection (b) of this Code section, provided that the envelopes bear the notation of 'Official Overseas/Military General Election Run-off Ballot.' The State Election Board shall by rule or regulation establish procedures for the transmission of blank absentee ballots by mail and by

electronic transmission for all electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section ~~20302~~ 20301, et seq., as amended, and by which such electors may designate whether the elector prefers the transmission of such ballots by mail or electronically, for use in county, state, and federal primaries, elections, and runoffs in this state and, if the Secretary of State finds it to be feasible, for use in municipal primaries, elections, and runoffs. If no preference is stated, the ballot shall be transmitted by mail. The State Election Board shall by rule or regulation establish procedures to ensure to the extent practicable that the procedures for transmitting such ballots shall protect the security and integrity of such ballots and shall ensure that the privacy of the identity and other personal data of such electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section ~~20302~~ 20301, et seq., as amended, to whom a blank absentee ballot is transmitted under this Code section is protected throughout the process of such transmission."

SECTION 28.

Said chapter is further amended by revising subsections (a) and (d) of and adding a new subsection to Code Section 21-2-355, relating to procedure for voting by absentee ballot and advance voting, to read as follows:

"(a) At any time after receiving an official absentee ballot, but before the day of the primary or election, except electors who are confined to a hospital on the day of the primary or election, the elector shall vote his or her absentee ballot, then fold the ballot and enclose and securely seal the same in the envelope on which is printed 'Official Absentee Ballot.' This envelope shall then be placed in the second one, on which is printed the form of the oath of the elector; the name and oath of the person assisting, if any; and other required identifying information. The elector shall then fill out, subscribe, and swear to the oath printed on such envelope. In order to verify that the absentee ballot was voted by the

elector who requested the ballot, the elector shall print the number of his or her Georgia driver's license number or identification card issued pursuant to Article 5 of Chapter 5 of Title 40 in the space provided on the outer oath envelope. The elector shall also print his or her date of birth in the space provided in the outer oath envelope. If the elector does not have a Georgia driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of Title 40, the elector shall so affirm in the space provided on the outer oath envelope and print the last four digits of his or her social security number in the space provided on the outer oath envelope. If the elector does not have a Georgia driver's license, identification card issued pursuant to Article 5 of Chapter 5 of Title 40, or a social security number, the elector shall so affirm in the space provided on the outer oath envelope and place a copy of one of the forms of identification set forth in subsection (c) of Code Section 21-2-417 in the outer envelope. Such envelope shall then be securely sealed and the elector shall then personally mail or personally deliver same to the board of registrars or absentee ballot clerk, provided that mailing or delivery may be made by the elector's mother, father, grandparent, aunt, uncle, brother, sister, spouse, son, daughter, niece, nephew, grandchild, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, or an individual residing in the household of such elector. The absentee ballot of a disabled elector may be mailed or delivered by the caregiver of such disabled elector, regardless of whether such caregiver resides in such disabled elector's household. The absentee ballot of an elector who is in custody in a jail or other detention facility may be mailed or delivered by any employee of such jail or facility having custody of such elector. An elector who is confined to a hospital on a primary or election day to whom an absentee ballot is delivered by the registrar or absentee ballot clerk shall then and there vote the ballot, seal it properly, and return it to the registrar or absentee ballot clerk. If the elector registered to vote for the first time in this state by mail and has not previously provided the identification required by Code Section 21-2-220 and votes for the first time by absentee ballot and fails to provide the identification required by

Code Section 21-2-220 with such absentee ballot, such absentee ballot shall be treated as a provisional ballot and shall be counted only if the registrars are able to verify the identification and registration of the elector during the time provided pursuant to Code Section 21-2-419."

"(d)(1) There shall be a period of advance voting that shall commence:

(A) On the fourth Monday immediately prior to each primary or election; and

~~(B) On the fourth Monday immediately prior to a runoff from a general primary;~~

~~(C) On the fourth Monday immediately prior to a runoff from a general election in which there are candidates for a federal office on the ballot in the runoff; and~~

~~(D)~~ (B) As soon as possible prior to a runoff from any other general primary or election in which there are only state or county candidates on the ballot in the runoff but no later than the second Monday immediately prior to such runoff

and shall end on the Friday immediately prior to each primary, election, or runoff.

Voting shall be conducted ~~during normal business hours~~ beginning at 9:00 A.M. and ending at 5:00 P.M. on weekdays, other than observed state holidays, during such period

and shall be conducted on the second ~~Saturday~~ and third Saturdays during the hours of

9:00 A.M. through 5:00 P.M. and, if the registrar or absentee ballot clerk so chooses, the

second Sunday, the third Sunday, or both the second and third Sundays prior to a primary

or election during the hours of 9:00 A.M. through 4:00 P.M. determined by the registrar

or absentee ballot clerk, but no longer than 7:00 A.M. through 7:00 P.M.; provided,

however, ~~that in primaries and elections in which there are no federal or state candidates~~

~~on the ballot, no Saturday voting hours shall be required; and provided, further, that, if~~

such second Saturday is a public and legal holiday pursuant to Code Section 1-4-1, if

such second Saturday follows a public and legal holiday occurring on the Thursday or

Friday immediately preceding such second Saturday, or if such second Saturday

immediately precedes a public and legal holiday occurring on the following Sunday or

Monday, such advance voting shall not be held on such second Saturday but shall be held

on the third Saturday prior to such primary or election beginning at 9:00 A.M. and ending at 5:00 P.M. Except as otherwise provided in this paragraph, ~~counties and municipalities~~ the registrars may extend the hours for voting ~~beyond regular business hours to permit~~ advance voting from 7:00 A.M. until 7:00 P.M. and may provide for additional voting locations pursuant to Code Section 21-2-382 to suit the needs of the electors of the jurisdiction at their option; provided, however, that voting shall occur only on the days specified in this paragraph and counties and municipalities shall not be authorized to conduct advance voting on any other days.

(2) The registrars or absentee ballot clerk, as appropriate, shall provide reasonable notice to the electors of their jurisdiction of the availability of advance voting as well as the times, dates, and locations at which advance voting will be conducted. In addition, the registrars or absentee ballot clerk shall notify the Secretary of State in the manner prescribed by the Secretary of State of the times, dates, and locations at which advance voting will be conducted.

(3) The board of registrars shall publish the dates, times, and locations of the availability of advance voting in its jurisdiction on the homepage of the county's publicly accessible website associated with elections 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 14 days prior to the beginning of the advance voting period for a general primary, special primary, general election, or special election and no later than seven days prior to the beginning of the advance voting period for any run-off election. Any new advance voting locations added after that deadline shall be published in the same manner as soon as possible. The board of registrars shall not remove any advance voting location after the notice of such location is published, except in the case of an emergency or unavoidable event that renders a location unavailable for use. Any changes that are made due to an emergency or unavoidable event after a notice of a location has

1537 been published shall be published as soon as possible in the same manner set forth in this
1538 paragraph.

1539 (e) On each day of an absentee voting period, each county board of registrars or
1540 municipal absentee ballot clerk shall report for the county or municipality to the Secretary
1541 of State and post on the county or municipal website, or if the county or municipality
1542 does not maintain such a website, a place of public prominence in the county or
1543 municipality, not later than 10:00 A.M. on each business day the number of persons to
1544 whom absentee ballots have been issued, the number of persons who have returned
1545 absentee ballots, and the number of absentee ballots that have been rejected.
1546 Additionally, on each day of an advance voting period, each county board of registrars
1547 or municipal absentee ballot clerk shall report to the Secretary of State and post on the
1548 county or municipal website, or if the county or municipality does not maintain such a
1549 website, a place of public prominence in the county or municipality, not later than 10:00
1550 A.M. on each business day the number of persons who have voted at the advance voting
1551 sites in the county or municipality. During the absentee voting period and for a period
1552 of three days following a primary, election, or runoff, each county board of registrars or
1553 municipal absentee ballot clerk shall report to the Secretary of State and post on the
1554 county or municipal website, or if the county or municipality does not maintain such a
1555 website, a place of public prominence in the county or municipality, not later than 10:00
1556 A.M. on each business day the number of persons who have voted provisional ballots, the
1557 number of provisional ballots that have verified or cured and accepted for counting, and
1558 the number of provisional ballots that have been rejected."

1559 **SECTION 29.**

1560 Said chapter is further amended by revising Code Section 21-2-386, relating to safekeeping,
1561 certification, and validation of absentee ballots, rejection of ballot, delivery of ballots to

1562 manager, duties of managers, precinct returns, and notification of challenged elector, as
1563 follows:

1564 "21-2-386.

1565 (a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened,
1566 and stored in a manner that will prevent tampering and unauthorized access all official
1567 absentee ballots received from absentee electors prior to the closing of the polls on the
1568 day of the primary or election except as otherwise provided in this subsection.

1569 (B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the
1570 receipt of the ballot on its envelope. The registrar or clerk shall then compare the
1571 number of the elector's Georgia driver's license number or state identification card
1572 issued pursuant to Article 5 of Chapter 5 of Title 40 and date of birth entered on the
1573 absentee ballot envelope identifying information on the oath with the same information
1574 on file in his or her office, shall compare the signature or mark on the oath with the
1575 signature or mark on the absentee elector's voter registration card or the most recent
1576 update to such absentee elector's voter registration card and application for absentee
1577 ballot or a facsimile of said signature or mark taken from said card or application, and
1578 shall, if the information and signature appear to be valid and other identifying
1579 information appears to be correct, contained in the elector's voter registration records.
1580 If the elector has affirmed on the envelope that he or she does not have a Georgia
1581 driver's license or state identification card issued pursuant to Article 5 of Chapter 5 of
1582 Title 40, the registrar or clerk shall compare the last four digits of the elector's social
1583 security number and date of birth entered on the envelope with the same information
1584 contained in the elector's voter registration records. The registrar or clerk shall also
1585 confirm that the elector signed the oath and the person assisting the elector, if any,
1586 signed the required oath. If the elector has signed the elector's oath, the person assisting
1587 has signed the required oath, if applicable, and the identifying information entered on
1588 the absentee ballot envelope matches the same information contained in the elector's

1589 voter registration record, the registrar or clerk shall so certify by signing or initialing
1590 his or her name below the voter's oath. Each elector's name so certified shall be listed
1591 by the registrar or clerk on the numbered list of absentee voters prepared for his or her
1592 precinct.

