

OCT 15, 2024 02:21 PM

Danielle F. Forté
Danielle F. Forté, Clerk
Muscongce County, Georgia

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

MUSCOGEE COUNTY BOARD OF
ELECTIONS AND REGISTRATION,

Petitioner,

v.

STATE ELECTION BOARD,

Respondent.

Civil Action No. SU2024CV002288

**PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND AN INTERLOCUTORY INJUNCTION**

The Muscongce County Board of Elections and Registration (the "Muscongce Board") is proud of its commitment and efforts to always deliver fair, secure, and orderly elections. From the Board's Election Director to the county's more than 350 poll workers, the people who administer Muscongce County elections approach their roles with dedication, adhere to state law, and are steadfast in their commitment to ensuring all lawful votes are counted. This team has worked tirelessly to prepare for the upcoming election and execute their responsibilities faithfully and effectively.

Because the Muscongce Board is focused on ensuring a smooth general election next month, it did not wish to engage in litigation at this late date. Indeed, the Muscongce Board and its chair both joined the Attorney General, the Secretary of State, and numerous other officials in attempting to dissuade the State Election Board ("SEB") from adopting several new rules mere weeks before this November's election. Unfortunately, the SEB's decision to adopt an

unnecessary and unlawful rule—Rule 183-1-12-.12(a)(5) (the “Hand Count Rule”)—requiring the hand counting of all Election Day ballots, leaves the Muscogee Board with no alternative. Muscogee County is unable to comply with the Hand Count Rule without violating Georgia statute and the Attorney General and Secretary of State have made clear that the SEB lacked the authority to adopt the Hand Count Rule.

The rule is not only unlawful; it is also impractical and serves no conceivable purpose. Existing rules already provide robust safeguards for counting ballots and the Hand Count Rule adds nothing to the process except a source of vulnerabilities and delays. Because the SEB chose to adopt this rule mere weeks before Election Day, compliance will require Muscogee County to undertake an immediate and herculean effort to create new protocols, retrain its poll workers, obtain the security resources and facilities necessary to enable the mass hand counting of ballots, and secure the additional funds required to pay for these changes. Petitioner’s preparations cannot wait until the week before Election Day and necessitate a prompt ruling from this Court. What is more, these preparations may be literally impossible to complete, absent a court order, because the Secretary of State has made clear that his office will provide neither the specific forms required to comply with the rule, nor any additional guidance on implementing the rule until after any court decisions are made.

To preserve the status quo and prevent irreparable harm, Petitioner asks the Court to immediately issue a temporary restraining order pausing the Hand Count Rule from taking effect and being enforced. Petitioner further requests that, within 30 days of issuance of that order, the Court either rule on Petitioner’s request for an interlocutory injunction or render a final judgment on the merits.

BACKGROUND

On September 20, 2024, the SEB adopted six rules that will, if implemented, substantially alter Georgia's election procedures effective October 22—seven days after the start of early voting and just 14 days before the November election. *See* Verified Pet. ¶¶ 66-73. On October 9, Petitioner brought this action for declaratory relief under Georgia's Administrative Procedure Act ("APA") challenging the validity of the most disruptive of the SEB's new rule: the Hand Count Rule. *See* Verified Pet. Petitioner also moved for an expedited trial on the merits. *See* Emergency Mot. to Expedite Decl. J. Action (filed Oct. 11, 2024). Petitioner now seeks to preserve the status quo and prevent the irreparable harm that it will face if the Hand Count Rule takes effect on October 22.

The Hand Count Rule requires three sworn poll officers, after the polls close on election day, to (1) independently count all ballots removed from the scanner, (2) sort these ballots into stacks of 50, and (3) independently arrive at the same total ballot count. Rule 183-1-12-.12, attached as Exhibit A. The Hand Count Rule also creates an obligation to reconcile the count; but it does not establish a procedure for doing so. *Id.* The Rule contemplates that this hand-counting procedure may take place on the day after Election Day depending on the number of ballots in the scanner. *Id.* If the hand count takes place after Election Day, the Hand Count Rule requires that the ballots be transported from the precincts to the county election office for completion of the process. *Id.*

The SEB adopted the Hand Count Rule over strong objections from the Attorney General, Secretary of State, the Georgia Association of Voter Registration and Election Officials ("GAVREO"), election officials and workers across the state (including the Chair of the Muscogee Election Board who submitted a comment in his individual capacity), voters, and

many other stakeholders. *See, e.g.*, GAVREO Comment to the SEB, dated Sept. 17, 2024, attached as Exhibit B. The Attorney General—Georgia’s chief legal officer—informed the SEB that the Hand Count Rule is “not tethered to any statute” and thus is “likely the precise type of impermissible legislation that agencies cannot do.” Attorney General’s Memorandum, dated Sept. 19, 2024 (“AG Comment”), at 6, attached as Exhibit C. The Secretary of State—the Georgia’s chief election official—warned that the Rule “would require tremendous personnel resources and time,” “could lead to significant delays in reporting,” and “would disrupt existing chain of custody protocols under the law and needlessly introduce the risk of error, lost ballots, or fraud.” Letter of Charlene McGowan, dated Sept. 16, 2024 (“McGowan Letter”), at 2, attached as Exhibit D. GAVREO—a nonpartisan association of election officials—opposed the Rule because of its “potential to delay results; set fatigued employees up for failure; and undermine the very confidence the [R]ule’s author claims to seek.” GAVREO Comment at 3 (Ex. B). Nonetheless, the SEB adopted the Hand Count Rule at its September 20 meeting.

On October 1, 2024, Petitioner’s Election Director received a notice from the office of the Secretary of State stating that it “does not intend to provide additional training on SEB rules until after any court decisions are made.” Affidavit of Nancy Boren (“Boren Aff.”) ¶ 19, attached as Exhibit E. The Secretary has thus not provided any of the mandatory forms required to comply with the Hand Count Rule. *See* O.C.G.A. § 21-2-50(a)(5) (providing that it is the Duty of the Secretary of State to furnish all blank forms for use in elections).

The SEB’s last-minute adoption of the Hand Count Rule has created major challenges for Petitioner and its staff. Petitioner is deeply committed to following the law—including SEB rules—but here the Hand Count Rule is in conflict with at least two Georgia statutes and the

Attorney General has made clear that the SEB lacked the power to enact it. Petitioner urgently requires a court order to clarify the parties' legal obligations. *See, e.g.,* Boren Aff. ¶ 66.

Absent prompt injunctive relief, Petitioner will be forced to attempt to implement an unlawful rule. As detailed below, this will require Petitioner to divert resources away from vital election activities in order to develop new protocols, retrain poll workers, obtain adequate security for ballots and personnel, and secure the necessary facilities in which to conduct hand counts. Boren Aff. ¶¶ 25-28, 34-42, 43-49. Many of these tasks will be difficult, if not impossible, because of the Secretary of State's decision to delay providing guidance and the mandatory forms. Several of these tasks will also require Petitioner to make additional expenditures beyond what it had budgeted for conducting this election. Boren Aff. ¶¶ 12, 27, 49. And even if Petitioner somehow manages to fully prepare to implement the Hand Count Rule, the rule could still cause harm to both Petitioner and the public by delaying election results and introducing unnecessary human error into the ballot counting process—all without providing any benefit in terms of increased security or reliability.

LEGAL STANDARD

Petitioner brings suit pursuant to O.C.G.A. § 50-13-10, a provision of the Georgia APA that 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.” In a declaratory judgment action governed by Chapter 4, “the trial court is specifically authorized to grant injunctive relief to preserve the status quo pending the adjudication on the merits.” *Scott v. Prime Sales & Leasing, Inc.*, 276 Ga. App. 283, 287 (2005) (citing O.C.G.A. § 9-4-3(b)). “The purpose of an interlocutory injunction is to preserve the status

quo, as well as balance the conveniences of the parties, pending final resolution of the litigation.” *Veterans Parkway Devs., LLC v. RMW Dev. Fund II, LLC*, 300 Ga. 99, 102 (2016).

