

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

TERESA CRAWFORD,
LORETTA MIRANDOLA,
ANITA TUCKER,
DEMOCRATIC NATIONAL
COMMITTEE, and
DEMOCRATIC PARTY OF
GEORGIA, INC.,

Petitioners,

v.

STATE ELECTION BOARD,

Respondent,

Civil Case No. 24CV012349

**ORDER DENYING PETITIONERS'
AMENDED EMERGENCY MOTION FOR
INTERLOCUTORY INJUNCTION**

This matter is before the Court on Petitioners' Teresa Crawford, Loretta Mirandola, Anita Tucker ("BRE Petitioners"), Democratic National Committee ("DNC"), and Democratic Party of Georgia, Inc. ("DPG") (collectively, "Petitioners") Amended Emergency Motion for Interlocutory Injunction ("the Emergency Motion"). Upon consideration of the briefs and arguments at the October 16, 2024 hearing, the Court **DENIES** the Emergency Motion and

enjoins the enforcement of the Hand Count Rule for the reasons set forth below.¹

FINDINGS OF FACTS

I. The Statutory Scheme For Processing Ballots

The Georgia Election Code sets forth a comprehensive, integrated system of election administration that ensures qualified voters cast proper votes and that such votes are accurately counted and reported on an expedited timeline.² The Election Code also ensures that votes are accurately counted and reported through a comprehensive security and chain of custody scheme.³

As relevant here, once the polls close on Election Day, county superintendents must start the process of counting, canvassing, tabulating, and certifying the votes.⁴ These obligations begin immediately, as the superintendent must report the total number of ballots cast within their jurisdiction to the Secretary of State and public by 11:59 P.M. on Election Day.⁵ There are various checks throughout this process to ensure election integrity and accuracy, such as the review of various pieces of precinct-level information, precinct-level cross-checks, and (under defined circumstances) recounts or recanvasses.⁶ At the conclusion of the process, following certification, the superintendent transmits the results to the Secretary of State.⁷

To begin this county-level process, poll managers for each precinct must first transmit the precinct election materials to the superintendent. The Election Code explains the specific steps

¹ As described herein, the Hand Count Rule amends Rule 183-1-12-.12(a)(5).

² See generally O.C.G.A. §§ 21-2-1 through 21-2-604.

³ *Id.*

⁴ *Id.* § 21-2-493(a); see also *id.* §§ 21-2-490 through 21-2-504.

⁵ *Id.* § 21-2-421.

⁶ See, e.g., *id.* §§ 21-2-493(b), 21-2-493(e)–(h), 21-2-495.

⁷ *Id.* § 21-2-493(a), (k).

poll workers must follow before this transmission can begin, which vary slightly based on the type of voting device used.⁸ The only section of the Election Code that permits the kind of hand counting ballots at the precincts contemplated by the Hand Count Rule consists of the provisions governing hand-marked paper ballots.⁹

II. The Hand Count Rule

On August 21, 2024, the State Election Board (“SEB”) announced a potential amendment to Rule 183-1-12-.12(a)(5) that would require groups of poll officials to hand count Election Day ballots at the precincts. The announcement stated that “a public hearing w[ould] be held on Friday, September 20” to “provide the public an opportunity to comment upon and provide input into the proposed rule amendments.”¹⁰

The Hand Count Rule changes the post-election procedures for handling and counting ballots. It requires three poll workers at thousands of precincts throughout the state to conduct a hand count of the Election Day ballots before the ballot materials are transmitted to the superintendent.¹¹

At the conclusion of the public hearing on September 20, 2024 the SEB voted to adopt the Hand Count Rule in full.¹² SEB did not issue a statement of reasons for its adoption and for overruling the opposition to the rule. The Hand Count Rule becomes effective on October 22,

⁸ *E.g.* O.C.G.A. §§ 21-2-450 to 457 (voting machines); O.C.G.A. §§ 21-2-480 to 486 (optical scanners).

⁹ *See* O.C.G.A. § 21-2-300(a)(2) (requiring use of scanning ballots marked by electronic ballot markers); *see also* Pet. Ex. A at 6.