1593 (C) If the elector has failed to sign the oath, or if the ~~signature~~ identifying information
1594 entered on the absentee ballot envelope does not ~~appear to be valid~~ match the same
1595 information appearing in the elector's voter registration record, or if the elector has
1596 failed to furnish required information or information so furnished does not conform
1597 with that on file in the registrar's or clerk's office, or if the elector is otherwise found
1598 disqualified to vote, the registrar or clerk shall write across the face of the envelope
1599 'Rejected,' giving the reason therefor. The board of registrars or absentee ballot clerk
1600 shall promptly notify the elector of such rejection, a copy of which notification shall be
1601 retained in the files of the board of registrars or absentee ballot clerk for at least two
1602 years. Such elector shall have until the end of the period for verifying provisional
1603 ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem
1604 resulting in the rejection of the ballot. The elector may cure a failure to sign the oath,
1605 ~~an invalid signature~~ nonmatching identifying information, or missing information by
1606 submitting an affidavit to the board of registrars or absentee ballot clerk along with a
1607 copy of one of the forms of identification enumerated in subsection (c) of Code
1608 Section 21-2-417 before the close of such period. The affidavit shall affirm that the
1609 ballot was submitted by the elector, is the elector's ballot, and that the elector is
1610 registered and qualified to vote in the primary, election, or runoff in question. If the
1611 board of registrars or absentee ballot clerk finds the affidavit and identification to be
1612 sufficient, the absentee ballot shall be counted.

1613 (D) An elector who registered to vote by mail, but did not comply with subsection (c)
1614 of Code Section 21-2-220, and who votes for the first time in this state by absentee
1615 ballot shall include with his or her application for an absentee ballot or in the outer oath

envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify the elector that such ballot is deemed a provisional ballot and shall provide information on the types of identification needed and how and when such identification is to be submitted to the board of registrars or absentee ballot clerk to verify the ballot.

(E) Three copies of the numbered list of voters shall also be prepared for such rejected absentee electors, giving the name of the elector and the reason for the rejection in each case. Three copies of the numbered list of certified absentee voters and three copies of the numbered list of rejected absentee voters for each precinct shall be turned over to the poll manager in charge of counting the absentee ballots and shall be distributed as required by law for numbered lists of voters.

(F) All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election shall be safely kept unopened by the board or absentee ballot clerk and then transferred to the appropriate clerk for storage for the period of time required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election. The board of registrars or absentee ballot clerk shall promptly notify the elector by first-class mail that the elector's ballot was returned too late to be counted and that the elector will not receive credit for voting in the primary

or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

(G) Notwithstanding any provision of this chapter to the contrary, until the United States Department of Defense notifies the Secretary of State that the Department of Defense has implemented a system of expedited absentee voting for those electors covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by eligible absentee electors who reside outside the county or municipality in which the primary, election, or runoff is held and are members of the armed forces of the United States, members of the merchant marine of the United States, spouses or dependents of members of the armed forces or merchant marine residing with or accompanying such members, or overseas citizens that are postmarked by the date of such primary, election, or runoff and are received within the three-day period following such primary, election, or runoff, if proper in all other respects, shall be valid ballots and shall be counted and included in the certified election results.

~~(2)(A) Beginning at 8:00 A.M. on the third Monday prior to~~ After the opening of the polls on the day of the primary, election, or runoff, the ~~registrars or absentee ballot clerks~~ election superintendent shall be authorized to open the outer oath envelope on which is printed the oath of the elector of absentee ballots that have been verified and accepted pursuant to subparagraph (a)(1)(B) of this Code section, in such a manner as not to destroy the oath printed thereon; provided, however, that the ~~registrars or absentee ballot clerk~~ shall not be authorized to remove the contents of such outer envelope, or to open the inner envelope marked 'Official Absentee Ballot,' ~~except as otherwise provided in this Code section~~ and scan the absentee ballot using one or more ballot scanners. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the ~~outer~~ absentee ballot envelopes are being opened and the absentee

ballots are being scanned. After opening the outer envelopes, the ballots shall be safely
and securely stored until the time for tabulating such ballots. However, no person shall
tally, tabulate, estimate, or attempt to tally, tabulate, or estimate or cause the ballot
scanner or any other equipment to produce any tally or tabulate, partial or otherwise,
of the absentee ballots cast until the time for the closing of the polls on the day of the
primary, election, or runoff except as provided in this Code section. Prior to beginning
the process set forth in this paragraph, the superintendent shall provide written notice
to the Secretary of State in writing at least seven days prior to processing and scanning
absentee ballots. Such notice shall contain the dates, start and end times, and location
or locations where absentee ballots will be processed and scanned. The superintendent
shall also post such notice publicly in a prominent location in the superintendent's office
and on the home page of the county election superintendent's website, if the county
election superintendent maintains such a website. The Secretary of State shall publish
on his or her website the information he or she receives from superintendents stating
the dates, times, and locations where absentee ballots will be processed.
(B) The proceedings set forth in this paragraph shall be open to the view of the public,
but no person except one employed and designated by the superintendent shall touch
any ballot or ballot container. Any person involved in processing and scanning
absentee ballots shall swear an oath, in the same form as the oath for poll officers
provided in Code Section 21-2-95, prior to beginning the processing and scanning of
absentee ballots. The county executive committee or, if there is no organized county
executive committee, the state executive committee of each political party and political
body having candidates whose names appear on the ballot for such election shall have
the right to designate two persons and each independent and nonpartisan candidate
whose name appears on the ballot for such election shall have the right to designate one
person to act as monitors for such process. In the event that the only issue to be voted
upon in an election is a referendum question, the superintendent shall also notify in

writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process. While viewing or monitoring the process set forth in this paragraph, monitors and observers shall be prohibited from:

(i) In any way interfering with the processing or scanning of absentee ballots or the conduct of the election;

(ii) Using or bringing into the room any photographic or other electronic monitoring or recording devices, cellular telephones, or computers;

(iii) Engaging in any form of campaigning or campaign activity;

(iv) Taking any action that endangers the secrecy and security of the ballots;

(v) Touching any ballot or ballot container;

(vi) Tallying, tabulating, estimating, or attempting to tally, tabulate, or estimate, whether partial or otherwise, any of the votes on the absentee ballots cast; and

(vii) Communicating any information that they see while monitoring the processing and scanning of the absentee ballots, whether intentionally or inadvertently, about any ballot, vote, or selection to anyone other than an election official who needs such information to lawfully carry out his or her official duties.

(C) The State Election Board shall promulgate rules requiring reconciliation procedures; prompt and undelayed scanning of ballots after absentee ballot envelopes are opened; secrecy of election results prior to the closing of the polls on the day of a primary, election, or runoff; and other protections to protect the integrity of the process set forth in this paragraph.

(3) A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff ~~open the inner envelopes in accordance with the procedures prescribed in this subsection and~~ begin tabulating the absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary,

election, or runoff, the Secretary of State of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process.

(4) The county election superintendent shall publish a written notice in the superintendent's office of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls and publish such notice at least one week prior to the primary, election, or runoff in the legal organ of the county.

(5) The process for opening ~~the inner~~ absentee ballot envelopes, scanning absentee ballots, ~~of~~ and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be ~~a confidential process~~ conducted in a manner to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.

(6) All persons conducting the tabulation of absentee ballots during the day of a primary, election, or runoff, including the vote review panel required by Code Section 21-2-483, and all monitors and observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular

telephones; shall not utilize computers for the purpose of ~~e-mail~~ email, instant messaging, or other forms of communication; and shall not communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory and technical assistance personnel shall be permitted to enter and leave the area in which the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be placed into locked ballot boxes and may be transferred to locked ballot bags, if needed, for security. The persons conducting the tabulation of the absentee ballots shall not cause the tabulating equipment to produce any count, partial or otherwise, of the absentee votes cast until the time for the closing of the polls except as otherwise provided in this Code section.

(b) When requested by the superintendent, but not earlier than the third Monday prior to a primary, election, or runoff ~~As soon as practicable after 7:00 A.M. on the day of the primary, election, or runoff, in precincts other than those in which optical scanning tabulators are used,~~ a registrar or absentee ballot clerk shall deliver the official absentee ballot of each certified absentee elector, each rejected absentee ballot, applications for such ballots, and copies of the numbered lists of certified and rejected absentee electors to the ~~manager in charge of the absentee ballot precinct of the county or municipality, which shall be located in the precincts containing the county courthouse or polling place designated by the municipal superintendent. In those precincts in which optical scanning tabulators are used, such absentee ballots shall be taken to the tabulation center or other place~~ location designated by the superintendent, and the superintendent or official receiving such absentee

ballots shall issue his or her receipt therefor. ~~Except as otherwise provided in this Code section, in no event shall the counting of the ballots begin before the polls close.~~

(c) The superintendent shall cause the verified and accepted absentee ballots to be opened and tabulated as provided in this Code section. ~~A~~ ~~Except as otherwise provided in this Code section, after the close of the polls on the day of the primary, election, or runoff, a~~ manager shall then open the outer envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope marked 'Official Absentee Ballot' in a ballot box reserved for absentee ballots. In the event that an outer envelope is found to contain an absentee ballot that is not in an inner envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person sealing the inner envelope, and deposited in the ballot box and counted in the same manner as other absentee ballots, provided that such ballot is otherwise proper. Such manager with two assistant managers, appointed by the superintendent, with such clerks as the manager deems necessary shall count the absentee ballots following the procedures prescribed by this chapter for other ballots, insofar as practicable, ~~and prepare an election return for the county or municipality showing the results of the absentee ballots cast in such county or municipality.~~

(d) All absentee ballots shall be counted and tabulated in such a manner that returns may be reported by precinct; and separate returns shall be made for each precinct in which absentee ballots were cast showing the results by each precinct in which the electors reside. The superintendent shall utilize the procedures set forth in this Code section to ensure that the returns of verified and accepted absentee ballots cast are reported to the public as soon as possible following the closing of the polls on the day of the primary, election, or runoff. Failure to utilize these procedures to ensure that the returns of verified and accepted absentee ballots are reported as soon as possible following the close of polls shall subject the superintendent to sanctions by the State Election Board. If a superintendent fails to report the returns of verified and accepted absentee ballots by the day following the

election at 5:00 P.M., the State Election Board may convene an independent performance review board pursuant to Code Section 21-2-107.