In deciding whether to issue an interlocutory injunction a trial court must consider whether: (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 the claims at trial; and (4) granting the interlocutory injunction will not disserve the public interest. *SRB Inv. Servs., LLLP v. Branch Banking & Trust Co.*, 289 Ga. 1, 5 (2011). “[T]he four-factor test for issuing an interlocutory injunction is a balancing test and . . . it is not incumbent upon the movant to prove each factor.” *City of Waycross v. Pierce Cty. Bd. of Comm’rs*, 300 Ga. 109, 111 (2016). “Whether an interlocutory injunction is warranted is a matter committed to the discretion of the trial court.” *Jansen-Nichols v. Colonial Pipeline Co.*, 295 Ga. 786, 787 (2014).¹

ARGUMENT AND CITATION OF AUTHORITY

I. Petitioner Faces Irreparable Injury if the Court Denies its Motion for an Interlocutory Injunction.

“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 is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner.” *Bishop v. Patton*, 288 Ga. 600, 604–05 (2011). There need only

¹ This lawsuit does not implicate any sovereign immunity concerns, as § 50-13-10 “explicitly waive[s] sovereign immunity as to declaratory judgment actions in which the rules of [an] agenc[y] are challenged.” *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 659–60 (2015). The State conceded last week in another challenge to SEB rules that sovereign immunity poses no barrier to APA suits seeking a declaration that agency rules are invalid, and that this express waiver survived the adoption of Paragraph V in the Georgia Constitution. See *Abhiraman v. SEB* (No. 24CV010786) Transcript at 78–79 (“You know, obviously under 50-13-10 there is a statutory waiver, under the declaratory judgment statute, there’s statutory waiver.”) (statement of Senior Assistant Attorney General) which is attached as an excerpt at Exhibit F.

be a “substantial threat” of irreparable injury; it need not be “guaranteed.” *State v. Fed. Def. Program*, 315 Ga. 319, 347 (2022). Furthermore, “[a] trial court may issue an interlocutory injunction to maintain the status quo until the final hearing if, by balancing the relative equities of the parties, it would appear that the equities favor the party seeking the injunction. Thus, a demonstration of irreparable injury is not an absolute prerequisite to interlocutory injunctive relief.” *Parker v. Clary Lakes Recreation Ass’n, Inc.*, 272 Ga. 44, 44 (2000) (internal citation omitted).

The SEB’s passage of the Hand Count Rule mere weeks before this November’s election creates enormous legal, logistical, and budgetary challenges for Petitioner. Given the limited time remaining before Election Day and the Secretary of State’s decision to wait to provide guidance and mandatory forms, it may well be impossible for Muscogee County to adequately prepare for this last-minute rule change. If the Court allows the Rule to go into effect and declares it invalid after the election, Petitioner will have no recourse against the SEB or the State to remediate the immense physical, financial, legal, and practical burdens created by the last-minute rule change. As such, absent a temporary restraining order and/or an interlocutory injunction, Petitioner faces numerous forms of irreparable harm. Each is discussed in turn below.

A. Legal Risk

The Muscogee Board, its Election Director, and its staff are dedicated to following the law and are meticulous about ensuring that they do so. Boren Aff. ¶ 66. But the Hand Count Rule places Petitioner in a Catch-22. On one hand, Petitioner is bound by the SEB’s Hand Count Rule. On the other hand, complying with the rule would risk violating the Election Code (including O.C.G.A. § 21-2-420(a) and O.C.G.A. § 21-2-421(a) as described below) and would be contrary to the opinion of the state’s chief legal officer, the Attorney General. *See* AG Comment (Ex. C).

Although Petitioner agrees with the Attorney General's reasoning and believes that the Hand Count Rule is invalid and detrimental to election administration, failure to comply with the rule would risk disciplinary action from the SEB, up to and including suspension of the Muscogee Board. *See* O.C.G.A. § 21-2-33.2. Being forced into this state of legal jeopardy is itself irreparable injury.

B. New Financial Burdens

Muscogee County began financial planning for this year's November election as far back as January 2024, and it did not include requests associated with a hand count by three poll workers per precinct. Boren Aff. ¶ 12; Affidavit of Uhland Roberts ("Roberts Aff.") ¶ 31, attached as Exhibit G. Implementing the Hand Count Rule could require hiring several additional staff because the elections office must identify three poll workers who are available to conduct the hand count either late in the evening after a long shift or the following day. Boren Aff. ¶ 13. Muscogee's poll workers often have other employment, and may not be available the following day for the hand count. Boren Aff. ¶ 28. Even if they are available, Muscogee would need to pay for an additional day for this same poll worker—funds that are not in the original budget for the November 2024 election. *Id.*

Furthermore, for security of the ballots and the staff, Muscogee County would need to pay for additional hours to hire security guards during the hand count. Boren Aff. ¶¶ 26, 28. If the hand count is permitted to be conducted outside of the County Election office, Muscogee may also have to pay to rent a location where all of the precincts will fit for the hand count following election night. Boren Aff. ¶ 48. This is not merely a minor inconvenience for the election office. Rather, these unexpected costs are a matter of the public purse. Use of these

funds could mean diversion from other needs within the county expended on this Hand Count Rule.

C. Administrative Burden on Election Staff

In order to comply with the Hand Count Rule, Petitioner's small and dedicated staff must complete an extensive list of time-consuming tasks on top of their already long list of critical home-stretch election season tasks. The Election Director must create guidance and instructions for poll managers to decide when, whether, and how to conduct hand counts on the evening of Election Day or the following day(s). Boren Aff. ¶ 13(b). The office must also incorporate new uniform documentation associated with security and reporting required in the process. This has been rendered more difficult, if not impossible, by the Secretary of State's decision not to provide guidance or mandatory forms for the Hand Count Rule until after a court decision is reached. Boren Aff. ¶ 19.

The Muscogee Board must also secure the necessary facilities for conducting hand counts after Election Day. Boren Aff. ¶¶ 13(f), 48. The Hand Count Rule allows the Poll Manager to choose to start the count the following day based on factors such as fatigue of the poll workers, meaning that Petitioner will not know which precincts will perform their count on election night until after the polls close. Boren Aff. ¶ 43. Polling locations usually serve other purposes after Election Day, and thus are unlikely to be available for hand-counts that extend past Election Day. Boren Aff. ¶ 43; Roberts Aff. ¶¶ 19-20. As such, Petitioner will need to reserve space for an unknown number of precincts to conduct hand counts after Election Day. Boren Aff. ¶ 43. In addition to the other budgetary implications of the Hand Count Rule, Petitioner would need to incorporate facilities into planning and administration. Boren Aff. ¶ 48. Performing all these

tasks would divert time, energy, and resources away from other critical election responsibilities. Boren Aff. ¶¶ 14, 40.

D. Training of Poll Officials

To comply with the Hand Count Rule, Petitioner must identify, potentially hire, and train three poll workers for each precinct to hand count all ballots cast in that precinct on Election Day. Boren Aff. ¶ 49. At this late stage in the election cycle, the majority of poll workers have already been trained on the existing rules. Boren Aff. ¶¶ 35-36. Thus, the identified poll workers must be retrained with new Hand Count Rule procedures, thereby diverting time, energy and effort away from other critical election day preparation. Boren Aff. ¶ 40. One of the essential elements of poll worker training involves explaining and demonstrating the many forms that poll workers will need to use in their work. Boren Aff. ¶ 38. As noted above, none of the mandated forms for the hand count yet exist, thus impeding Petitioner's ability to even begin training at this eleventh hour. For example, the Hand Count Rule requires that the three poll officers performing the count produce a "control document" with specified information about the ballots. *See* Rule 183-1-12-.12 (Ex. A). It is difficult, if not impossible, to train poll workers to use such a form when the Secretary of State has yet to create it.

E. Security Risks

The Hand Count Rule creates risks to both the security of ballots and the security of election workers. The SEB has provided no guidance on how to address either. With regard to ballots, the Hand Count Rule creates risks because it significantly increases the amount of time outside of the securely sealed ballot boxes and the number of hands that touch them. Boren Aff. ¶ 56. Under the existing procedure, every time the ballot box is unsealed, two people must sign a form to establish the chain of custody and account for any activity with the ballots. Boren Aff. ¶

56. When they return the ballots to the box, they sign another form and immediately seal the box again. Boren Aff. ¶ 56. The Hand Count Rule introduces an entirely new instance of opening the ballot boxes, with extended exposure outside of the boxes that would require new safeguards to ensure security during the hand count. Boren Aff. ¶¶ 51, 57. For example, detailed procedures will be required to keep track of each batch of ballots, document who counted which batches, and ensure that all ballots are stored properly. Boren Aff. ¶¶ 21, 22. These do not yet exist.

Even if all these procedures could be perfectly worked out in the limited time remaining before Election Day, the Hand Count Rule would still increase the risk to ballot security because, during the hand count, the ballots will be exposed in a variety of environments with an unknown number of members of the public present. Boren Aff. ¶ 57. The Hand Count Rule provides no restrictions on the number of people or credentials for who can observe the hand count, how far from the counting they must stay, and other necessary protocols to ensure that poll workers can conduct the counts in secure conditions without disruption. Boren Aff. ¶ 24, 58. The Hand Count will also necessitate hiring of additional security personnel. Boren Aff. ¶¶ 24, 26. On Election Day, Petitioner employs security personnel to protect both the ballots and the poll workers. Boren Aff. ¶ 26. These security personnel are paid on an hourly basis, and the Hand Count Rule increases the number of hours for which they are needed. Petitioner will undoubtedly be forced to adjust its budget or seek additional funding from the County. Boren Aff. ¶¶ 26, 27.

