

**SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**ETERNAL VIGILANCE ACTION,
INC., SCOT TURNER, and
JAMES HALL,**

Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

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Civil Action File No. 24CV011558

EMERGENCY MOTION TO EXPEDITE THIS MATTER

INTRODUCTION

Plaintiffs move to expedite the consideration of their Complaint for Declaratory Judgment and Injunctive Relief. Expedited consideration has been granted in *Abhiraman v. State Election Board*, Civil Case No. 24CV010786, that challenges some of the same State Election Board (“SEB”) rules that Plaintiffs challenge here. As Plaintiffs in this case, and in the *Abhiraman* case contend, the challenged SEB Rules deviate substantially from the plain language of the Election Code. As Plaintiffs here contend, those deviations are unconstitutional. The new SEB Rules, if left in place, would substantially affect the manner in which election results are counted and certified in the upcoming November 2024 elections in this State—in a manner that is both contrary to the Election Code and the Georgia Constitution. As such, Court action is needed to address these issues as soon as possible. The issues raised by Plaintiffs here are purely legal issues.

Again, the SEB’s newly promulgated and enacted rules that contravene the Election Code and violate our Constitution’s separation-of-powers and non-delegation mandates. These new rules mandate sweeping changes, expand authority, and arbitrarily add requirements to various election laws. Implementing such broad changes now promise to only sow confusion and discourse among

the voters and election works preparing for the momentous election season. Thus, these changes pose an immediate threat to the upcoming November elections and ought to be decided promptly.

LEGAL STANDARD

Georgia's Declaratory Judgment Act provides that a court may try a declaratory judgment petition "at any time designated by the court not earlier than 20 days after the service thereof, unless the parties consent in writing." GA. CODE ANN. § 9-4-5. This flexibility allows the court to hear a petition for declaratory judgment on an emergency or expedited basis.

When an emergency motion is filed, this Court has broad discretion to expedite the motion. Ga. Sup. Ct. R. 6.7. "Upon 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." *Id.* A motion shall demonstrate good cause upon a showing of sufficient detail that supports the necessity for an expedited procedure. *Id.*

ARGUMENT

Here, good causes exists because the SEB enacted sweeping new rules on the eve of election season with a Presidential contest. With mere months leading to the 2024 November elections, the SEB promulgated and enacted numerous rules that drastically altered the Election Code. These changes not only threaten to confuse voters, but also to not count their votes upon the smallest infraction of a new rule that the SEB likely never possessed authority to pass in the first place.

The changes to the challenged SEB rules either have or will be effective by mid-September 2024. Voters for the 2024 election must be registered by October 7, 2024. Early voting starts October 15, 2024. And requests for absentee ballots must be made by October 25, 2024. This timeline means that the challenged rules will inform the upcoming November elections. Two of

the challenged SEB rules directly impact early voting and absentee ballots. Thus, the impending effect of the SEB rules creates the exigency at issue.

New SEB rule 183-1-12.02(c.2) creates a new definition of the term “certify” that is not set forth in the Election Code. The new rule defines “certify” as follows: “Certify the results of a primary, election, or runoff,’ or words to that effect, means to attest, after reasonable inquiry that the tabulation and canvassing of the election are complete and accurate and that the results are a true and accurate accounting of all votes cast in that election.” This definition, which is contrary to the Election Code and beyond the SEB’s authority to make, permits superintendents to exercise substantial discretion over certifying election results. This discretion is not permitted. A superintendent’s duties to certify an election, and the considerations that affect certification, are clearly expressed by the Election Code. The SEB’s new rule interjects subjectivity into vote certification that would likely cause both chaos, delay and inconsistency in the manner that votes are certified at the November 2024 election.

New SEB rule 183-1-12.12, provides that county boards shall make available to any individual member of a county board of election “all election related documentation created during the conduct of elections prior to certification results.” The materials that boards of elections are allowed to consider are specifically delineated in the Election Code. Election Board members are not authorized to receive or consider extraneous, non-statutory, materials regarding their certification, canvassing, or other duties. The SEB’s new rule interjects subjectivity into vote certification that would likely cause both chaos, delay and inconsistency in the manner that votes are certified at the November 2024 election.