(e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall write 'Challenged,' the elector's name, and the alleged cause of challenge on the outer envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection. The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

(f) It shall be unlawful at any time prior to the close of the polls for any person to disclose or for any person to receive any information regarding the results of the tabulation of absentee ballots except as expressly provided by law."

SECTION 30.

Said chapter is further amended in Code Section 21-2-390, relating to delivery of election materials to clerk of superior court or city clerk after primary or election and accounting for ballots by registrars or municipal absentee ballot clerks, by designating the existing text as subsection (a) and adding a new subsection to read as follows:

"(b) The Secretary of State shall be authorized to inspect and audit the information contained in the absentee ballot applications or envelopes at his or her discretion at any time during the 24 month retention period. Such audit may be conducted state wide or in selected counties or cities and may include the auditing of a statistically significant sample of the envelopes or a full audit of all of such envelopes. For this purpose, the Secretary of State or his or her authorized agents shall have access to such envelopes in the custody of the clerk of superior court or city clerk."

SECTION 31.

Said chapter is further amended in Code Section 21-2-403, relating to time for opening and closing of polls, by redesignating the existing text as subsection (a) and adding a new subsection to read as follows:

"(b) Poll hours at a precinct may be extended only by order of a judge of the superior court of the county in which the precinct is located upon good cause shown by clear and convincing evidence that persons were unable to vote at that precinct during a specific period or periods of time. Poll hours shall not be extended longer than the total amount of time during which persons were unable to vote at such precinct. Any order extending poll hours at a precinct beyond 9:00 P.M. shall be by written order with specific findings of fact supporting such extension."

SECTION 32.

Said chapter is further amended by revising subsections (c) and (e) of Code Section 21-2-408, relating to poll watchers, designation, duties, removal for interference with election, reports by poll watchers of infractions or irregularities, and ineligibility of candidates to serve as poll watchers, as follows:

"(c) In counties or municipalities using direct recording electronic (DRE) voting systems or optical scanning voting systems, each political party may appoint two poll watchers in each primary or election, each political body may appoint two poll watchers in each election, each nonpartisan candidate may appoint one poll watcher in each nonpartisan election, and each independent candidate may appoint one poll watcher in each election to serve in the locations designated by the superintendent within the tabulating center. Such designated locations shall include the check-in area, the computer room, the duplication area, and such other areas as the superintendent may deem necessary to the assurance of fair and honest procedures in the tabulating center. The locations designated by the superintendent shall ensure that each poll watcher can fairly observe the procedures set

1855 forth in this Code section. The poll watchers provided for in this subsection shall be
1856 appointed and serve in the same manner as other poll watchers."
1857 "(e) No person shall be appointed or be eligible to serve as a poll watcher in any primary
1858 or election in which such person is a candidate. No person shall be eligible to serve as a
1859 poll watcher unless he or she has completed training provided by the political party,
1860 political body, or candidate designating the poll watcher. Upon request, the Secretary of
1861 State shall make available material to each political party, political body, or candidate that
1862 can be utilized in such training but it shall be the responsibility of the political party,
1863 political body, or candidate designating the poll watcher to instruct poll watchers in their
1864 duties and in applicable laws and rules and regulations. Each political party, political body,
1865 or candidate shall, in their written designation of poll watchers, certify under oath that the
1866 named poll watchers have completed the training required by this Code section."

1867 **SECTION 33.**

1868 Said chapter is further amended by revising subsections (a) and (e) of Code
1869 Section 21-2-414, relating to restrictions on campaign activities and public opinion polling
1870 within the vicinity of a polling place, cellular phone use prohibited, prohibition of candidates
1871 from entering certain polling places, and penalty, as follows:

1872 "(a) No person shall solicit votes in any manner or by any means or method, nor shall any
1873 person distribute or display any campaign material, nor shall any person give, offer to give,
1874 or participate in the giving of any money or gifts, including, but not limited to, food and
1875 drink, to an elector, nor shall any person solicit signatures for any petition, nor shall any
1876 person, other than election officials discharging their duties, establish or set up any tables
1877 or booths on any day in which ballots are being cast:

1878 (1) Within 150 feet of the outer edge of any building within which a polling place is
1879 established;

1880 (2) Within any polling place; or

(3) Within 25 feet of any voter standing in line to vote at any polling place.

These restrictions shall not apply to conduct occurring in private offices or areas which cannot be seen or heard by such electors."

"(e) This Code section shall not be construed to prohibit a poll officer from distributing materials, as required by law, which are necessary for the purpose of instructing electors or from distributing materials prepared by the Secretary of State which are designed solely for the purpose of encouraging voter participation in the election being conducted or from making available self-service water from an unattended receptacle to an elector waiting in line to vote."

SECTION 34.

Said chapter is further amended by revising subsections (a) and (b) of Code Section 21-2-418, relating to provisional ballots, as follows:

"(a) If a person presents himself or herself at a polling place, absentee polling place, or registration office in his or her county of residence in this state for the purpose of casting a ballot in a primary or election stating a good faith belief that he or she has timely registered to vote in such county of residence in such primary or election and the person's name does not appear on the list of registered electors, the person shall be entitled to cast a provisional ballot in his or her county of residence in this state as provided in this Code section. If the person presents himself or herself at a polling place in the county in which he or she is registered to vote, but not at the precinct at which he or she is registered to vote, the poll officials shall inform the person of the polling location for the precinct where such person is registered to vote. The poll officials shall also inform such person that any votes cast by a provisional ballot in the wrong precinct will not be counted unless it is cast after 5:00 P.M. and before the regular time for the closing of the polls on the day of the primary, election, or runoff and unless the person executes a sworn statement, witnessed

1906 by the poll official, stating that he or she is unable to vote at his or her correct polling place
1907 prior to the closing of the polls and giving the reason therefor.

1908 (b) Such person voting a provisional ballot shall complete an official voter registration
1909 form and a provisional ballot voting certificate which shall include information about the
1910 place, manner, and approximate date on which the person registered to vote. The person
1911 shall swear or affirm in writing that he or she previously registered to vote in such primary
1912 or election, is eligible to vote in such primary or election, has not voted previously in such
1913 primary or election, and meets the criteria for registering to vote in such primary or
1914 election. If the person is voting a provisional ballot in the county in which he or she is
1915 registered to vote but not at the precinct in which he or she is registered to vote during the
1916 period from 5:00 P.M. to the regular time for the closing of the polls on the day of the
1917 primary, election, or runoff, the person shall execute a sworn statement, witnessed by the
1918 poll official, stating that he or she is unable to vote at his or her correct polling place prior
1919 to the closing of the polls and giving the reason therefor. The form of the provisional ballot
1920 voting certificate shall be prescribed by the Secretary of State. The person shall also
1921 present the identification required by Code Section 21-2-417."

1922 **SECTION 35.**

1923 Said chapter is further amended by revising Code Section 21-2-419, relating to validation of
1924 provisional ballots and reporting to Secretary of State, as follows:

1925 "21-2-419.

1926 (a) A person shall cast a provisional ballot on the same type of ballot that is utilized by the
1927 county or municipality. Such provisional ballot shall be sealed in double envelopes as
1928 provided in Code Section 21-2-384 and shall be deposited by the person casting such ballot
1929 in a secure, sealed ballot box.

1930 (b) At the earliest time possible after the casting of a provisional ballot, but no later than
1931 the day after the primary or election in which such provisional ballot was cast, the board

of registrars of the county or municipality, as the case may be, shall be notified by the election superintendent that provisional ballots were cast in the primary or election and the registrars shall be provided with the documents completed by the person casting the provisional ballot as provided in Code Section 21-2-418. Provisional ballots shall be securely maintained by the election superintendent until a determination has been made concerning their status. The board of registrars shall immediately examine the information contained on such documents and make a good faith effort to determine whether the person casting the provisional ballot was entitled to vote in the primary or election. Such good faith effort shall include a review of all available voter registration documentation, including registration information made available by the electors themselves and documentation of modifications or alterations of registration data showing changes to an elector's registration status. Additional sources of information may include, but are not limited to, information from the Department of Driver Services, Department of Family and Children Services, Department of Natural Resources, public libraries, or any other agency of government including, but not limited to, other county election and registration offices.

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

(2) If the registrars determine after the polls close, but not later than three days following the primary or election, that the person voting the provisional ballot timely registered and was eligible and entitled to vote in the primary or election but voted in the wrong precinct, then the board of registrars shall notify the election superintendent only if such person voted between the hours of 5:00 P.M. and the regular time for the closing of the polls on the day of the primary, election, or runoff and provided the sworn statement

required by subsection (b) of Code Section 21-2-418. The superintendent shall count such person's votes which were cast for candidates in those races for which the person was entitled to vote but shall not count the votes cast for candidates in those races in which such person was not entitled to vote. The superintendent shall order the proper election official at the tabulating center or precinct to prepare an accurate duplicate ballot containing only those votes cast by such person in those races in which such person was entitled to vote for processing at the tabulating center or precinct, which shall be verified in the presence of a witness. Such duplicate ballot shall be clearly labeled with the word 'Duplicate,' shall bear the designation of the polling place, and shall be given the same serial number as the original ballot. The original ballot shall be retained and the sworn statement required by subsection (b) of Code Section 21-2-418 shall be transmitted to the Secretary of State with the certification documents required by paragraph (4) of subsection (a) of Code Section 21-2-497 and such statement shall be reviewed by the State Election Board.