F. Toll on Election Workers

Muscogee County has a team of seasoned, dedicated, hardworking, and reliable poll workers, many of whom have served in the role for several election cycles. Boren Aff. ¶ 59. Nonetheless, the Hand Count Rule is likely to stress and fatigue even these dedicated poll workers. Boren Aff. ¶ 59. On Election Day, poll managers and supervisory staff arrive at 5:30

A.M. and poll workers arrive at 6:00 A.M. Boren Aff. ¶ 60. They stay on site until after the last person in line at 7:00 PM has completed voting. *Id.* This is already an exhausting day of work, but the Hand Count Rule will add at least several additional hours, particularly in precincts with a large number of ballots to hand count. The Hand Count Rule requires the poll workers to conduct the count either the evening of Election Day or the following day, which could extend many workers' schedules late into the evening. Boren Aff. ¶¶ 13(b), 61. Given the lengthy set of responsibilities for closing precincts, Muscogee County anticipates that at least some of the hand counts will occur after Election Day. Boren Aff. ¶ 45.

Muscogee County poll workers are accustomed to the orderly and careful enactment of new procedures, so the chaos and uncertainty around the Hand Count Rule is already causing worry and concern. Boren Aff. ¶ 62. The Hand Count Rule also requires that the count be made public, and while Petitioner's staff are accustomed to close scrutiny, poll workers may become nervous or stressed under such conditions and may even be subject to harassment while attempting to conduct the hand count. Boren Aff. ¶ 63. Muscogee County poll workers are willing to perform a hand count if required, but in several training sessions so far, many have expressed anxiety about how the logistics of such a count will occur. Boren Aff. ¶ 61.

G. Voter Trust

The Muscogee Board and its staff hold themselves to a high standard and strive for excellence in their work. Voters trust the board because of its track record of providing among the most secure, fair, and efficient elections in the country. Roberts Aff. ¶ 12. The Hand Count Rule threatens both the quality of the Muscogee Board's work and the associated voter trust.

Typically, when a new procedure is required, Petitioner ensures that all the steps of the procedure are carefully planned out. Boren Aff. ¶ 32. Protocols are practiced and tested so that

the process is streamlined, efficient, and accurate on Election Day. Boren Aff. ¶ 32. That level of rigor is impossible here given the amount of time remaining before Election Day, increasing the risk of mishaps that lead to confusion or call into question the security of the ballots. Hand counting ballots also dramatically increases the risk of human error, and any discrepancies created by such error are likely to further fuel voter distrust. Boren Aff. ¶ 55. Finally, Petitioner prioritizes clear public communication, particularly during an election, but it will be nearly impossible to communicate clearly about the hand count. Boren Aff. ¶ 30. With 25 precincts able to make independent decisions about when to conduct their hand counts, and with those decisions being made in real time on election night, Petitioner has no way of informing the public in advance about when and where hand counts will be conducted. Boren Aff. ¶ 30; Roberts Aff. ¶¶ 22-23.

II. The Threatened Injury to Petitioner Far Outweighs Any Harm That the Injunction May Cause to the SEB

An injunction would not harm the SEB because the Hand Count Rule cannot advance the SEB's stated goals and, in practice, is likely to undermine them. The SEB's stated purpose for the Hand Count Rule is "to ensure the secure, transparent, and accurate counting of ballots." Notice of Proposed Rulemaking at 2, attached as Exhibit H. The rule cannot advance this goal because there are already safeguards in place to ensure that the number of ballots counted match the number of ballots cast, and there is no plausible scenario in which the Hand Count Rule would uncover errors or misconduct not already detected by existing safeguards.

Existing SEB rules require that the poll manager reconcile the number of voters who check in at the polls with the number of ballots scanned and the number of ballots unable to be scanned. Rule 183-1-12-.12(a)(1)-(2), attached as Exhibit I. If the numbers cannot be reconciled with each other, the poll manager is required to "immediately determine the reason for the

inconsistency; correct the inconsistency, if possible[,] and fully document the inconsistency or problem along with any corrective measures taken.” *Id.* Given this existing requirement, the Hand Count Rule does nothing to increase the security, transparency, or accuracy of the count. To see that this is true, consider the hypothetical case in which existing safeguards detect no errors, but a hand count does—in other words, a situation where the number of voters who check in at the polls matches the number of scanned ballots, but the number of hand-counted ballots does not match. The only plausible explanations for this inconsistency would be either that a human error occurred in the process of hand counting, or that ballots were improperly added or removed during the hand counting process. In other words, the only additional errors that hand counting can detect are those introduced by the hand counting process itself.

Beyond failing to make elections more secure, the Hand Count Rule creates new election security vulnerabilities. As the Secretary of State has explained, “having poll workers handle ballots at polling locations after they have been voted introduces a new and significant risk to chain of custody procedures.” Secretary of State’s Press Release, dated Aug. 15, 2024, attached as Exhibit J. The Hand Count Rule also allows poll officers in larger precincts to move ballots and count them at a “place other than the polling location” after election day. Rule 183-1-12-.12 (Ex. A). This introduces further opportunities for ballots to be lost or tampered with. Finally, by delaying results and potentially introducing new discrepancies, the Hand Count Rule would not make elections more transparent but rather would contribute to voter confusion and mistrust of the election system.

In short, enjoining the Hand Count Rule would cause no harm to the SEB. Instead, it would prevent the Hand Count Rule from disrupting the status quo at this critical time and would further the very goals the SEB is supposed to advance based on its mandate from the legislature.

III. Petitioner is Substantially Likely to Prevail on the Merits of its Claims at Trial.

Petitioner is likely to succeed on the merits of its claims brought under the Georgia APA. The Hand Count Rule is not authorized by law, is contrary to express provisions in the Georgia code, and is not reasonable, given the problems it creates (rather than solves). In addition, the SEB failed to meet its procedural obligations under the APA in finalizing the rule.

A. The Hand Count Rule is not Authorized by Law.

An agency rule is “invalid” if it “exceeds the scope of or is inconsistent with the authority of the statute upon which it is predicated.” *Dep’t of Hum. Res. v. Anderson*, 218 Ga. App. 528, 529 (1995). Such rules are an “unconstitutional usurpation of the General Assembly’s power” to legislate. *N. Fulton Med. Ctr. v. Stephenson*, 269 Ga. 540, 543 (1998). The SEB accordingly has “no inherent powers and no lawful right to act except as directed by the [enabling] statute.” *Southern Co-op. Foundry Co. v. Drummond*, 76 Ga. App. 222, 224 (1947). The SEB can only promulgate rules “to carry into effect a law already passed” or otherwise “administer and effectuate an existing enactment of the General Assembly.” *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995). It cannot add extra requirements or procedures where the statute speaks plainly and comprehensively on a matter. *E.g.*, *Dep’t of Hum. Res.*, 218 Ga. App. at 529 (1995); *Pope v. Cokinos*, 231 Ga. 79, 80–82 (1973).

As the Attorney General’s Office warned the SEB prior to its passage of the Hand Count Rule, the rule is “not tethered to any statute” and thus is “likely the precise type of impermissible legislation that agencies cannot do.” AG Comment at 6 (Ex. C). That is correct. No statute comes close to authorizing the type of hand counting required by the Rule, including the statutes cited as “[a]uthority” for the Rule. Notice of Proposed Rulemaking (citing O.C.G.A. §§ 21-2-483(a), 21-2-436, 21-2-420(a)) (Ex. H).

O.C.G.A. § 21-2-483 mostly governs procedures at the tabulation center and is, therefore, largely irrelevant to the Hand Count Rule, which mandates hand counting at the precinct level prior to tabulation. The SEB likely cited § 21-2-483(a) because the first sentence reads: “In primaries and elections in which optical scanners are used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent.” O.C.G.A. § 21-2-483(a) (emphasis added). But this provision refers to the counting of ballots using optical scanners, not by hand. *See* O.C.G.A. § 21-2-483(g)(1), (h); *see also* O.C.G.A. § 21-2-300(a).

O.C.G.A. § 21-2-436 is likewise inapplicable because it governs “[p]recincts [u]sing [p]aper [b]allots,” not those using voting machines. (Muscogee County only uses optical scanners. Ver. Pet. ¶ 45.) This section also only provides for procedures “before the ballot box is opened,” such as announcing “the number of ballots issued to electors” based on paper ballot stubs. O.C.G.A. § 21-2-436. In contrast, the Hand Count Rule mandates new procedures after the poll manager and two witnesses “unseal and open each scanner ballot box.” *See* Rule 183-1-12-.12 (Ex. A).

Nor is the Rule authorized by O.C.G.A. § 21-2-420, which provides that “the poll officials in each precinct shall complete the required accounting and related documentation for the precinct.” O.C.G.A. § 21-2-420. The term “required accounting” refers to the accounting expressly required by statute. *E.g.*, O.C.G.A. § 21-2-450. It cannot plausibly be read to implicitly authorize hand counting ballots at the precinct level, especially where the Legislature’s comprehensive scheme for ballot counting and tabulation contains not even a hint of such authority. The SEB can only adopt rules “to carry into effect a law already passed” or otherwise “administer and effectuate an existing enactment of the General Assembly.” *HCA Health Servs.*, 265 Ga. at 502. It cannot write new laws from scratch.

B. The Hand Count Rule Conflicts with Existing Law.

The Hand Count Rule also exceeds the SEB's rulemaking authority because it is inconsistent with the Georgia Election Code, specifically O.C.G.A. §§ 21-2-420(a) and 21-2-421(a)(1).