¹⁰ Pet. Ex. G at 1.

¹¹ There were 2,715 precincts across Georgia’s 159 counties used for voting in both the March 12, 2024 Presidential Preference Primary (<https://results.enr.clarityelections.com/GA/120015/web.317647/#/summary>) and the May 21, 2024 General Primary / Nonpartisan Election (<https://results.enr.clarityelections.com/GA/121186/web.317647/#/summary>).

¹² Pet. Ex. J at 2.

2024, which is a week after early voting begins and two weeks before Election Day.¹³

III. The Emergency Motion

On September 30, 2024, Petitioners submitted a Verified Petition for Declaratory Relief (“the Petition”) seeking a declaration that the Hand Count Rule is invalid, is an unlawful exercise of SEB’s authority, and fails to comply with the procedural requirements of the Georgia Administrative Procedure Act (“Georgia APA”); a permanent injunction against the enforcement of the Hand Count Rule; and any other relief the Court deems necessary or proper.¹⁴ On October 2, 2024, Petitioners filed an Emergency Motion for Interlocutory Injunction, and on October 10, 2024 Petitioners filed an Amended Emergency Motion. A hearing on Petitioners’ Amended Emergency Motion was held on October 16, 2024.

Petitioners submitted four affidavits in support of the Amended Emergency Motion—three from the BRE Petitioners and one from the Voter Protection Director for DPG.¹⁵ Prior to the October 16 hearing, the parties stipulated to the admissibility of the affidavits for the truth of the facts asserted therein. The affidavits describe various irreparable hardships the Hand Count Rule has already and will impose on them unless it is immediately enjoined, including difficulties with (1) staffing; (2) training; (3) diversion of financial resources; (4) interference with certification; and (5) introduction of errors. To the extent the Court references those facts below, they are deemed incorporated in these Findings of Fact.

LEGAL STANDARD

Petitioners bring suit under O.C.G.A. § 50-13-10, which is part of the Georgia APA. That

¹³ Exhibit to Amended Emergency Motion for Interlocutory Injunction (“Ex.”) 2 at 1.

¹⁴ Pet. at 33–34.

¹⁵ Exs. 1, 3–5.

provision authorizes declaratory judgment actions challenging the validity of state agency rules and prescribes that such actions “shall be in accordance with Chapter 4 of Title 9, relating to declaratory judgments.” O.C.G.A. § 50-13-10(c). In a declaratory judgment action governed by that Chapter, “the trial court is specifically authorized to grant injunctive relief to preserve the status quo pending the adjudication on the merits.”¹⁶

To grant an interlocutory injunction, the moving party must demonstrate that: (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted; (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest. It is “not incumbent upon [the moving party] to prove all four factors to obtain [an] interlocutory injunction.”¹⁷ This Court finds that the motion fails on the first and second prong of the test and therefore fails itself.

ANALYSIS & CONCLUSIONS OF LAW

I. Petitioners Have Standing

The Court concludes that Petitioners have standing to pursue this suit. The BRE Petitioners have standing because the relief sought would “guide and protect the *petitioner[s]* from uncertainty and insecurity with respect to” the interaction between the Hand Count Rule and their statutory duties, which—as discussed further below—do not authorize the required hand count.¹⁸

¹⁶ *Scott v. Prime Sales & Leasing, Inc.*, 276 Ga. App. 283, 287 (2005).

¹⁷ *City of Waycross v. Pierce Cty. Bd. of Comm'rs*, 300 Ga. 109, 111 (2016).

¹⁸ *Cobb Cty. v. Floam*, 319 Ga. 89, 97 (2024) (emphasis in original); see also *id.* at 101 n.7 (observing that a county board of elections’ “duties in administering elections” can lead to “the kind of uncertainty that would support a declaratory judgment”).