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

(d)(1) At the earliest time possible after a determination is made regarding a provisional ballot, the board of registrars shall notify in writing those persons whose provisional ballots were not counted that their ballots were not counted because of the inability of the registrars to verify that the persons timely registered to vote or other proper reason. The

registrars shall process the official voter registration form completed by such persons pursuant to Code Section 21-2-418 and shall add such persons to the electors list if found qualified.

(2) At the earliest time possible after a determination is made regarding a provisional ballot, the board of registrars shall notify in writing those electors who voted in the wrong precinct and whose votes were partially counted of their correct precinct.

(e) The board of registrars shall complete a report in a form designated by the Secretary of State indicating the number of provisional ballots cast and counted in the primary or election."

SECTION 36.

Said chapter is further amended in Part 1 of Article 11, relating to general provisions regarding preparation for and conduct of primaries and elections, by adding new Code sections to read as follows:

"21-2-420.

(a) After the time for the closing of the polls and the last elector voting, the poll officials in each precinct shall complete the required accounting and related documentation for the precinct and shall advise the election superintendent of the total number of ballots cast at such precinct and the total number of provisional ballots cast. The chief manager and at least one assistant manager shall post a copy of the tabulated results for the precinct on the door of the precinct and then immediately deliver all required documentation and election materials to the election superintendent. The election superintendent shall then ensure that such ballots are processed, counted, and tabulated as soon as possible and shall not cease such count and tabulation until all such ballots are counted and tabulated.

(b) The election superintendent shall ensure that each precinct notifies the election superintendent of the number of ballots cast and number of provisional ballots cast as soon as possible after the time for the closing of the polls and the last elector votes. The election

2012 superintendent shall post such information publicly. The State Election Board shall
2013 promulgate rules and regulations regarding how such information shall be publicly posted
2014 to ensure transparency, accuracy, and security.

2015 21-2-421.

2016 (a) As soon as possible but not later than 10:00 P.M. following the close of the polls on
2017 the day of a primary, election, or runoff, the election superintendent shall report to the
2018 Secretary of State and post in a prominent public place the following information:

2019 (1) The number of ballots cast at the polls on the day of the primary, election, or runoff,
2020 including provisional ballots cast;

2021 (2) The number of ballots cast at advance voting locations during the advance voting
2022 period for the primary, election, or runoff; and

2023 (3) The total number of absentee ballots returned to the board of registrars by the
2024 deadline to receive such absentee ballots on the day of the primary, election, or runoff.

2025 (b) Upon the completion of the report provided for in subsection (a) of this Code section,
2026 the election superintendent shall compare the total number of ballots received as reported
2027 in subsection (a) of this Code section and the counting of the ballots in the primary,
2028 election, or runoff minus any rejected and uncured absentee ballots, uncounted provisional
2029 ballots, and any other uncounted ballots, with the total number of ballots cast in the
2030 primary, election, or runoff. The results of such comparison and all explanatory materials
2031 shall be reported to the Secretary of State. The reason for any discrepancy shall be fully
2032 investigated and reported to the Secretary of State."

2033 **SECTION 37.**

2034 Said chapter is further amended by revising subsections (a) and (d) of Code
2035 Section 21-2-437, relating to procedure as to count and return of votes generally and void
2036 ballots, as follows:

2037 "(a) After the polls close and as soon as all the ballots have been properly accounted for
2038 and those outside the ballot box as well as the voter's certificates, numbered list of voters,
2039 and electors list have been sealed, the poll officers shall open the ballot box and take
2040 therefrom all ballots contained therein. In primaries in which more than one ballot box is
2041 used, any ballots or stubs belonging to another party holding its primary in the same polling
2042 place shall be returned to the ballot box for the party for which they were issued. In
2043 primaries, separate tally and return sheets shall be prepared for each party, and separate
2044 poll officers shall be designated by the chief manager to count and tally each party's ballot.
2045 Where the same ballot box is being used by one or more parties, the ballots and stubs shall
2046 first be divided by party before being tallied and counted. The ballots shall then be counted
2047 one by one and a record made of the total number. Then the chief manager, together with
2048 such assistant managers and other poll officers as the chief manager may designate, under
2049 the scrutiny of one of the assistant managers and in the presence of the other poll officers,
2050 shall read aloud the names of the candidates marked or written upon each ballot, together
2051 with the office for which the person named is a candidate, and the answers contained on
2052 the ballots to the questions submitted, if any; and the other assistant manager and clerks
2053 shall carefully enter each vote as read and keep account of the same in ink on a sufficient
2054 number of tally papers, all of which shall be made at the same time. All ballots, after being
2055 removed from the box, shall be kept within the unobstructed view of all persons in the
2056 voting room until replaced in the box. No person, while handling the ballots, shall have
2057 in his or her hand any pencil, pen, stamp, or other means of marking or spoiling any ballot.
2058 The poll officers shall immediately proceed to canvass and compute the votes cast and shall
2059 not adjourn or postpone the canvass or computation until it shall have been fully
2060 completed, ~~except that, in the discretion of the superintendent, the poll officers may stop~~
2061 ~~the counting after all contested races and questions are counted, provided that the results~~
2062 ~~of these contested races and questions are posted for the information of the public outside~~

2063 ~~the polling place and the ballots are returned to the ballot box and deposited with the~~
2064 ~~superintendent until counting is resumed on the following day."~~

2065 "(d) Any ballot marked so as to identify the voter shall be void and not counted, except a
2066 ballot cast by a challenged elector whose name appears on the electors list; such challenged
2067 vote shall be counted as prima facie valid but may be voided in the event of an election
2068 contest. Any ballot marked by anything but pen or pencil shall be void and not counted.
2069 Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote
2070 for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if
2071 otherwise properly marked. If an elector shall mark his or her ballot for more persons for
2072 any nomination or office than there are candidates to be voted for such nomination or
2073 office, or if, for any reason, it may be impossible to determine his or her choice for any
2074 nomination or office, his or her ballot shall not be counted for such nomination or office;
2075 but the ballot shall be counted for all nominations or offices for which it is properly
2076 marked. Unmarked ballots or ballots improperly or defectively marked so that the whole
2077 ballot is void shall be set aside and shall be preserved with other ballots. In primaries,
2078 votes cast for candidates who have died, withdrawn, or been disqualified shall be void and
2079 shall not be counted. Except as provided in subsection (g) of Code Section 21-2-134
2080 regarding nonpartisan elections, in in elections, votes for candidates who have died or been
2081 disqualified shall be void and shall not be counted."

2082 **SECTION 38.**

2083 Said chapter is further amended by revising subsection (a) of Code Section 21-2-438, relating
2084 to ballots identifying voter, not marked, or improperly marked declared void, as follows:

2085 "(a) Any ballot marked so as to identify the voter shall be void and not counted, except a
2086 ballot cast by a challenged elector whose name appears on the electors list; such challenged
2087 vote shall be counted as prima facie valid but may be voided in the event of an election
2088 contest. Any ballot marked by anything but pen or pencil shall be void and not counted.

2089 Any erasure, mutilation, or defect in the vote for any candidate shall render void the vote
2090 for such candidate but shall not invalidate the votes cast on the remainder of the ballot, if
2091 otherwise properly marked. If an elector shall mark his or her ballot for more persons for
2092 any nomination or office than there are candidates to be voted for such nomination or
2093 office, or if, for any reason, it may be impossible to determine his or her choice for any
2094 nomination or office, his or her ballot shall not be counted for such nomination or office;
2095 but the ballot shall be counted for all nominations or offices for which it is properly
2096 marked. Ballots not marked or improperly or defectively marked so that the whole ballot
2097 is void, shall be set aside and shall be preserved with the other ballots. In primaries, votes
2098 cast for candidates who have died, withdrawn, or been disqualified shall be void and shall
2099 not be counted. Except as provided in subsection (g) of Code Section 21-2-134 regarding
2100 nonpartisan elections, in ~~in~~ elections, votes for candidates who have died or been
2101 disqualified shall be void and shall not be counted."

2102 **SECTION 38A.**

2103 Said chapter is further amended by revising subsection (a) of Code Section 21-2-480, relating
2104 to caption for ballots, party designations, and form and arrangement, as follows:
2105 "(a) At the top of each ballot for an election in a precinct using optical scanning voting
2106 equipment shall be printed in prominent type the words 'OFFICIAL BALLOT,' followed
2107 by the name and designation of the precinct for which it is prepared and the name and date
2108 of the election."

2109 **SECTION 38B.**

2110 Said chapter is further amended by revising Code Section 21-2-482, relating to absentee
2111 ballots for precincts using optical scanning voting equipment, as follows:
2112 "21-2-482.

2113 Ballots in a precinct using optical scanning voting equipment for voting by absentee
 2114 electors shall be prepared sufficiently in advance by the superintendent and shall be
 2115 delivered to the board of registrars as provided in Code Section 21-2-384. Such ballots
 2116 shall be marked 'Official Absentee Ballot' and shall be in substantially the form for ballots
 2117 required by Article 8 of this chapter, except that in counties or municipalities using voting
 2118 machines, direct recording electronic (DRE) units, or ballot scanners, the ballots may be
 2119 in substantially the form for the ballot labels required by Article 9 of this chapter or in such
 2120 form as will allow the ballot to be machine tabulated. Every such ballot shall have printed
 2121 on the face thereof the following:

2122 'I understand that the offer or acceptance of money or any other object of value to vote
 2123 for any particular candidate, list of candidates, issue, or list of issues included in this
 2124 election constitutes an act of voter fraud and is a felony under Georgia law.'

2125 The form for either ballot shall be determined and prescribed by the Secretary of State and
 2126 shall have printed at the top the name and designation of the precinct."