Section 21-2-420(a) provides that after “the poll officials in each precinct shall complete the required accounting and related documentation,” the chief manager and at least one assistant manager shall “*immediately* deliver all required documentation and election materials to the election superintendent” who must then “ensure that such ballots are processed, counted, and tabulated *as soon as possible*.” O.C.G.A. § 21-2-420(a) (emphasis added). Because election materials include ballots, *see id.*, and these materials must “immediately” be delivered to the election superintendent, it would be impossible for poll managers to comply with O.C.G.A. § 21-2-420(a) while also conducting an hours- or days-long hand count process. The hand count would also frustrate the superintendent's ability to process, count, and tabulate the ballots “as soon as possible” as required by statute.

The Hand Count Rule is also inconsistent with Section 421(a) of the election code. That section requires the superintendent to report to the Secretary of State and publicly post the number of ballots cast on election day. This report must be made “[a]s soon as possible but not later than 11:59 P.M. following the close of the polls on the day of [the] election.” O.C.G.A. § 21-2-421(a). The Hand Count Rule, by contrast, allows the number of ballots to be hand counted after Election Day and requires only that poll officers finish their count “during the week designated for county certification.” Rule 183-1-12-.12 (Ex. A). If the poll manager waits until the hand count is complete before reporting the number of ballots to the superintendent, then any

hand count that extends beyond 11:59 P.M. on election night will inhibit the superintendent from complying with the statutory requirement.

C. The Hand Count Rule is Unreasonable.

Under the Georgia APA, an administrative rule is valid only if it is reasonable. *Albany Surgical, P.C. v. Dep't of Cmty. Health*, 257 Ga. App. 636, 637 (2002). The evaluation of reasonableness of an agency regulation must begin with an examination of the purpose of the statute delegating the regulatory authority to determine if the regulation furthers that purpose. *Id.* A court must conclude that a rule is reasonable if the agency is able to provide relevant evidence that the rule furthers the intended purpose. *See id.* While this is not a high bar, the flawed Hand Count Rule does not meet the threshold requirement.

Georgia statute states that it is the duty of the SEB to “promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections.” O.C.G.A. § 21-2-31(1). It is further the SEB’s duty to “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2). Far from promoting uniform, fair, legal, and orderly elections, the Hand Count Rule requires poll workers to take actions that are inconsistent with Georgia statute, delay the reporting of results, and jeopardize the security of the vote count. The SEB’s stated purpose for the Hand Count Rule is “to ensure the secure, transparent, and accurate counting of ballots,” Notice of Proposed Rulemaking at 2 (Ex. H), but the SEB will not be able to provide any evidence to show that the rule advances its purpose. Such evidence does not exist because, as discussed above, there is no plausible scenario in which the Hand Count Rule would uncover errors or misconduct that would not already be

uncovered by existing safeguards. In short, the rule does not advance its purpose because the rule accomplishes nothing.

Furthermore, the Hand Count Rule undermines the uniformity of the practices and proceedings of election officials. It does so both by explicitly providing discretion to poll managers and by incorporating ambiguities that will be interpreted differently by different officials. The Hand Count Rule provides that the decision of when to start the hand-counting process is up to the Poll Manager or Assistant Poll Manager, meaning poll managers in each precinct may decide to start at different times and for different reasons. *See* Rule 183-1-12-.12 (Ex. A). It is not clear from the vague text of the rule whether a polling location with fewer than 750 ballots per scanner must begin the hand count on Election Day or complete it that day, creating further room for nonuniformity. *See* Rule 183-1-12-.12 (Ex. A). Additionally, the rule's description of the counting process itself is ambiguous. The Rule requires that poll workers count the ballots "independently" and "separately," which suggests that each of the three sworn poll officers must count all of the ballots in stacks of 50 before the next person begins. *See* Rule 183-1-12-.12 (Ex. A). But the rule could also be read to allow a poll officer to count one stack of 50, pass that stack to the next person, and continue counting. Different poll officers are likely to interpret this provision differently, leading to dramatic differences in the amount of time required to conduct the hand count. And the SEB's decision to adopt the Hand Count Rule mere weeks before Election Day only furthers the risk of confusion and nonuniformity.

A rule that does nothing to advance its stated purpose or the purpose of the enacting agency, but instead undermines those very purposes, is the quintessential example of an unreasonable rule.

D. Passage of the Hand Count Rule did not Follow the Mandatory Procedures Specified in the Georgia APA.

The APA mandates that “[n]o rule . . . shall be valid unless adopted in exact compliance with” the procedures set out in “subsection[] (a)” of section 50-13-4. O.C.G.A. § 50-13-4(d). “Failure to comply with these procedures will invalidate an amended rule.” *Walker v. Dep’t of Transp.*, 279 Ga. App. 287, 294 (2006). Section 50-13-4(a), in turn, requires that the agency, upon request, “issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.” O.C.G.A. § 50-13-4(a)(2). Section 50-13-4(a) also mandates that “[p]rior to the adoption, amendment, or repeal of any rule . . . the agency shall ... [g]ive at least 30 days’ notice of its intended action.” O.C.G.A. § 50-13-4(a)(1). The SEB failed to comply with both of these requirements.

First, the SEB has failed to respond to the dozens of individuals who offered specific objections to the Hand Count Rule despite numerous requests for a concise explanation. Second, the SEB’s notice for its September 20 meeting stated only that it would “provide the public an opportunity to comment upon and provide input into the proposed rule amendments.” Notice of Proposed Rulemaking at I (Ex. H). The SEB provided no notice that it *intended to vote on or pass the rule* as required by O.C.G.A. § 50-13-4(a)(1). Although this discrepancy may appear minor, the Georgia APA is clear that “exact compliance” is required. Because the SEB failed to comply with O.C.G.A. § 50-13-4(a) in passing the Hand Count Rule, the Court “must . . . hold that the amendment[] [is] invalid.” *Outdoor Advert.*, 186 Ga. App. at 554.

IV. Granting an Interlocutory Injunction will not Disserve the Public Interest.

An interlocutory injunction would advance the public interest because it would prevent delays in results and election night confusion while advancing election security. As described

above, existing rules already ensure the accuracy and security of Georgia's vote counting, and the Hand Count Rule would not contribute to those goals. Instead, the Hand Count Rule would lead to delays in the reporting of election results on election night and into the subsequent days—creating the conditions for the spread of conspiracy theories and distrust of elections. Hand counting of ballots would likely also introduce human error into the vote counting process, further contributing to public distrust. Furthermore, as the Secretary of State has explained “It is far too late in the election process for counties to implement new rules and procedures.” McGowan Letter (Ex. D). In the lead up to an election, last-minute changes can “result in voter confusion,” and “[a]s an election draws closer, that risk will increase.” *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006). Moreover, there is no “new problem” or exigent circumstance requiring last-minute intervention by the SEB. The method of counting ballots has been set since at least 2020 and throughout this election cycle, and the Hand Count Rule does not respond to unforeseen circumstances.

In this context, an interlocutory injunction to preserve the status quo would serve the public interest by reducing the risk of chaos and confusion and ensuring that the election is administered consistent with the robust and effective existing rules.

CONCLUSION

Petitioner asks the Court to immediately issue a temporary restraining order pausing the Hand Count Rule from taking effect and being enforced. Petitioner further requests that, within 30 days of issuance of that order, the Court either rule on Petitioner's request for an interlocutory injunction or render a final judgment on the merits.

Respectfully submitted on this 15th day of October, 2024

PAGE, SCRANTOM, SPROUSE,
TUCKER & FORD, P.C.

By: /s/ James C. Clark, Jr.

James C. Clark, Jr.

Ga. Bar No.: 127145

jclark@pagescrantom.com

Thomas F. Gristina

Ga. Bar No.: 452454

tgristina@pagescrantom.com

1111 Bay Avenue, Third Floor
P.O. Box 1199
Columbus, Georgia 31902
(706) 324-0251

Jonathan B. Miller*
Public Rights Project
490 43rd Street, Unit #115
Oakland, CA 94609
T: (510) 738-6788
jon@publicrightsrproject.org

*Application for admission *pro hac vice* forthcoming

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing to be filed with the Clerk of Court using the eFileGA system.

/s/ James C. Clark, Jr. _____

James C. Clark, Jr.

