IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VASU ABHIRAMAN, TERESA K. CRAWFORD, LORETTA MIRANDOLA, JENNIFER MOSBACHER, ANITA TUCKER, ESSENCE JOHNSON, LAUREN WAITS, SUZANNE WAKEFIELD, MICHELLE AU, JASMINE CLARK, DEMOCRATIC NATIONAL COMMITTEE, and DEMOCRATIC PARTY OF GEORGIA, INC.,

Petitioners,

v.

STATE ELECTION BOARD,

Respondent.

Civil Case No. 24CV010786

EMERGENCY MOTION TO EXPEDITE DECLARATORY JUDGMENT ACTION

INTRODUCTION

Petitioners move to expedite this declaratory judgment action in light of the fast-approaching November elections. November 5 is a little over two months away. But in the last three weeks, Georgia's State Election Board ("SEB") has passed a host of last-minute rules that threaten to sow chaos and impede the vote-canvassing process. Two of those rules are the subject of this litigation.

First, on August 6, SEB approved an amendment to Rule 183-1-12-.02 that injects significant uncertainty into the mandatory election-certification process, requiring county election officials to conduct an undefined "reasonable inquiry" before certifying election results. (That amended rule is referred to herein as the "Reasonable Inquiry Rule.") Second, on August 19, SEB approved an amendment to Rule 183-1-12-.12 that requires certain voting data—not mentioned anywhere in the election code—to be compiled and reviewed by county election board members, and purports to permit individual board members "to examine all election related documentation created during the conduct of elections" before certification of the results. (That amended rule is referred to herein as the "Examination Rule.")

These rules ask election officials to approach their duties as though they have discretion to delay or refuse certification of election results. As explained in the verified petition, Georgia law permits no such discretion. But if officials interpret the new rules as the drafters assert they should, the officials could (unlawfully) delay certifying an election to complete a "reasonable inquiry" or examine documents—or could even (unlawfully) refuse to certify at all. Indeed, county board members have *already* refused to certify past election results, and these rules give officials new, powerful tools to impede certification. The rules also impermissibly seek to displace court-supervised election contests as the process by which fraud is alleged and investigated.

Consequently, petitioners—Georgia voters, Georgia candidates, Georgia county election board members, and political organizations—seek a declaratory judgment to clarify in advance of the election that the two rules are unlawful and cannot, in conflict with state statutes, imbue election officials with discretion over certification. Specifically, petitioners seek a declaration that: (a) the relevant Georgia statutes (O.C.G.A. §§21-2-70(9) and 21-2-493(k)) set forth mandatory duties; (b) election officials must certify election results; (c) absent a court order to the contrary, the mandatory certification process must occur no later than 5:00 P.M. on November 12, 2024; and (d) to the extent that either the Reasonable Inquiry Rule or the Examination Rule confers discretion to delay or refuse certification to election officials that is inconsistent with these mandatory duties, it is invalid and exceeds SEB's statutory authority.

Given that election day is a mere seventy-one days away, and this case involves pure questions of law, petitioners respectfully urge the Court to expedite this case and hold a hearing or trial on a schedule that will allow this Court to resolve petitioners' claims before election day. Georgia election officials are already setting procedures and staffing for canvassing. And candidates and political organizations in the state are already allocating resources and making efforts to ensure that every vote is counted. Resolving the meaning and validity of these SEB rules now would ensure that this Court—and, if necessary, the appellate courts—will be able to give these critical election certification issues the complete and careful consideration they deserve.

By contrast, delaying resolution risks disorder. Withholding consideration until the canvassing process begins on November 5—or worse, until an election official fails to certify county results on November 12—will likely require this Court (as well as, potentially, other superior courts across the state) to rule on these momentous issues in a matter of hours, in the context of rushed emergency judicial proceedings. It could also result in the discarding of valid votes cast

by qualified electors. Moreover, any delays caused by the rules or resulting litigation will "create a vacuum that leads to misinformation and disinformation." Press Release, Brad Raffensperger, Georgia Secretary of State, *Raffensperger Defends Georgia's Election Integrity Act from Last Minute Changes Delaying Election Results* (Aug. 15, 2024), https://sos.ga.gov/news/raffensperger-defends-georgias-election-integrity-act-last-minute-changes-delaying-election. In light of these considerations, and for the additional reasons outlined below, the Court should expedite this proceeding.

LEGAL STANDARD

Georgia's Declaratory Judgment Act recognizes that declaratory judgments may be needed on an urgent or expedited basis. O.C.G.A. § 9-4-5 thus provides that declaratory judgment petitions "may be tried at any time designated by the court," except that a trial cannot be held "earlier than 20 days after the service" of a petition without the parties' consent. *Id.*

More generally, this Court has broad discretion to expedite proceedings where good cause exists. Uniform Superior Court Rule 6.7 states that "[u]pon written notice and good cause shown, the assigned judge may shorten or waive the time requirement applicable to emergency motions, except motions for summary judgment, or grant an immediate hearing on any matter requiring such expedited procedure."

ARGUMENT

Good cause exists to expedite here. The November elections are a little over two months away, and the SEB rules at issue threaten to throw the conduct of those elections—and especially the canvassing and result-certification process—into chaos. At minimum, the challenged rules inject substantial uncertainty into the certification process by imposing vague requirements that, according to their drafters, permit or require election officials to exercise discretion in certifying

election results. That discretion, in turn, risks officials delaying—or even outright refusing—to certify election results.