2127 **SECTION 39.**

2128 Said chapter is further amended by revising subsection (f) of Code Section 21-2-483, relating
 2129 to counting of ballots, public accessibility to tabulating center and precincts, execution of
 2130 ballot recap forms, and preparation of duplicate ballots, as follows:

2131 "(f) If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be
 2132 processed by the tabulating machine, the superintendent, in his or her discretion, may order
 2133 ~~the proper election official at the tabulating center or precinct~~ a duplication panel to prepare
 2134 a true duplicate copy for processing ~~with the ballots of the same polling place, which shall~~
 2135 ~~be verified in the presence of a witness.~~ In a partisan election, the duplication panel shall
 2136 be composed of the election superintendent or a designee thereof and one person appointed
 2137 by the county executive committee of each political party having candidates whose names
 2138 appear on the ballot for such election, provided that, if there is no organized county

2139 executive committee for a political party, the person shall be appointed by the state
2140 executive committee of the political party. In a nonpartisan election or an election
2141 involving only the presentation of a question to the electors, the duplication panel shall be
2142 composed of the election superintendent or a designee thereof and two electors of the
2143 county or municipality. In the case of a nonpartisan county or municipal election or an
2144 election involving only the presentation of a question to the electors, the two elector
2145 members of the panel shall be appointed by the chief judge of the superior court of the
2146 county or municipality in which the election is held. In the case of a municipality which
2147 is located in more than one county, the two elector members of the panel shall be appointed
2148 by the chief judge of the superior court of the county in which the city hall of the
2149 municipality is located. The election superintendent may create multiple duplication panels
2150 to handle the processing of such ballots more efficiently. All duplicate ballots shall be
2151 clearly labeled by the word 'duplicate,' shall bear the designation of the polling place, and
2152 shall be given the same serial number as the defective ballot contain a unique number that
2153 will allow such duplicate ballot to be linked back to the original ballot. The defective
2154 ballot shall be retained."

2155 **SECTION 40.**

2156 Said chapter is further amended by revising Code Section 21-2-492, relating to computation
2157 and canvassing of returns, notice of when and where returns will be computed and canvassed,
2158 blank forms for making statements of returns, and swearing of assistants, as follows:

2159 "21-2-492.

2160 The superintendent shall arrange for the computation and canvassing of the returns of votes
2161 cast at each primary and election at his or her office or at some other convenient public
2162 place at the county seat or municipality following the close of the polls on the day of such
2163 primary or election with accommodations for those present insofar as space permits. An
2164 interested candidate or his or her representative shall be permitted to keep or check his or

2165 her own computation of the votes cast in the several precincts as the returns from the same
 2166 are read, as directed in this article. The superintendent shall give at least one week's notice
 2167 prior to the primary or election by publishing same in a conspicuous place in the
 2168 superintendent's office, of the time and place when and where he or she will commence and
 2169 hold his or her sessions for the computation and canvassing of the returns; and he or she
 2170 shall keep copies of such notice posted in his or her office during such period. The
 2171 superintendent shall procure a sufficient number of blank forms of returns made out in the
 2172 proper manner and headed as the nature of the primary or election may require, for making
 2173 out full and fair statements of all votes which shall have been cast within the county or any
 2174 precinct therein, according to the returns from the several precincts thereof, for any person
 2175 voted for therein, or upon any question voted upon therein. The assistants of the
 2176 superintendent in the computation and canvassing of the votes shall be first sworn by the
 2177 superintendent to perform their duties impartially and not to read, write, count, or certify
 2178 any return or vote in a false or fraudulent manner."

2179 **SECTION 41.**

2180 Said chapter is further amended by revising subsections (a) and (k) of Code
 2181 Section 21-2-493, relating to computation, canvassing, and tabulation of returns,
 2182 investigation of discrepancies in vote counts, recount procedure, certification of returns, and
 2183 change in returns, and adding a new subsection to read as follows:

2184 "(a) The superintendent shall, ~~at or before 12:00 Noon~~ after the close of the polls on the
 2185 day ~~following the~~ of a primary or election, at his or her office or at some other convenient
 2186 public place at the county seat or in the municipality, of which due notice shall have been
 2187 given as provided by Code Section 21-2-492, publicly commence the computation and
 2188 canvassing of the returns and continue ~~the same~~ until all absentee ballots received by the
 2189 close of the polls, including those cast by advance voting, and all ballots cast on the day
 2190 of the primary or election have been counted and tabulated and the results of such

2191 tabulation released to the public and, then, continuing with provisional ballots as provided
2192 in Code Sections 21-2-418 and 21-2-419 and those absentee ballots as provided in
2193 subparagraph (a)(1)(G) of Code Section 21-2-386 from day to day until completed. For
2194 this purpose, the superintendent may organize his or her assistants into sections, each of
2195 which whom may simultaneously proceed with the computation and canvassing of the
2196 returns from various precincts of the county or municipality in the manner provided by this
2197 Code section. Upon the completion of such computation and canvassing, the
2198 superintendent shall tabulate the figures for the entire county or municipality and sign,
2199 announce, and attest the same, as required by this Code section."

2200 "(j.1) The Secretary of State shall create a pilot program for the posting of digital images
2201 of the scanned paper ballots created by the voting system.

2202 (k) As the returns from each precinct are read, computed, and found to be correct or
2203 corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until
2204 all the returns from the various precincts which are entitled to be counted shall have been
2205 duly recorded; then they shall be added together, announced, and attested by the assistants
2206 who made and computed the entries respectively and shall be signed by the superintendent.
2207 The consolidated returns shall then be certified by the superintendent in the manner
2208 required by this chapter. Such returns shall be certified by the superintendent not later than
2209 5:00 P.M. on the ~~second Friday~~ Monday following the date on which such election was
2210 held and such returns shall be immediately transmitted to the Secretary of State; ~~provided,~~
2211 ~~however, that such certification date may be extended by the Secretary of State in his or~~
2212 ~~her discretion if necessary to complete a precertification audit as provided in Code Section~~
2213 ~~21-2-498."~~

2214 **SECTION 42.**

2215 Said chapter is further amended by revising Code Section 21-2-501, relating to number of
2216 votes required for election, as follows:

2217 "21-2-501.

2218 (a)(1) Except as otherwise provided in this Code section, no candidate shall be
2219 nominated for public office in any primary or special primary or elected to public office
2220 in any election or special election or shall take or be sworn into such elected public office
2221 unless such candidate shall have received a majority of the votes cast to fill such
2222 nomination or public office. In instances where no candidate receives a majority of the
2223 votes cast, a run-off primary, special primary runoff, run-off election, or special election
2224 runoff between the candidates receiving the two highest numbers of votes shall be held.
2225 Unless such date is postponed by a court order, such ~~run-off primary, special primary~~
2226 ~~runoff, run-off election, or special election~~ runoff shall be held ~~as provided in this~~
2227 ~~subsection.~~

2228 ~~(2) In the case of a runoff from a general primary or a special primary or special election~~
2229 ~~held in conjunction with a general primary, the runoff shall be held on the Tuesday of the~~
2230 ~~ninth week following such general primary.~~

2231 ~~(3) In the case of a runoff from a general election for a federal office or a runoff from a~~
2232 ~~special primary or special election for a federal office held in conjunction with a general~~
2233 ~~election, the runoff shall be held on the Tuesday of the ninth week following such general~~
2234 ~~election.~~

2235 ~~(4) In the case of a runoff from a general election for an office other than a federal office~~
2236 ~~or a runoff from a special primary or special election for an office other than a federal~~
2237 ~~office held in conjunction with a general election, the runoff shall be held on the~~
2238 ~~twenty-eighth day after the day of holding the preceding general or special primary or~~
2239 ~~general or special election.~~

2240 ~~(5) In the case of a runoff from a special primary or special election for a federal office~~
2241 ~~not held in conjunction with a general primary or general election, the runoff shall be held~~
2242 ~~on the Tuesday of the ninth week following such special primary or special election.~~

~~(6) In the case of a runoff from a special primary or special election for an office other than a federal office not held in conjunction with a general primary or general election, the runoff shall be held on the twenty-eighth day after the day of holding the preceding special primary or special election; provided, however, that, if such runoff is from a special primary or special election held in conjunction with a special primary or special election for a federal office and there is a runoff being conducted for such federal office, the runoff from the special primary or special election conducted for such other office may be held in conjunction with the runoff for the federal office.~~

~~(7)~~(2) If any candidate eligible to be in a runoff withdraws, dies, or is found to be ineligible, the remaining candidates receiving the two highest numbers of votes shall be the candidates in the runoff.

~~(8)~~(3) The candidate receiving the highest number of the votes cast in such run-off primary, special primary runoff, run-off election, or special election runoff to fill the nomination or public office sought shall be declared the winner.

~~(9)~~(4) The name of a write-in candidate eligible for election in a runoff shall be printed on the election or special election run-off ballot in the independent column.

~~(10)~~(5) The run-off primary, special primary runoff, run-off election, or special election runoff shall be a continuation of the primary, special primary, election, or special election for the particular office concerned. Only the electors who ~~were~~ are duly registered to vote and not subsequently deemed disqualified to vote in the ~~primary, special primary, election, or special election runoff~~ for candidates for that particular office shall be entitled to vote therein, and only those votes cast for the persons designated as candidates in such run-off primary, special primary runoff, run-off election, or special election runoff shall be counted in the tabulation and canvass of the votes cast. No elector shall vote in a run-off primary or special primary runoff in violation of Code Section 21-2-224.

(b) For the purposes of this subsection, the word 'plurality' shall mean the receiving by one candidate alone of the highest number of votes cast. If the municipal charter or ordinances

2270 of a municipality as now existing or as amended subsequent to September 1, 1968, provide
2271 that a candidate may be nominated or elected by a plurality of the votes cast to fill such
2272 nomination or public office, such provision shall prevail. Otherwise, no municipal
2273 candidate shall be nominated for public office in any primary or elected to public office in
2274 any election unless such candidate shall have received a majority of the votes cast to fill
2275 such nomination or public office.