Separately, the BRE Petitioners require immediate guidance on the interaction between the Hand Count Rule and their statutory duties to avoid violating the Election Code, which could give SEB the authority to take charge of the BRE Petitioners' home counties' election proceedings pursuant to O.C.G.A. § 21-2-33.2. In other words, “the relief sought by” the BRE Petitioners (clarifying their statutory duties) has “some immediate legal effect on the parties’ conduct.”¹⁹

In addition, DNC and DPG each have associational and organizational standing. As to the former, (1) their members who live and vote in Georgia (including DPG-appointed election board members) have standing to sue SEB in their own right; (2) DNC and DPG seek to ensure that votes cast for Democratic candidates in November are properly secured and counted, and that their members serving as election board members and poll workers know their legal obligations; and (3) neither the claims asserted nor the relief requested require the participation of either organization’s members.²⁰ As to the latter, DNC and DPG also each have standing independent from their members because they are injured when ballots cast for Democratic candidates are delayed, discarded, or lost during the required hand count, and by the diversion of resources necessary to monitor hand counts and advise voters and local officials about the Rule.

II. An Injunction Is Already Given

A. Irreparable Harm

“The first factor—substantial threat of irreparable injury if an interlocutory injunction is not entered—is the most important one, given that the main purpose of an interlocutory injunction

¹⁹ *Perdue v. Barron*, 367 Ga. App. 157, 163 (2023).

²⁰ *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 387 (2022); *Aldridge v. Ga. Hosp. & Travel Ass’n*, 251 Ga. 234, 236 (1983) (holding that because “this suit is primarily seeking declaratory and injunctive relief and does not present complicated issues of individual damages,” “the relief requested does not require the participation of individual GHTA members”).

is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner.”²¹ The question for this Court is whether the evidence demonstrates a “substantial threat” of irreparable injury, not that irreparable injury would necessarily follow absent an injunction.²² On October 16, 2024 Judge Robert McBurney of the Superior Court of Fulton County granted an identical temporary injunction enjoining the SEB from enforcing the Hand Count Rule from taking effect.²³ Nothing this Court can do will impact that ruling, therefore there is no harm that this Court could remedy through order.

B. The Balance Of Equities

The second factor is satisfied when “the potential for harm to the [movant] outweighs any possible harm to the” other side.²⁴ As recounted above, Judge McBurney entered a ruling enjoining this action already, therefore there is no inherent risk present. Therefore, any ruling of this Court would be duplicative and only lead to confuse the issue and add harm to the non-moving party.

C. Likelihood Of Success On The Merits and Public Interest

Because the Court finds that the order for Judge McBurney adequately protects the interests of the Plaintiff, the Court is declining to comment on the Plaintiff’s likelihood of Success on the Merits or the Public Interest involved.

²¹ *Bishop v. Patton*, 288 Ga. 600, 604–05 (2011).

²² *State v. Federal Defender Program, Inc.*, 315 Ga. 319, 347 (2022).

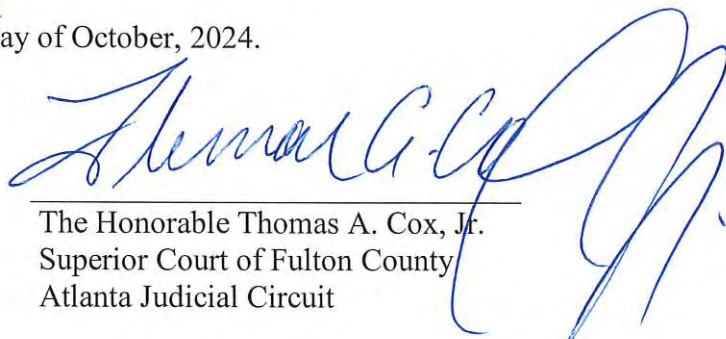
²³ Fulton County Superior Court Civil Case 24CV012497

²⁴ *City of Waycross*, 300 Ga. at 112.

CONCLUSION

Accordingly, this Court **DENIES** Petitioners' Emergency Motion.

IT IS SO ORDERED this 16th day of October, 2024.

A handwritten signature in blue ink, appearing to read "Thomas A. Cox, Jr.", is written over a horizontal line.

The Honorable Thomas A. Cox, Jr.
Superior Court of Fulton County
Atlanta Judicial Circuit

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