New SEB rule 183-1-14.02(19) changes the availability of early voting drop boxes in a manner contrary to the Election Code. It does so because it requires “video surveillance and recording of a drop box at any early voting location. ... Any drop box that is not under constant and direct surveillance shall be locked or removed and prohibited from use.” Implementation of this rule during the upcoming election season would permit the SEB to remove statutorily

authorized drop-boxes from use, simply because that drop-box was not under constant video surveillance. The Election Code only mandates that the “[d]rop box locations must have adequate lighting and be under constant surveillance by an election official or his or her designee, law enforcement official, or licensed security guard.” O.C.G.A. § 21-2-382(c)(1). There is no video surveillance mandate. In fact, the General Assembly specifically and purposefully excluded such a mandate from the statute.

Additionally, new SEB rule 183-1-14.02(18) purports to proscribe the manner in which absentee votes are received. The new rule requires the photograph ID of the absentee voter and requires the person who delivers the absentee ballot to a drop box location to provide a signature and photo ID, and approved relation to the elector’s name on the absentee ballot. In contrast, the Election Code only says that the absentee voter “shall print the number of his or her Georgia’s driver’s license or identification card issued pursuant to Article 5 of Chapter 5 of Title 40 in the space provided on the outer oath envelope.” O.C.G.A. § 21-2-385. Further, there is no signature or photo ID required of the person delivering the ballot. *Id.* The Election Code meticulously details what certification is required and what materials need to be considered, yet the new SEB rules impermissibly expand the requirements just days before the election season begins. The new SEB rules would permit superintendents to reject absentee votes in a manner that is inconsistent with the Election Code.

The November elections are rapidly approaching, and solving these electoral issues now would likely avoid any need for rushed litigation following the election. Expediting the issue would also be consistent with Georgia precedent, which recognizes 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) (granting an expedited hearing for an election case because of an

impending election); *Whitmer v. Thurman*, 241 Ga. 569, 569 (1978) (granting a motion to expedite an election case “due to the necessity of a decision prior to the primary election.”); *McKinney v. Brown*, 242 Ga. 456, 456 (1978) (granting a motion to expedite an election issue before the election). Furthermore, a decision to expedite this issue would be consistent with this Court’s earlier decision to expedite a declaratory judgment action in *Abhiraman et al. v. State Election Board*, which challenges the same SEB regulations. *See Exhibit A*.

Finally, the relief sought in the Complaint rests solely on questions of law that do not require discovery. When issues are based purely on questions of law rather than contested facts, it is within the authority of the court to make accelerated determinations of law. *See, Uni-Worth Enterprises v. Wilson*, 244 Ga. 636, 640 (1979) (affirming the trial court’s decision to render conclusive findings of law when granting early injunctive relief).

CONCLUSION

The Court should expedite this case and schedule a hearing on the matter as soon as reasonably practicable.

Respectfully submitted this 23rd day of September 2024.

Christopher S. Anulewicz

Georgia Bar No. 020914

canulewicz@bradley.com

Jonathan R. DeLuca

Georgia Bar No. 228413

jdeluca@bradley.com

Wayne R. Beckermann

Georgia Bar No. 747995

wbeckermann@bradley.com

BRADLEY ARANT

BOULT CUMMINGS LLP

Promenade Tower, 20th Floor

1230 Peachtree Street, NE

Atlanta, Georgia 30309

Telephone: (404) 868-2100

Facsimile: (404) 868-2010

Marc James Ayers

Pro hac to be applied for

mayers@bradley.com

BRADLEY ARANT

BOULT CUMMINGS LLP

1819 5th Avenue North

Birmingham, AL 35203

Email: mayers@bradley.com

Telephone: (205) 521-8598

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September 2024, I served a true and correct copy of the foregoing **EMERGENCY MOTION TO EXPEDITE THIS MATTER INTRODUCTION** via statutory electronic service via the Odyssey eFileGA electronic filing platform.

/s/ Christopher S. Anulewicz

Christopher S. Anulewicz

Georgia Bar No. 020914

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