As the verified petition explains, under the governing statutes and binding precedent, election officials have *no* discretion to delay or refuse certification. This Court should resolve the uncertainty caused by the challenged SEB rules now, in advance of the election, for the benefit of all parties involved and the public. Doing so would be consistent with Georgia precedent recognizing that expedition is appropriate in election cases. *See, e.g.*, *Anderson v. Carter*, 2002 WL 34190748, at *1 & n.1 (Ga. Super. Ct. Fulton Cnty. Aug. 19, 2002) (expediting election case based on impending election); *Whitmer v. Thurman*, 241 Ga. 569, 569 (1978) (similar, noting "the necessity of a decision prior to the primary election"); *McKinney v. Brown*, 242 Ga. 456, 456 (1978) (similar).

Resolving the critical electoral issues this case raises now would likewise avoid any need for this Court or others (including appellate courts) to do so on an emergency basis in November, during the seven days between election day and the county certification deadline—or perhaps even after a county refuses to certify by "5:00 P.M. on the [Tuesday] following the date on which such election was held," O.C.G.A. § 21-2-493(k); *see* O.C.G.A. § 21-2-14 (addressing deadline adjustment in light of "legal holidays").

Expediting these proceedings also reduces the risk of disenfranchising voters. The Secretary of State has his own certification obligations and deadlines. *See* O.C.G.A. § 21-2-499. If a county official relied on the Reasonable Inquiry or Examination Rule to delay or refuse to certify any votes, the Secretary would still be obliged to certify the statewide results, raising questions about whether the statewide results could be certified *without* ballots from a county that did not certify results. In that event, petitioners might not be able to obtain a ruling from this Court in

time to prevent disenfranchisement—a grave and irreparable injury. *See, e.g.*, *New Georgia Project v. Raffensperger*, 484 F. Supp. 3d 1265, 1306 (N.D. Ga. 2020) ("It is well-settled that an infringement on the fundamental right to vote amounts [to] an irreparable injury.").

Expedited resolution is further warranted because the rules impose immediate burdens on petitioners. The Reasonable Inquiry Rule injects uncertainty (and possibly county-by-county variation) as to what new or additional data (if any) must be made available for purposes of conducting a sufficiently "reasonable inquiry" before certifying election results, as well as what steps election officials may or must take to evidence and/or conclude that "reasonable inquiry." The Examination Rule requires the compilation of lists and other voting data that are nowhere mentioned in the election code, including "list[s] of all voters who voted … sorted by precinct" and lists that show "by category the number of voters who voted Election Day In Person, Advance Voting, Absentee and Provisionally," again "sorted by precinct."

County election board members and officials are already gearing up for November 5, and under the challenged rules would have to act now to (1) determine exactly what additional data compilations are required by the amended rules; and (2) ensure that the new data can be compiled and made available to election board members virtually immediately after the polls close on November 5. Those are resource-intensive tasks, and they directly impinge on other critical obligations and activities of county election officials. These burdens that the challenged rules have already imposed—and will continue to impose—on election board members confirm that expedition is warranted. *See, e.g.*, *Carter v. Lowry*, 2021 WL 1550520, at *1–2 (Ga. Bus. Ct. Apr. 13, 2021) (granting request to expedite under Uniform Superior Court Rule 6.7 because the challenged action—the recording of a Notice of Lis Pendens—had a "substantial impact on Defendants' ability to operate their real estate businesses").

Moreover, expedition is entirely feasible because this case presents pure questions of law, namely whether the SEB rules at issue are "authorized by statute" and whether they "exceed[] the scope of or [are] inconsistent with the authority of the statute[s] upon which [they are] predicated," *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 662-663 (2015). Georgia courts have long recognized that legal questions (requiring no fact development or discovery) are amenable to accelerated determinations. *See, e.g.*, *Uni-Worth Enterprises v. Wilson*, 244 Ga. 636, 636, 640 (1979) (holding that trial court was authorized to render conclusive findings of law when granting early temporary relief).

Finally, expediting this action would not harm or prejudice SEB. Indeed, expedition would benefit SEB in the same way it would benefit petitioners and the Court, by avoiding the almost-certain need for rushed emergency litigation right after the election—when SEB obviously will have many other demands on its time and other resources.

CONCLUSION

The Court should expedite this case, setting the following schedule:

(1) The deadline for SEB to respond to this motion is seven days after service of the motion;

(2) The deadline for SEB to file an answer to the verified petition is 14 days after service of the petition;

(3) The hearing/trial on this action will be set to allow this Court sufficient time to resolve petitioners' claims before election day;

(4) Each side will be permitted to file one hearing/trial brief no later than three days before the date of the hearing/trial.

Respectfully submitted this 26th day of August, 2024.

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CERTIFICATE OF SERVICE

On this 26th day of August 2024, a true and correct copy of the foregoing was (1) electronically filed with the Clerk of Court using the Court's eFileGA electronic filing system; (2) given to a process server to be served in conjunction with the verified petition on Respondent State Election Board and the Georgia Attorney General; and (3) sent via Certified Mail to the following recipients:

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