2276 (c) In instances in which no municipal candidate receives a majority of the votes cast and
2277 the municipal charter or ordinances do not provide for nomination or election by a plurality
2278 vote, a run-off primary or election shall be held between the candidates receiving the two
2279 highest numbers of votes. Such runoff shall be held on the twenty-eighth day after the day
2280 of holding the first primary or election, unless such run-off date is postponed by court
2281 order, ~~provided, however, that, in the case of a runoff from a municipal special election~~
2282 ~~that is held in conjunction with a special election for a federal office and not in conjunction~~
2283 ~~with a general primary or general election, the municipality may conduct such runoff from~~
2284 ~~such municipal special election on the date of the special election runoff for the federal~~
2285 ~~office. Only the electors entitled to vote in the first primary or election shall be entitled to~~
2286 ~~vote in any run-off primary or election resulting therefrom; provided, however, that no~~ No
2287 elector shall vote in a run-off primary in violation of Code Section 21-2-216. The run-off
2288 primary or election shall be a continuation of the first primary or election, and only those
2289 votes cast for the candidates receiving the two highest numbers of votes in the first primary
2290 or election shall be counted. No write-in votes may be cast in such a primary, run-off
2291 primary, or run-off election. If any candidate eligible to be in a runoff withdraws, dies, or
2292 is found to be ineligible, the remaining candidates receiving the two highest numbers of
2293 votes shall be the candidates in such runoff. The municipal candidate receiving the highest
2294 number of the votes cast in such run-off primary or run-off election to fill the nomination
2295 or public office sought shall be declared the winner. The municipality shall give written

2296 notice to the Secretary of State of such runoff as soon as such municipality certifies the
2297 preceding primary, special primary, election, or special election.
2298 (d) The name of a municipal write-in candidate eligible for election in a municipal runoff
2299 shall be printed on the municipal run-off election ballot in the independent column.
2300 (e) In all cities having a population in excess of 100,000 according to the United States
2301 decennial census of 1980 or any future such census, in order for a municipal candidate to
2302 be nominated for public office in any primary or elected to public office in any municipal
2303 election, he or she must receive a majority of the votes cast.
2304 (f) Except for presidential electors, to be elected to public office in a general election, a
2305 candidate must receive a majority of the votes cast in an election to fill such public office.
2306 To be elected to the office of presidential electors, no slate of candidates shall be required
2307 to receive a majority of the votes cast, but that slate of candidates shall be elected to such
2308 office which receives the highest number of votes cast."

2309 **SECTION 43.**

2310 Said chapter is further amended by revising Code Section 21-2-540, relating to conduct of
2311 special elections generally, as follows:

2312 "21-2-540.

2313 (a)(1) Every special primary and special election shall be held and conducted in all
2314 respects in accordance with the provisions of this chapter relating to general primaries
2315 and general elections; and the provisions of this chapter relating to general primaries and
2316 general elections shall apply thereto insofar as practicable and as not inconsistent with
2317 any other provisions of this chapter. All special primaries and special elections held at
2318 the time of a general primary, as provided by Code Section 21-2-541, shall be conducted
2319 by the poll officers by the use of the same equipment and facilities, insofar as practicable,
2320 as are used for such general primary. All special primaries and special elections held at
2321 the time of a general election, as provided by Code Section 21-2-541, shall be conducted

by the poll officers by the use of the same equipment and facilities, ~~so far~~ insofar as practicable, as are used for such general election.

(2) If a vacancy occurs in a partisan office to which the Governor is authorized to appoint an individual to serve until the next general election, a special primary shall precede the special election.

(b) At least 29 days shall intervene between the call of a special primary and the holding of same, and at least 29 days shall intervene between the call of a special election and the holding of same. The period during which candidates may qualify to run in a special primary or a special election shall remain open for a minimum of two and one-half days. Special primaries and special elections which are to be held in conjunction with the presidential preference primary, a state-wide general primary, or state-wide general election shall be called at least 90 days prior to the date of such presidential preference primary, state-wide general primary, or state-wide general election; provided, however, that this requirement shall not apply to special primaries and special elections held on the same date as such presidential preference primary, state-wide general primary, or state-wide general election but conducted completely separate and apart from such state-wide general primary or state-wide general election using different ballots or voting equipment, facilities, poll workers, and paperwork. ~~Notwithstanding any provision of this subsection to the contrary, special elections which are to be held in conjunction with the state-wide general primary or state-wide general election in 2014 shall be called at least 60 days prior to the date of such state-wide general primary or state-wide general election.~~

(c)(1) Notwithstanding any other provision of law to the contrary, a special primary or special election to fill a vacancy in a county or municipal office shall be held only on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years, any such special primary or special election shall only be held on:

(i) The third Tuesday in March;

(ii) The third Tuesday in June;

(iii) The third Tuesday in September; or

(iv) The Tuesday after the first Monday in November; and

(B) In even-numbered years, any such special primary or special election shall only be held on:

(i) The third Tuesday in March; provided, however, that in the event that a special primary or special election is to be held under this provision in a year in which a presidential preference primary is to be held, then any such special primary or special election shall be held on the date of and in conjunction with the presidential preference primary;

(ii) The date of the general primary; or

(iii) The Tuesday after the first Monday in November;

provided, however, that, in the event that a special primary or special election to fill a federal or state office on a date other than the dates provided in this paragraph has been scheduled and it is possible to hold a special primary or special election to fill a vacancy in a county, municipal, or school board office in conjunction with such special primary or special election to fill a federal or state office, the special primary or special election to fill such county, municipal, or school board office may be held on the date of and in conjunction with such special primary or special election to fill such federal or state office, provided all other provisions of law regarding such primaries and elections are met.

(2) Notwithstanding any other provision of law to the contrary, a special election to present a question to the voters shall be held only on one of the following dates which is at least 29 days after the date of the call for the special election:

(A) In odd-numbered years, any such special election shall only be held on the third Tuesday in March or on the Tuesday after the first Monday in November; and

2376 (B) In even-numbered years, any such special election shall only be held on:
 2377 (i) The date of and in conjunction with the presidential preference primary if one is
 2378 held that year;
 2379 (ii) The date of the general primary; or
 2380 (iii) The Tuesday after the first Monday in November.

2381 (3) The provisions of this subsection shall not apply to:
 2382 (A) Special elections held pursuant to Chapter 4 of this title, the 'Recall Act of 1989,'
 2383 to recall a public officer or to fill a vacancy in a public office caused by a recall
 2384 election; and
 2385 (B) Special primaries or special elections to fill vacancies in federal or state public
 2386 offices.

2387 (d) Except as otherwise provided by this chapter, the superintendent of each county or
 2388 municipality shall publish the call of the special primary or special election.

2389 (e)(1) Candidates in special elections for partisan offices that are not preceded by special
 2390 primaries shall be listed alphabetically on the ballot and may choose to designate on the
 2391 ballot their party affiliation. The party affiliation selected by a candidate shall not be
 2392 changed following the close of qualifying.

2393 (2) Candidates in special primaries shall be listed alphabetically on the ballot."

2394 **SECTION 44.**

2395 Said chapter is further amended by revising subsection (b) of Code Section 21-2-541, relating
 2396 to holding of special primary or election at time of general primary or election and inclusion
 2397 of candidates and questions in special primary or election on ballot, as follows:
 2398 "(b) If the times specified for the closing of the registration list for a special primary or
 2399 special election are the same as those for a general primary or general election, the
 2400 candidates and questions in such special primary or special election shall be included on
 2401 the ballot for such general primary or general election. In such an instance, the name of

2402 the office and the candidates in such special primary or special election shall appear on the
2403 ballot in the position where such names would ordinarily appear if such contest was a
2404 general primary or general election."

2405 **SECTION 45.**

2406 Said chapter is further amended by revising Code Section 21-2-542, relating to special
2407 election for United States senator vacancy and temporary appointment by Governor, as
2408 follows:

2409 "21-2-542.

2410 Whenever a vacancy shall occur in the representation of this state in the Senate of the
2411 United States, such vacancy shall be filled for the unexpired term by the vote of the electors
2412 of the state at a special primary to be held at the time of the next general primary followed
2413 by a special election to be held at the time of the next November state-wide general
2414 election, occurring at least 40 days after the occurrence of such vacancy; and it shall be the
2415 duty of the Governor to issue his or her proclamation for such special primary and special
2416 election. Until such time as the vacancy shall be filled by an election as provided in this
2417 Code section, the Governor may make a temporary appointment to fill such vacancy."

2418 **SECTION 46.**

2419 Said chapter is further amended in Article 14, relating to special elections and primaries
2420 generally and municipal terms of office, by adding a new Code section to read as follows:

2421 "21-2-546.

2422 Notwithstanding any other law to the contrary, in each county in this state in which there
2423 is a civil and magistrate court established by local Act of the General Assembly, vacancies
2424 in the office of chief judge of such court caused by death, retirement, resignation, or
2425 otherwise shall be filled by the appointment of a qualified person by the Governor to serve

2426 until a successor is duly elected and qualified and until January 1 of the year following the
2427 next general election which is more than six months following such person's appointment."

2428 **SECTION 47.**

2429 Said chapter is further amended by revising subsection (a) of Code Section 21-2-568, relating
2430 to entry into voting compartment or booth while another voting, interfering with elector,
2431 inducing elector to reveal or revealing elector's vote, and influencing voter while assisting,
2432 as follows:

2433 "(a) Any person who knowingly:

2434 (1) Goes into the voting compartment or voting machine booth while another is voting
2435 or marks the ballot or registers the vote for another, except in strict accordance with this
2436 chapter;

2437 (2) Interferes with any elector marking his or her ballot or registering his or her vote;

2438 (3) Attempts to induce any elector ~~before depositing his or her ballot~~ to show how he or
2439 she marks or has marked his or her ballot; or

2440 (4) Discloses to anyone how another elector voted, without said elector's consent, except
2441 when required to do so in any legal proceeding; or

2442 (5) Accepts an absentee ballot from an elector for delivery or return to the board of
2443 registrars except as authorized by subsection (a) of Code Section 21-2-385

2444 shall be guilty of a felony."