Ga. Bar No.: 127145

jclark@pagescrantom.com

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT LIST

EXHIBIT A.....	Rule 183-1-12-.12
EXHIBIT B.....	GAVREO Comment to the SEB, dated Sept. 17, 2024
EXHIBIT C.....	Attorney General's Opinion, dated Sept. 19, 2024
EXHIBIT D.....	Letter of Charlene McGowan, dated Sept. 16, 2024
EXHIBIT E.....	Affidavit of Nancy Boren
EXHIBIT 1.....	October 1, 2024 Letter of Secretary of State
EXHIBIT F.....	Statement of Senior Assistant Attorney General
EXHIBIT G.....	Affidavit of Affidavit of Uhland Roberts
EXHIBIT 1.....	Letter to SEB Board
EXHIBIT H.....	Notice of Proposed Rulemaking
EXHIBIT I.....	Rule 183-1-12-.12(a)(1)-(2)
EXHIBIT J.....	Secretary of State's Press Release, dated Aug. 15, 2024

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM



The Office of Secretary of State

Brad Raffensperger
SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that the attached eight (8) pages represent a true copy of Rule 183-1-12-.12, entitled “Tabulating Results,” Rules of the State Election Board, Chapter 183-1, “Georgia Election Code,” Subject 183-1-12, “Preparation for and Conduct of Primaries and Elections,” as amended by filing on October 2, 2024; to become effective October 22, 2024, as filed in the Office of Secretary of State, Administrative Procedure Division.

Brad Raffensperger

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Official Seal of the State of Georgia this 4th day of October, 2024.



Ga. Comp. R. & Regs. r. 183-1-12-.12 [Effective 10/22/2024] Tabulating Results
Georgia Administrative Code
Department 183. RULES OF STATE ELECTION BOARD
Chapter 183-1. GEORGIA ELECTION CODE
Subject 183-1-12. PREPARATION FOR AND CONDUCT OF PRIMARIES AND ELECTIONS

Rule 183-1-12-.12. [Effective 10/22/2024] Tabulating Results

(a) After the Polls Close.

1. Immediately after the polls close and the last voter has voted, the poll manager and two witnesses who have been previously sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall begin the closing procedure on each ballot scanner so that no further votes are cast and record the number of scanned ballots from every ballot scanner used in the polling place. The poll manager and the two witnesses shall record the number of scanned ballots from each scanner on a recap form to be developed by the Secretary of State. The poll manager and the two witnesses shall cause each ballot scanner to print three tapes of the tabulated results and shall sign each tape indicating that it is a true and correct copy of the tape produced by the ballot scanner. The poll manager and two witnesses shall record the count of ballots from the tabulation tape on the recap form. If the poll manager or the witnesses have reason to believe that printed tapes are not a true and correct tabulation of the ballots scanned by that ballot scanner, the poll manager or witness shall document the reasons and evidence for that belief and inform the election superintendent, who shall take appropriate action, in his or her discretion, so that the ballots in the ballot box associated with the ballot scanner are accurately tabulated.
2. The poll manager shall cause the number of printed ballots from each ballot marking device to be recorded on the recap form. The poll manager shall further cause the number of spoiled ballots and ballots placed in the emergency bin of the scanner that were unable to be scanned to be recorded on the recap form. The poll manager shall cause the total number of voter check ins from the electronic poll book and/or paper voter list to be recorded on the recap form. If the numbers recorded on the recap form do not reconcile with each other, the poll manager shall immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken.
3. As soon as possible after the polls close and the last elector votes, the poll manager shall advise the election superintendent of the total number of ballots scanned into the ballot scanner, the total number of provisional ballots issued at the precinct, and the total number of any cast but unscanned ballots in a scanner emergency bin in the manner prescribed by the Secretary of State.

4. One of the three tapes of the tabulated results printed from the ballot scanner shall be affixed to the door of the polling place for the information of the public along with a copy of the provisional ballot recap form for the polling place. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purposes) provided by the election superintendent, along with the "poll officer" memory card from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The poll manager and the two witnesses shall initial the envelope indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the polling place recap form.
5. The poll manager and two witnesses who have been sworn as poll officers as provided in O.C.G.A. § 21-2-94 and 21-2-95 shall unseal and open each scanner ballot box, remove the paper ballots from each ballot box, record the date and time that the ballot box was emptied and present to three sworn precinct poll officers to independently count the total number of ballots removed from the scanner, sorting into stacks of 50 ballots, continuing until all of the ballots have been counted separately by each of the three poll officers. When all three poll officers arrive at the same total ballot count independently, they shall each sign a control document containing the polling place, ballot scanner serial number, election name, printed name with signature and date and time of the ballot hand count. If the numbers recorded on the precinct poll pads, ballot marking devices [BMDs] and scanner recap forms do not reconcile with the hand count ballot totals, the poll manager shall immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken. A separate container shall be used for the hand counted paper ballots from each ballot box and the container shall be labelled with the polling place, ballot scanner serial number, the number assigned to the ballot scanner for that election, the scanner counts of the ballots from the tabulation tape, and the hand count ballot total as certified by the three poll officials. The container shall be sealed and signed by the poll manager and two of the three hand count poll officers such that it cannot be opened without breaking the seal. The poll manager and two witnesses shall sign a label affixed to the container indicating that it contains all the hand counted ballots from the indicated scanner box and no additional ballots.
 - a. The decision about when to start the process described in this rule is up to the Poll Manager or Assistant Poll Manager. This decision can be made at the end of Election Day, or if a scanner possesses more than 750 ballots on Election Day, the Poll Manager can choose to start the next day and finish during the week designated for county certification. This decision should

take into account factors such as staffing requirements, fatigue, and concerns about efficiency and accuracy.

- b. If the ballot counting is to take place after Election Day, the relevant ballots, tabulation tapes, enumerated voter lists, and polling information shall be sealed in a tamper-proof container and the number of the seal noted. The counting shall occur in the County election office on the next business day following Election Day and must conclude prior to any scheduled or announced post-election audits. The process must be completed within the designated county certification period.
 - c. Counting will take place as mentioned in this rule. The process of opening, counting, and resealing ballots must be conducted in the presence of the relevant poll manager or assistant poll manager. These procedures must be conducted publicly to ensure transparency.
 - d. If the counting of ballots takes place at any time or place other than the polling location, the supervisor of elections must immediately communicate the date, time, and place of such action with all candidates on the ballot and the county chair of both major political parties no later than 10:00 pm on Election Day. The poll manager shall post such information on the outside windows of the polling location together with all other information required to be so posted.
6. The poll manager and the same two witnesses who emptied the ballot box shall complete and sign a form indicating that the ballot box was properly emptied and the ballots were properly stored and secured. Such form shall be delivered to the election superintendent with the completed polling place recap form. The ballot box shall be resealed and the new seal numbers shall be documented.
7. The envelopes containing the tabulation tape and the memory card, the containers containing the paper ballots, the completed polling place recap forms, voter access cards, supervisor's cards, electors lists, numbered lists of voters, electronic poll books, and other such paperwork shall be delivered to the election superintendent by the poll manager and at least one other sworn poll officer or law enforcement official. The election superintendent or his or her designee shall receive the materials and shall issue a receipt to the poll manager for the materials. The poll manager and any poll officers who travelled with the materials shall sign a form indicating that no sealed documents were unsealed enroute and that the materials have not been tampered with. The election superintendent, in his or her discretion, may allow a designee of the poll manager to deliver the envelopes or containers containing the ballot scanner tabulation tapes and memory cards to be used for unofficial reporting of results prior to the delivery of the other polling place materials provided that the same procedures for transit and delivery set forth herein are followed.

8. Before leaving the polling place, the poll manager shall power off, secure, and seal all electronic ballot markers, ballot boxes, and ballot scanners. The polling place shall be locked to prohibit unauthorized entry.
9. Accredited poll watchers shall be allowed to observe the process described in this rule; however, they must do so in a manner that does not interfere with poll officials.

(b) Consolidation of Results.

1. All persons involved with the tabulation and consolidation of the election results and who will operate the computer programs or handle the memory cards shall be sworn in the same manner that custodians are sworn before entering into their duties.
2. Only persons who are permanent employees of the election superintendent or have been duly sworn as poll officers or custodians shall touch or be in contact with any ballot, container, returns, tapes, device, memory card, or any other such election materials. Only persons who are employed by the election superintendent or have been duly sworn shall be in the immediate area of the tabulating center designated by the superintendent for the officers to conduct the tabulation and consolidation of the election results.
3. The tabulation and consolidation shall be performed in public. However, the election superintendent may make reasonable rules and regulations for conduct at the tabulating center for the security of the results and the returns and to avoid interference with the tabulating center personnel.
4. The election superintendent shall ensure all properly cast ballots that are received by the deadline to receive ballots are processed, verified, and tabulated as soon as possible and shall not cease such count and tabulation until all such ballots are counted and tabulated. However, counting may cease prior to tabulating provisional ballots that are cured by the prescribed deadline and validated pursuant to O.C.G.A. § 21-2-419, so long as those ballots are processed, verified, and tabulated as soon as possible. Counting may also cease prior to tabulating ballots from 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. ("UOCAVA"), that are received after the deadline to receive non-UOCAVA ballots but before the deadline for UOCAVA ballots set forth in O.C.G.A. § 21-2-386(a)(1)(G) so long as those ballots are processed, verified, and tabulated as soon as possible following their timely receipt.
 - a. For the purposes of this rule, "shall not cease" allows for reasonable or limited breaks so long as the processing, counting, and tabulating of ballots resumes as soon as possible. If the election superintendent, in its reasonable discretion, determines that due to mechanical or technological

failures, emergency circumstances, or other circumstances that do not allow the processing, counting, and tabulating of ballots to continue reliably and accurately, the election superintendent shall report as soon as possible in writing to the Secretary of State in the manner prescribed by the Secretary of State the reason the processing, counting, and tabulating of ballots cannot continue reliably and accurately and the estimated time that the processing, counting, and tabulating ballots will resume.

5. Upon the delivery of any election materials from a polling place, the election superintendent or his or her designee shall provide a receipt that clearly states what election materials have been delivered.
6. Upon receiving the paper ballots and the memory cards, the election superintendent shall verify the signatures on the sealed envelopes and containers, verify that the seals are intact, that the envelopes or containers have not been opened, and that there is no evidence of tampering with the envelopes, containers, or their contents.
7. In the case of elections for county, state, and federal office, after verifying that the envelopes and containers are properly sealed and have not been opened or tampered with, the election superintendent shall break the seal and open each envelope and remove the memory card and results tape. The election superintendent or his or her designee shall then insert the memory card into the election management system computer and transfer the vote totals from the memory card into the election management system for official tabulation and consolidation.
8. After transferring all of the vote totals from the memory cards to the election management system and consolidating such totals with the totals from the absentee ballot system and such votes from any provisional ballots which have been found by the registrars to be authorized pursuant to O.C.G.A. § 21-2-419, the election superintendent shall prepare the official consolidated returns for the primary, election, or runoff.
9. The election superintendent shall not list and certify in the official consolidated returns for an election any results for write in candidates who were not properly qualified under O.C.G.A. § 21-2-133.
10. In the case of primaries, elections, and runoffs for county, state, and federal office, the county election superintendent shall transmit to the Secretary of State the election returns by precinct for the county in electronic format or by electronic means, as may be specified by the Secretary of State, within fourteen days following a primary, election, or runoff.

(c) Publicly Posting Total Number of Ballots Cast After Close of Polls.

1. For the purposes of publicly posting the number of ballots cast, including the total number of ballots scanned into the ballot scanner, the total number of provisional ballots issued at the precinct, and the total number of any cast but unscanned ballots in a scanner emergency bin, as soon as possible after the close of polls and the number of absentee ballots received as soon as possible following the deadline to receive such absentee ballots as required by O.C.G.A. § 21-2-421(a), posting information in a prominent public place means:

- a. If the county or municipality maintains a publicly accessible website, publishing information on the homepage of the county's publicly accessible website associated with elections and/or registrations.
- b. If the county or municipality does not maintain a publicly accessible website, affixing information on the door of the county or municipality's election office such that the information is viewable to the public.
- c. At the same time that such information is publicly posted, it shall be transmitted to the Secretary of State in a manner determined by the Secretary of State.

(d) Election Night Reporting. The election superintendent shall transmit to the Secretary of State unofficial election results for all races for state offices in any primary, election, or runoff as soon as possible after the closing of the polls for such primary, election, or runoff. Such results shall be transmitted in a format prescribed by the Secretary of State. At a minimum, the results shall be transmitted upon one third of the precincts reporting results, upon two thirds of the precincts reporting results, and upon all precincts reporting results, including absentee ballots within all precincts. Except upon prior notice to and consultation with the Secretary of State, no election superintendent shall conclude the tabulation of votes on election night in any primary, election, or runoff in which there are contested races for federal and state offices until and unless all such unofficial results, including absentee ballots, have been transmitted to the Secretary of State.

(e) Reconciliation Report.

1. As soon as possible but no later than 30 days following the certification of election results, the election superintendent shall transmit to the Secretary of State a reconciliation report that reconciles the aggregate total of all ballots cast in each precinct as reported in the precinct-level election results to the aggregate number of voters who received credit for voting in each precinct on the form made available by the Secretary of State. Any discrepancies in the aggregate total of ballots cast in each precinct compares to the aggregate number of voters who received credit for voting in a precinct shall be fully investigated by the election superintendent or designee. The explanation for any discrepancy shall be included in the Reconciliation Report.

2. Upon submission of the completed Reconciliation Report to the Secretary of State, each county shall publish the report on their county election results website or post it in their elections office.

(f) Preparing for County Certification.

1. After each election but not later than 3:00 P.M. on the Friday following the date on which the election was held, the Board shall meet to conduct a review of precinct returns.
2. After all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast in person on Election Day and all provisional ballots (that have been validated) have been tabulated, the total number of ballots cast by each vote method shall be reported for each precinct.
3. A list of all voters who voted in the election shall be compiled including by category the number of voters who voted Election Day in Person, Advance Voting, Absentee and Provisionally. The list shall be examined for duplicates. The list shall then be sorted by precinct. The total number of unique voter IDs from each precinct shall be counted. The total number of unique voters who voted by each vote method shall be reported for each precinct.
4. For each precinct, the board members shall compare the total number of ballots cast to the total number of unique voter ID numbers. In any precinct in which the number of ballots exceeds the number of unique voters, the Board shall determine the method of voting in which the discrepancy exists. The Board shall investigate the discrepancy and no votes shall be counted from that precinct until the results of the investigation are presented to the Board as required in GA Code § 21-2-493(b).
5. If any error is discovered that cannot be properly corrected, the Board shall determine a method to compute the votes justly as required in GA Code § 21-2-493(i). If fraud is discovered, the Board shall determine a method to compute the votes justly and report the facts to the district attorney for action as required in GA Code § 21-2-493(i).
6. Board members shall be permitted to examine all election related documentation created during the conduct of elections prior to certification of results.

(g) Certification Meeting.

1. After all precinct discrepancies have been investigated and resolved as required by GA Code § 21-2-493, the correct or corrected returns shall be recorded until all the returns from each precinct which are entitled to be counted are recorded; then they shall be added together, announced, and verified as accurate.

2. The consolidated returns shall then be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.

Authority: O.C.G.A. §§ 21-2-31, 21-2-70(15), 21-2-94, 21-2-95, 21-2-368, 21-2-379.24, 21-2-420, 21-2-421, 21-2-436, 21-2-493(a), 21-2-493(b), 21-2-493(i), 21-2-493(k).

History. Original Rule entitled "Tabulating Results" adopted. F. Jan. 23, 2020; eff. Feb. 12, 2020.

Amended: F. Mar. 2, 2020; eff. Mar. 22, 2020.

Amended: F. Sept. 22, 2021; eff. Oct. 12, 2021.

Amended: F. Nov. 1, 2021; eff. Nov. 21, 2021.

Amended: F. Aug. 27, 2024; eff. Sept. 16, 2024.

Amended: (i.e., subparagraphs (a) 1., (a) 5., paragraph (e), as specified by the Board) F. Oct. 2, 2024; eff. Oct. 22, 2024.

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

GEORGIA ASSOCIATION OF VOTER REGISTRATION AND ELECTION OFFICIALS

September 17, 2024



Dear Members of the State Election Board,

The Georgia Association of Voter Registration and Election Officials (GAVREO) offers the following feedback on the eleven rules that have been posted for rulemaking to be voted on at your September 20th meeting.

We hope you understand that our role is to administer elections in a nonpartisan manner. To that end, any feedback that we provide during the rulemaking process is not only nonpartisan but is rooted in decades of practical election administration experience. We do not oppose rules because we are lazy or because a political operative or organization wants us to. We oppose rules because they are poorly written, inefficient, would not accomplish their stated goals, or go directly against state law. The proposed rules under consideration are not simply “common sense” rules that no reasonable person could disagree with.

The 2024 General Election is less than 50 days away and by-mail voting starts today for some counties and no later than this Saturday for all counties. Ballots have been designed, procured, and are presently being issued to military and overseas voters. Election officials are training thousands of poll workers daily across the state and are already working to educate the public on what to expect throughout the voting process and beyond. We respectfully ask that these proposed rules, and any other petitions for rulemaking, be tabled until 2025.

1. 183-1-12-.01 (Absentee Ballot Distinction)

GAVREO opposes this rule because it goes against state law, will waste taxpayer money, and cannot be implemented prior to the upcoming election.

As we have previously stated, distinguishing between different types of hand marked paper ballots will do nothing to increase the chain of custody of those ballots. However, we would be remiss if we did not inform the board that the opportunity to adopt this rule prior to the 2024 General Election has already passed.

It takes a significant amount of time to design, proof, and order hand-marked paper ballots before the first ballot is ever issued to a voter. That process is routinely completed between 60-70 days prior to any major statewide election so registrars can meet deadlines enumerated in both state and federal law. For the upcoming election we are required to

mail absentee-by-mail ballots to military and overseas voters beginning as early as Tuesday, September 17th and no later than Saturday, September 21. Ballots will be mailed to all other requestors on Monday, October 7th. Considering that rules are not in place until a minimum of 20 days after the Board votes to adopt them, the earliest day that this rule could be in place is October 10th – weeks after ballots have been delivered to counties and three days after we will send ballots to most absentee-by-mail voters.