2445 **SECTION 48.**

2446 Said chapter is further amended in Article 15, relating to miscellaneous offenses, by adding
2447 new Code sections to read as follows:

2448 "21-2-568.1.

2449 (a) Except while providing authorized assistance in voting under Code Section 21-2-409

2450 and except for children authorized to be in the enclosed space under subsection (f) of Code

2451 Section 21-2-413, no person shall intentionally observe an elector while casting a ballot in
2452 a manner that would allow such person to see for whom or what the elector is voting.
2453 (b) Any person who violates the provisions of subsection (a) of this Code section shall be
2454 guilty of a felony.

2455 21-2-568.2.

2456 (a) It shall be illegal for any person to use photographic or other electronic monitoring or
2457 recording devices, cameras, or cellular telephones, except as authorized by law, to:

2458 (1) Photograph or record the face of an electronic ballot marker while a ballot is being
2459 voted or while an elector's votes are displayed on such electronic ballot marker; or

2460 (2) Photograph or record a voted ballot.

2461 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
2462 misdemeanor."

2463 **SECTION 49.**

2464 Chapter 35 of Title 36 of the Official Code of Georgia Annotated, relating to home rule
2465 powers, is amended by revising subsection (a) of Code Section 36-35-4.1, relating to
2466 reapportionment of election districts for municipal elections, as follows:

2467 "(a) Subject to the limitations provided by this Code section, the governing authority of
2468 any municipal corporation is authorized to reapportion the election districts from which
2469 members of the municipal governing authority are elected following publication of the
2470 United States decennial census of 1980 or any future such census. Such reapportionment
2471 of districts shall be effective for the election of members to the municipal governing
2472 authority at the next regular general municipal election following the publication of the
2473 decennial census; provided, however, that, if the publication of the decennial census occurs
2474 within 120 days of the next general or special municipal election, such reapportionment of

2475 districts shall be effective for any subsequent special election and the subsequent general
2476 municipal election."

2477 **SECTION 50.**

2478 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
2479 by revising subsection (b) of Code Section 50-13-4, relating to procedural requirements for
2480 adoption, amendment, or repeal of rules, emergency rules, limitation on action to contest
2481 rule, and legislative override, as follows:

2482 "(b) If any agency finds that an imminent peril to the public health, safety, or welfare,
2483 including but not limited to, summary processes such as quarantines, contrabands, seizures,
2484 and the like authorized by law without notice, requires adoption of a rule upon fewer than
2485 30 days' notice and states in writing its reasons for that finding, it may proceed without
2486 prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable
2487 to adopt an emergency rule. Any such rule adopted relative to a public health emergency
2488 shall be submitted as promptly as reasonably practicable to the House of Representatives
2489 and Senate Committees on Judiciary, provided that any such rule adopted relative to a state
2490 of emergency by the State Election Board shall be submitted as soon as practicable but not
2491 later than 20 days prior to the rule taking effect. Any emergency rule adopted by the State
2492 Election Board pursuant to the provisions of this subsection may be suspended upon the
2493 majority vote of the House of Representatives or Senate Committees on Judiciary within
2494 ten days of the receipt of such rule by the committees. The rule may be effective for a
2495 period of not longer than 120 days but the adoption of an identical rule under paragraphs
2496 (1) and (2) of subsection (a) of this Code section is not precluded; provided, however, that
2497 such a rule adopted pursuant to discharge of responsibility under an executive order
2498 declaring a state of emergency or disaster exists as a result of a public health emergency,
2499 as defined in Code Section 38-3-3, shall be effective for the duration of the emergency or
2500 disaster and for a period of not more than 120 days thereafter."

2501 **SECTION 51.**

2502 Said title is further amended in Code Section 50-18-71, relating to right of access to public
2503 records, timing, fees, denial of requests, and impact of electronic records, by adding a new
2504 subsection to read as follows:

2505 "(k) Scanned ballot images created by a voting system authorized by Chapter 2 of Title 21
2506 shall be public records subject to disclosure under this article."

2507 **SECTION 52.**

2508 (a) Sections 21, 23, 25, 27, 28, and 29 of this Act shall become effective on July 1, 2021.
2509 (b) All other sections of this Act shall become effective upon its approval by the Governor
2510 or upon its becoming law without such approval.

2511 **SECTION 53.**

2512 All laws and parts of laws in conflict with this Act are repealed.

EXHIBIT E

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

COALITION FOR GOOD GOVERNANCE,
et al.,

Plaintiffs,

CIVIL ACTION FILE

vs.

NO. 1:21-CV-02070-JPB

BRIAN KEMP, Governor of the
State of Georgia, in his
official capacity, et al.,

Defendants.

VIDEO DEPOSITION OF
PATRICIA PULLAR

May 15, 2023

9:39 a.m.

TAKEN BY REMOTE VIDEOCONFERENCE

Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138

1 than that?

2 A It was very far away from that time. I
3 might have been out of town or something like that,
4 but I don't recall.

5 Q And we discussed your preference for early
6 voting in the most recent elections. Has it always
7 been that way, or did you used to vote in person on
8 Election Day?

9 A As far as I can remember, when early
10 voting started, I voted early. It was only maybe
11 once that I went into a local polling location on
12 Election Day.

13 Q To the best of your recollection,
14 approximately when was that that you went in person
15 to vote on Election Day?

16 A It might have been in 2012, 2014,
17 something like that.

18 Q Ms. Pullar, your allegations in this
19 action also relate to the position that you have on
20 the Clayton County board; is that accurate?

21 A Yeah, I'm no longer on the board.

22 Q How -- strike that.

23 When did you stop serving on the board?

24 A January of this year. Someone else was
25 reappointed -- was appointed, rather. December was

1 my last board meeting.

2 Q Just to briefly describe for my education
3 on it, how does the appointment process work
4 specifically as it relates to the position that you
5 previously held?

6 A County commissioner appoints board members
7 to the Board of Elections. Each individual county
8 commissioner selects someone from their district.

9 Q So would it have been the Clayton County
10 commissioner for the district that you were on the
11 board for that appointed someone else?

12 A Yes.

13 Q And how long did you serve on the Clayton
14 County board?

15 A 15 years.

16 Q Again, to summarize to the best of your
17 ability, what were your duties and responsibilities
18 when serving on the Clayton County board?

19 A Because we are the superintendents of the
20 election, we would set policy and assist the
21 elections director with any administrative policies
22 that we wanted to implement.

23 Q How would that process work for either
24 developing or coming up with those policies?

25 A In our meetings our elections director

1 you're going to be sworn in, and show up at the
2 first meeting.

3 Q And, again, I'm going to try to not go too
4 far off course with this line of questioning. So
5 based on that description, did the county
6 commissioner -- strike that.

7 How were you informed that you were no
8 longer appointed to the position that he had held
9 for 15 years?

10 A I wasn't.

11 Q So based on the description that you
12 provided, were the circumstances just that the
13 county commissioner just asked another individual to
14 serve in that position?

15 A Yes.

16 Q To clarify there, it would be accurate to
17 say that there was no formal way of you learning
18 that you would no longer serve on the board?

19 A There was no formal way.

20 Q This may end up being a loaded question or
21 a simple question, so to the extent that we may have
22 to get into it in my later question, we will, but to
23 the best of your understanding, does your capacity
24 no longer serving on the board as of December 2022
25 relate in any way to the allegations and claims in

1 this action?

2 A No, it was just another commissioner
3 coming onboard and deciding to appoint someone of
4 their liking.

5 Q Again, this may be a simple and obvious
6 answer, but I just want to clarify and confirm, so
7 the process by which this new commissioner -- strike
8 that.

9 This new commissioner that came onboard,
10 was that in -- close in time to the -- to your not
11 receiving that appointment anymore?

12 A Can you pose that question again? I'm
13 sorry.

14 Q I'll accurately -- again, I'm just trying
15 to understand this process a little bit better.

16 So would it be accurate to state the
17 timeline of this new county commissioner gets that
18 position; following that someone else is appointed
19 to serve on the Clayton County board in the capacity
20 that you previously served in?

21 A Correct.

22 Q And now we will move along to the lawsuit
23 itself. We will begin by discussing the law at
24 issue in this litigation generally, which is Georgia
25 Senate Bill 2302. When I refer to this, I might

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Coalition for Good Governance v. Kemp, Brian

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

COALITION FOR GOOD GOVERNANCE, CIVIL ACTION

et al., FILE NO.

Plaintiff, 1:21-CV-02070-JPB

v.

BRIAN KEMP, Governor of the

State of Georgia, in his

official capacity, et

Al.,

Defendants.

Virtual Videotape Deposition of

Ernestine Thomas-Clark

May 23, 2023

At 2:00 p.m.

Reported by LeShaunda Cass-Byrd, CSR, RPR

1 something that was recent as of April 2023 when this
2 second amended complaint was filed.

3 Do you understand that?

4 A. I understand what you're saying, yes.

5 Q. Is there more that you can tell me?

6 We can move on if you don't know.

7 A. I -- I didn't know -- I don't know anything
8 about this, sir. I mean, I said I saw it, but this is
9 different from what I thought it was because I -- I
10 don't know anything about this.

11 Q. All right. Paragraph 160 says if the SEB,
12 that is the State Elections Board, follows through on
13 its expressed intention to suspend or remove
14 superintendents that it claims have existing
15 violations such as Coffee County Board, plaintiff
16 Thomas-Clark will be injured in the same manner
17 alleged above for plaintiff Shirley.

18 Have you heard anything recently from the
19 State Election Board about possible suspension?

20 A. No.

21 Q. Has anything about SB 202 prevented you
22 from speaking out in public for making any complaints
23 to the state government about election administration?

24 A. Sir, would you repeat that again, please?

25 Q. Do you believe that anything in SB 202 has

1 prevented you from speaking out with regard to
2 electoral-related issues either in public generally or
3 directly to members of the state government?