The stated purpose of this proposed rule is to improve the security and chain of custody of hand-marked paper ballots by ensuring that absentee-by-mail ballots are visually distinct from emergency and provisional ballots. However, knowing the reason that any ballot was cast does almost nothing to address the chain of custody of that ballot but will potentially violate the secrecy of ballots cast in small batches (such as provisional ballots). Rather, we track the chain of custody of hand-marked paper ballots using printed text both on the ballot and the attached stub that is specific to each ballot.

2. 183-1-12-.12 (Reconciliation)

GAVREO is neutral on this rule, but believes that this rule is unnecessary.

Poll workers are already required to record the number of ballots cast from the screen of each in-person scanner on the appropriate paperwork. That number is already printed on the results tape for redundancy (and it's worth noting that the number of ballots cast on the results tape is a printed version of what is already on the screen). This rule is redundant and simply could provide the poll managers with an opportunity to make a clerical error on official paperwork.

3. 183-1-12-.12 and 183-1-14-.02 (Hand Counting)

While GAVREO appreciates the Board's efforts to amend the proposed rule to address our concerns, we continue to oppose the rules for the reasons we have previously stated including: the rule's potential to delay results; set fatigued employees up for failure; and undermine the very confidence the rule's author claims to seek. Please see our previous comments for more detail about our concerns with this rule.

4. 183-1-12-.12 (Reconciliation Reports)

GAVREO does not object to this rule as it will provide more transparency to the election process, but we have identified what we believe is an inconsistency with the rule. If the goal of the rule is to require counties to post the reconciliation report referenced by the rule to their respective county websites, and to allow counties without a county website to post it at their office instead, it appears that the rule provides a county with the choice to report on the website or at the office at its discretion.

While GAVREO does not object to this particular rule, we do object to passing rules within 90 days of the election.

5. 183-1-12-.13 (Storage of Returns)

GAVREO does not object to this rule on the condition that the State Election Board provides any additional memory cards that our members may need for future elections.

We acknowledge the importance of retaining election data contained on certain memory cards for a sufficient period of time. However, procuring a new set of memory cards for every election will be expensive even if we procure them through the most economical source possible rather than the current recommended supplier.

Also, we want to be clear that we are not saying that the data described in the rule should not be retained. We simply think that there are more efficient ways to accomplish that goal. For example, each in-person scanner contains two identical memory cards for redundancy. Only retaining one memory card would cut costs in half.

6. 183-1-12-.19 (Voter Lists)

GAVREO opposes this rule as it seems to assume that there is a static list of eligible electors that cannot be changed during the voting process. That is simply not the case. Registrars are often required to update the list during active elections for a variety of reasons.

For example, O.C.G.A. § 21-2-224 describes the deadline for anyone to apply to register to vote in an election. That does not imply that they must be registered by that date – only that the application has to be submitted by that date. Furthermore, we are required to accept any application that is received through the mail as long as the application is postmarked on or before the deadline. In fact, that same code section requires election officials to accept any mailed application that does not have a postmark but was received by the Secretary of State's Office no later than 25 days prior to the election.

Another example is O.C.G.A. § 21-2-220(d) that requires registrars to provide applicants 30 days to provide any missing information, and to only finish processing those applications when that information is received (which can occur on Election Day). One last example is that O.C.G.A. § 21-2-407 expressly authorizes registrars to correct the list of electors during every primary and election as we discover errors or omissions.

It is worth noting that Electors Lists are not used during Advance Voting and are only used at Election Day Polling Places. Advance voting is a form of absentee voting, and O.C.G.A. § 21-2-381(b)(1) requires that each application is verified against the information on file at the registrar's office rather than against the electors list.

The Board should also know that the Supplemental List is a document that is often filled out by hand by the poll workers at the direction of a registrar while voting is taking place. It cannot be posted online for public review weeks before Election Day, and the Secretary of State has no way to gather that information statewide as the rule describes.

7. 183-1-12-.21 (Daily Reporting)

GAVREO is neutral on this rule as it seems to attempt to make the voting process more transparent by including the number of ballots cast in related daily reporting requirements. However, we are concerned that it contains different reporting requirements for Primary and General Elections. Paragraph (1)(a) requires that registrars include the number of ballots cast in their daily reports for primary election, paragraph (1)(b) does not require those numbers to be reported for General Elections, and special elections are never mentioned. We would prefer if there was one standard report for all three types of elections.

8. 183-1-13-.05 (Poll Watchers at Tabulation Center)

GAVREO is neutral on this rule.

9. 183-1-14-.02 (Reconciliation)

GAVREO regrettably opposes this rule because it creates a situation where a county may miss a reporting deadline that is required by law.

Our members routinely reconcile the number of absentee ballots cast to the number of voters who were issued ballots throughout the absentee voting period. However, mistakes happen and as a result discrepancies occur that must be investigated prior to certification.

However, under this rule we only have an hour to investigate any discrepancy to the satisfaction of the Election Superintendent before any absentee results can be reported. But, for the majority of our counties the superintendent is the full board and cannot be expected to meet during one of the busiest times on Election Day. Per the rule as written, this rule would effectively contradict the law adopted by the legislature passed this year that expressly requires us to report absentee results within an hour of the polls closing.

While we wholeheartedly agree that the numbers described in this rule should be reconciled and any discrepancies explained prior to certification, the timeline described in the rule is unreasonable.

10. 183-1-14-.11 (Chain of Custody)

GAVREO opposes this rule because it fails to increase chain of custody, enhance security, or improve transparency. Furthermore, it cites a law that does not exist.

The main feature of the proposed rule states that it requires absentee-by-mail ballots to be tracked to ensure chain of custody. However, the rule never actually requires us to track absentee-by-mail ballots. The changes in the rule are:

- a. That the registrars use a common carrier that offers tracking to send ballots, and
- b. That the registrars maintain any USPS tracking records generated by this process in accordance with O.C.G.A. § 50-17-70.

The rule never requires registrars to track absentee-by-mail ballots. It requires registrars to retain records that are not generated by the USPS. Furthermore, O.C.G.A. § 50-17-70 does not exist.

Also, even if the rule was not fundamentally flawed, it is too late to pass the rule for the upcoming election. (See the response to 183-1-12-.01 for the applicable timeframes.)

Sincerely,

GAVREO Executive Board

RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT C

RETRIEVED FROM DEMOCRACYDOCKET.COM



GEORGIA DEPARTMENT OF LAW

CHRISTOPHER M. CARR
ATTORNEY GENERAL

40 Capitol Square SW
Atlanta, Georgia 30334-1300

www.law.ga.gov
(404) 656-3300

ATTORNEY-CLIENT PRIVILEGED INFORMATION

September 19, 2024

MEMORANDUM:

TO: John Fervier
Chairman
State Election Board

FROM: Elizabeth Young
Senior Assistant Attorney General

RE: Request for Comments on Proposed Rules in Advance of September 20,
2024 State Election Board Meeting

This memorandum is in response to the Board's request for comments from our office regarding the proposed rules to be considered by the Board at its September 20, 2024 meeting.

As an initial matter, this office does not typically engage in a broad review of an agency's proposed rules to ensure that the agency's proposed rules are consistent with law. As an administrative board with rulemaking authority, it is the Board's obligation to formulate its proposed rules to be consistent with law and conducive to the fair, legal and orderly conduct of primaries and elections. O.C.G.A. § 21-2-31(2). The Board should evaluate the legality of any proposed rule prior to publication and voting. Should the Board desire specific legal advice concerning any proposed rule or action, the Board should seek such advice in writing addressed to this office. This office cannot search through email correspondence to which it is simply copied to determine whether or not the Board has made a passing comment to seek legal advice on any particular topic. In addition, seeking unspecified comment on any proposed rule is unhelpful. In its request for legal advice, the Board should specify the matter upon which it seeks legal advice and ask a specific question to be answered through the Chair. This is the best manner in which to seek advice and allows this office to answer those questions on which the Board needs advice and avoids any misinterpretation of the Board's request and allows for an efficient and deliberate response.

In the instant matter, in an effort to assist the Board, we make this limited exception to our usual practice to offer the following expedited comments upon the rules proposed for

consideration at the September 20 meeting based on the Board's request. We make this exception here because a review of the proposed rules reveals several issues including that several of the proposed rules, if passed, very likely exceed the Board's statutory authority and in some instances appear to conflict with the statutes governing the conduct of elections. Where such is the case, and as outlined below, the Board risks passing rules that may easily be challenged and determined to be invalid.

Please note the following:

As a general matter, the passage of any rules concerning the conduct of elections are disfavored when implemented as close to an election as the rules on the September 20 agenda. The United States Supreme Court in *Purcell v. Gonzalez* recognized that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." 549 U.S. 1, 4-5 (2006). Federal courts have thus generally refrained from enjoining state election laws in the months prior to an election. *See Merrill v. Milligan*, 142 S. Ct. 879 (2022) (Kavanaugh, J., concurring); *see also League of Women Voters of Florida, Inc. v. Fla. Sec'y of State*, 32 F.4th 1363 (11th Cir. 2022) (*Purcell* applies when voting was set to begin in less than four months). The Board itself has utilized the *Purcell* principle in defense of certain Senate Bill 202 provisions. *See In re Ga. Senate Bill 202*, 622 F.Supp.3d 1312, 1343-44 (N.D. Ga. 2022) ("[State Defendants, which include the members of the State Election Board] argue that the Court should withhold relief under the *Purcell* doctrine and the Eleventh Circuit's application of that doctrine in *League* because in-person early voting for the general election will begin in mid-October, and a late change to the law will pose a significant risk of voter confusion and harm to the electoral process."). Thus, the Board should also consider how the passage of any rules well-within the period where courts have agreed that *Purcell* applies may affect the application of the principle in the future.