4 A. Do I believe it would stop me from doing it
5 if it's passed?

6 Q. Do I believe it has stopped you -- do you
7 believe it has stopped you?

8 A. Oh. No, I don't believe it has stopped me.

9 Q. Paragraph 162 says you're registered to
10 vote and are an eligible elector of Georgia and Coffee
11 County, right?

12 A. Yes, I am.

13 Q. And you intend to vote in all elections in
14 which you're eligible to vote, right?

15 A. Yes.

16 Q. Now, SB 202 was enacted in March of 2021.

17 Does that sound right to you?

18 A. I -- I really don't remember.

19 Q. Okay. Well, let me ask this question.
20 Since March of 2021, have you been able to vote in
21 every election where you wanted to vote?

22 A. Oh, yes.

23 Q. Since March 2021, have you been prevented
24 from voting at any time?

25 A. No.

EXHIBIT G

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Coalition for Good Governance v. Kemp, Brian

Page 1

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

COALITION FOR GOOD)
GOVERNANCE, et al.,)
)
Plaintiffs,)
)
vs.) CIVIL ACTION NO.
)
BRIAN KEMP, Governor of) 1:21-CV-02070-JPB
the State of Georgia, in)
his official capacity, et)
al,)
)
Defendants.)

VIDEOTAPED 30(b)(6) DEPOSITION OF ADAM C. SHIRLEY
(Taken by Defendants)

June 16, 2023

1:03 p.m.

Reported by: Debra M. Druzisky, CCR-B-1848

1 are described in this sentence?

2 A. As a citizen on the outside of the Board
3 of Elections watching this going on, I was not able
4 to attend the hearing that they held in Athens, but
5 my recollection is that there -- the resolution was
6 a fine to be paid by the County, and I believe
7 that -- and a warning. I believe that was the
8 conclusion of it.

9 Q. And are you aware of any other
10 investigations or violations in connection with the
11 Athens-Clarke County board from the Georgia State
12 Election Board?

13 A. I am not.

14 Q. To your knowledge, is the Athens-Clarke
15 County board currently under investigation for any
16 reason by the State Election Board?

17 A. To the best of my knowledge, no.

18 Q. And to the best of your knowledge, since
19 being appointed to the State Election Board -- I
20 mean, strike that.

21 To the best of your knowledge, since being
22 appointed to the Athens-Clarke Board of Elections,
23 has the State Election Board found the
24 Athens-Clarke board to be in violation for any
25 reason?

1 A. To the best of my knowledge, no.

2 Q. And I will stop sharing my screen at this
3 point. I'll bring it back up in just a second when
4 needed.

5 Mr. Shirley, what is your understanding of
6 the harm that is alleged by you or on your behalf
7 in the complaint related to what I will call the
8 take-over provision in SB 202, but it could also be
9 referenced as the suspension provision?

10 You understand what I am referring to when
11 I -- when I use that language; right?

12 A. I am. You're asking what is my
13 understanding of the potential harm that I'm
14 alleging would be to me in my capacity as a Board
15 of Elections member?

16 Q. Yes. That's correct.

17 A. Okay. My understanding is that, under the
18 provisions of SB 202 if it's allowed to stand, I as
19 a Board of Elections member will not only be
20 answerable/accountable to the mayor and county
21 commission or a Superior Court judge who pre-SB 202
22 were the two that could remove us from -- or you
23 know, not renew us to our position, there will
24 instead be the possibility of the local county
25 government initiating a hearing, requesting a

EXHIBIT H

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

COALITION FOR GOOD GOVERNANCE, CIVIL ACTION
et al., FILE NO.

Plaintiff, 1:21-CV-02070-JPB

v.

BRIAN KEMP, Governor of the
State of Georgia, in his
official capacity, et al.,
Defendants.

Virtual Videotape Deposition of
Judy McNichols
May 25, 2023
At 9:30 a.m.

Reported by LeShaunda Cass-Byrd, CSR, RPR

APPEARANCES OF COUNSEL:

1 as it appears on the file stamp on the top of the
2 page, and page 72 in the document as originally
3 numbered.

4 And again, with paragraph 192, Ms.
5 McNichols, if you can just read that paragraph to
6 yourself, and let me know when you are finished.

7 A. I have read it.

8 Q. And do you recognize the allegations
9 contained in that paragraph?

10 A. No.

11 Q. And we will now stop sharing the screen and
12 just refer back generally, to the takeover provision
13 in SB 202. I just had a few quick follow-ups about
14 the specific law pausing protocol as it relates to
15 that. Ms. McNichols, what is your understanding of
16 how the takeover provision works to reach an alternate
17 conclusion of removing or suspending an existing
18 superintendent of a county board?

19 A. My understanding at this point in time is
20 that it is, you know, looking at anything that could
21 go wrong and not allowing the local board to correct
22 it, and then it seems to me that it's all -- my
23 perceptions are that it seems, or that it's pettiness
24 that could cause -- you know, you could say something
25 wrong in a meeting somewhere, and -- and before you

1 know it, it didn't sit right with somebody at the
2 wrong place or at the state level, and then you --
3 you've got a takeover, and it just seems to me that
4 there needs to be opportunities to make sure that if
5 there are mistakes that are made, that we can correct
6 them locally.

7 Q. Ms. McNichols, has the board been subject
8 to the takeover provisions since it's been passed
9 by -- or strike that, rephrase.

10 Has the board been subject to the takeover
11 provision of SB 202 since SB 202 was passed?

12 A. No.

13 Q. And are you aware of the takeover provision
14 being used in any manner as it relates to county
15 boards?

16 Do we need to go off the record real fast.
17 I am sorry. We will gather ourselves.

18 A. I -- I am not familiar with any.

19 Q. Oh, I am sorry. I am sorry. We will go
20 back on the record.

21 A. Strike that and start all over.

22 Q. Did you need me to restate the question, or
23 do you recall it, Ms. McNichols?

24 A. I do not -- I do not recall any -- any in
25 my neck of the woods, in North Central Georgia. I

1 have not read about anybody having any concerns about
2 a takeover.

3 Q. And Ms. McNichols, if you received the
4 relief that you request in the complaint related to
5 the takeover provision, will you no longer be harmed
6 by this provision in SB 202?

7 MR. BROWN: I'm going to object to
8 the extent it calls for legal conclusion.
9 Ms. McNichols, feel free to answer.

10 THE WITNESS: I would feel much
11 happier, and no injuries, if we could do
12 away with this SB 202.

13 By MR. WEIGEL:

14 Q. Going back a little bit. I think we
15 covered this in some way, but I just want to confirm.
16 In your time on the board, have you had interactions
17 with the State Election Board or the Secretary of
18 State?

19 A. No.

20 Q. And since that question related
21 specifically to the board, have you individually had
22 any interactions with the State Election Board or the
23 Secretary of State as it relates to the concerns
24 raised in complaint?

25 A. No.

EXHIBIT I

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Coalition for Good Governance v. Kemp, Brian

Page 1

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

COALITION FOR GOOD GOVERNANCE,
et al.,

Plaintiffs,

CIVIL ACTION FILE

vs.

NO. 1:21-CV-02070-JPB

BRIAN KEMP, Governor of the
State of Georgia, in his
official capacity, et al.,

Defendants.

VIDEO DEPOSITION OF

JEANNE DUFORT

May 12, 2023

9:33 a.m.

TAKEN BY REMOTE VIDEOCONFERENCE

Robyn Bosworth, RPR, CRR, CRC, CCR-B-2138

1 So this provision -- I guess my question
2 is: Do you intend to open up absentee ballots
3 before the close of the polls on election day?

4 A Opening up absentee ballots is not a
5 function that I have any control over. That's
6 something that the election director, in my county
7 at least, is in charge of.

8 Q Okay. And so you would be more monitoring
9 them -- the election director and whoever is in
10 charge of that, you'd be monitoring them doing that?

11 A Right. Fundamentally election staff is
12 who is going to be opening ballots and sorting them
13 out.

14 Q What sort of things do you --
15 (Simultaneous speaking.)

16 A My capacity is as a public monitor of
17 what's happening.

18 Q Okay. As a public monitor, what sort of
19 things do you look for when you're observing this
20 counting of the absentee ballots?

21 A It's a good question. The art of
22 observing is not a fact checklist thing. You're
23 watching -- for example, you're watching to make
24 sure that when you're separating the personally
25 identifying piece of the ballot package from the

1 inner sealed envelope -- first of all, you're
2 watching to make sure that there is an inner sealed
3 envelope with a ballot inside.

4 So first you're watching to make sure that
5 good separation is happening so that ballot secrecy
6 is being maintained as the law requires, right,
7 because -- the process of elections is interesting.

8 It reminds me of the work I was in charge
9 of in India where we had this massive group of
10 individuals who had to come together and do things
11 in a manner that was consistent, right, and met
12 quality control standards but in poor villages with
13 fairly unskilled workforce.

14 The art of elections is similar in the
15 sense that it's a large workforce that comes
16 together periodically, and you're expecting them to
17 be perfect.

18 So I have observed -- how this relates is
19 I have observed a fairly significant difference in
20 how humans follow instructions in the course of what
21 they're supposed to do.

22 In my county, it's small enough -- and we
23 have a diligent, experienced election director --
24 that almost everything that happens is under her
25 watchful eye. So she's able to jump in and correct

1 for the human condition --

2 Q Uh-huh.

3 A -- reasonably quickly, but still we have
4 the human condition.

5 So as -- I'm watching as a monitor to make
6 sure that the basic instructions are being followed
7 in that. So the first thing is are they maintaining
8 ballot secrecy. Second is, as ballots come out of
9 those sealed privacy envelopes, are they coming out
10 intact.

11 We have cases where ballot-slitting
12 equipment or envelope-slitting equipment rips a
13 ballot, right, creates damage to a ballot. And in
14 that case, are the parts of the ballot remaining
15 together and intact because now you've got one
16 ballot that's been separated into pieces.

17 So those are two good examples of what
18 we're watching for.

19 Q Uh-huh.

20 Where do you typically stand in relation
21 to the person that's opening the ballots when you're
22 monitoring them?

23 A There's no single answer to that. The
24 spaces in which this is done are not always the same
25 spaces, and the election director in a small county