I. The Board's general rule-making power is limited to rules that do not exceed or conflict with the Georgia Election Code.

"[T]he General Assembly is empowered to enact laws of general application and then delegate to administrative officers or agencies the authority to make rules and regulations necessary to effectuate such laws." *Jackson v. Composite State Bd. of Med. Examiners of Ga.*, 256 Ga. 264, 265 (1986). The test of validity of an administrative rule is twofold: (1) is it authorized by statute, and (2) is it reasonable? *Georgia Real Estate Comm. v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 32-33 (1975).

The Board's power to adopt rules is solely derived from statutes passed by the General Assembly. The General Assembly has granted the Board authority to promulgate rules and regulations as will be conducive to the fair, legal, and orderly conduct of primaries and elections, *see* O.C.G.A. § 21-2-31(2); and further to promulgate rules and regulations to obtain uniformity in the practices and proceedings of superintendents, registrars,

deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections. O.C.G.A. § 21-2-31(1).

However, a broad grant of statutory authority to promulgate rules is not an unlimited grant of authority. See *Ga. Real Estate Comm'n v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 32-33 (1975) (administrative rules must be both authorized by statute and reasonable) (discussing *Eason v. Morrison*, 181 Ga. 322 (1935)). Only the General Assembly has the constitutional authority to legislate. See *HCA Health Services of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995). Although the General Assembly may grant “administrative authority to promulgate rules for the enforcement of the General Assembly’s enactments” to agencies like the Board, the agency’s authority can only extend to “adopt rules and regulations to carry into effect a law already passed” or otherwise “administer and effectuate an existing enactment of the General Assembly.” *Id.* Thus, a regulation that adds extra requirements or procedure where the statute speaks plainly on a matter is inconsistent with the statute and may likely be subject to a legal challenge. See *Dep’t of Hum. Res. v. Anderson*, 218 Ga. App. 528, 529 (1995) (agency regulation that added a requirement before a modification order of child support took effect was inconsistent with the clear authority of the statute).

Operating where there is *no* statute is also similarly impermissible: while agencies have implied powers “as a reasonably necessary to execute the express powers conferred,” *Bentley v. State Bd. of Med. Examiners of Ga.*, 152 Ga. 836, 836 (1922), the Supreme Court of Georgia has recently warned that “for a government entity whose authority on the relevant point is purely a creature of statute, the absence of statutory authority is the absence of legal authority to act.” *Camp v. Williams*, 314 Ga. 699, 709 (2022) (Bethel, J., concurring). See also *Gebrekidan v. City of Clarkston*, 298 Ga. 651, 654 (2016) (“[T]he General Assembly speaks through its silence as well as its words; the broad scope and reticulated nature of the statutory scheme indicate that the legislature meant not only to preclude local regulation of the various particular matters to which the general law directly speaks, but also to leave unregulated ... the matters left unregulated in the interstices of the general law.”).

Thus, the Board’s authority to promulgate rules and regulations is limited to the administration or effectuation of the statutes in the Georgia Election Code. The Board should therefore take all precaution to ensure that any rule adopted and promulgated by the Board neither conflicts with nor expands any statute; otherwise, the Board runs substantial risk of intruding upon the General Assembly’s constitutional right to legislate. When such intrusion occurs, the Board rule is highly likely to be ruled invalid should it be challenged.

Finally, to the extent that a proposed rule merely mirrors the language of a statute without more, it does not accomplish anything. To the extent that a rule mirrors a statute but adds or alters the statute’s requirements, the rule will likely be subject to an easy legal challenge.

II. Proposed Rules

There are several proposed rules before the Board that appear to either impermissibly conflict with or otherwise expand the scope of Georgia statutes.

1. Proposed Rules 183-1-12-.01 and 183-1-12-.19

These rules seek to change the form of the ballots and require that the Secretary of State and the counties post “freely accessible link[s]” to a list of electors prior to advance voting and maintain such data files for free download for a minimum of ten consecutive years, respectively. Thus, the proposed rules seek to direct actions that are, by statute, within the purview of the Secretary of State. *See* O.C.G.A. § 21-2-50(a)(1), (15); O.C.G.A. § 21-2-225(c). As such, the proposed rules do not fall within the Board’s regulatory power under O.C.G.A. § 21-2-31 thus very likely exceeds the Board’s scope of authority to promulgate.

2. Proposed Rule 183-1-13-.05

This rule seeks to expand the enumerated locations where poll watchers may be designated beyond those places identified in the statute. O.C.G.A. § 21-2-408(c), which the original rule, Ga. Comp. R. & Regs. 183-1-13-.05, tracks almost exactly, specifically provides that poll watchers may be designated by the superintendent to serve in “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.” Under the canon of statutory construction “expression *unius est exclusio alterius*” (“the mention of one thing implies the exclusion of another”), a list of items in a statute is presumed to exclude items not specifically listed, and the omission of additional locations from the statute is regarded by the courts as deliberate. *See, e.g. Barnes v. State Farm Fire & Cas. Co.*, 2024 Ga.App. LEXIS (Aug. 26, 2024).

The proposed rule goes beyond the statutorily-designated list of places a superintendent may decide to place poll watchers and instead supplants the superintendent’s discretion with the Board’s own. This too does not carry into effect a law already passed by the General Assembly but rather expands upon the statute; the rule, if adopted, would then very likely be subject to legal challenge as invalid.

3. Proposed Rule 183-1-14-.11

This rule goes beyond merely administering or effectuating an existing statute by adding additional requirements that would make it inconsistent with the statute. The proposed rule purports to require that absentee ballots be mailed “by United States Postal Service or other delivery service which offers tracking[.]” However, the General Assembly did not specify the use of tracking for the mailing of absentee ballots. *See* O.C.G.A. § 21-2-

384(a)(2) (“[T]he board of registrars or absentee ballot clerk shall *mail or issue* official absentee ballots to all eligible applicants....”) (emphasis added).

The proposed rule further requires that county boards of registrars maintain as public record the tracking records for each ballot mailed to the electors. However, the Board has no authority to promulgate rules regarding the classification or retention of documents. *See* O.C.G.A. § 21-2-31 (promulgate rules for the fair, legal, and orderly conduct of elections). Thus, promulgation of the rule would very likely go beyond the scope of the Board’s authority and be subject to challenge as invalid

4. Proposed Rule **183-1-12-.21**

This rule seeks to expand on the reporting requirements set forth in O.C.G.A. § 21-2-385(e). The statute already provides a fairly detailed process by which county boards of registrars or absentee ballot clerks must report information regarding the ballots issued, received, or rejected during the advance voting period. *See* O.C.G.A. § 21-2-385(e). The proposed rule seeks to go beyond the statute to require, among other expansions, additional information regarding the substance of the ballots (i.e., the number of political party or nonpartisan ballots cast). However, the General Assembly did not include that information as information that must be reported pursuant to O.C.G.A. § 21-2-385(e). Accordingly, the rule, if promulgated, would similarly likely go beyond the scope of the statute and the Board’s authority.

5. Proposed Rules **183-1-12-.12(a)(5)** and **183-1-14-.02(8), (13)**

These rules refer to the process of hand-counting ballots on Election Day and during the advance voting period, respectively, to produce a vote total to compare to the ballot count produced by the ballot scanners. Crucially, these Proposed Rules purport to amend provisions to allow for hand-counting ballots at the precinct-level, which would appear to occur prior to submission to the election superintendent and consolidation and tabulation of the votes. *Compare* Ga. Comp. R. & Regs. 183-1-12-.12(a) (“After the Polls Close”) with Ga. Comp. R. & Regs. 183-1-12-.12(b) (“Consolidation of Results”); Ga. Comp. R. & Regs. 183-1-14-.02(8) (“At the close of voting on any day *during the advance voting period...*”); Ga. Comp. R. & Regs. 183-1-14-.02(13) (“The ballot scanner and ballot containers shall then be secured *until time for the tabulation of votes.*”).

However, the statutes upon which these rules rely do not reflect any provision enacted by the General Assembly for the hand-counting of ballots prior to tabulation.

For example, O.C.G.A. § 21-2-483 details procedures *at* the tabulation center: in primaries and elections in which optical scanners are used, after the seal on each container of ballots is inspected and verified as not having been broken, the container with the ballots is opened, the ballots are removed, “and the ballots shall be prepared for processing by the *tabulating machines.*” O.C.G.A. § 21-2-483(c) (emphasis added).

Then, “[u]pon completion of the tabulation of the votes, the superintendent shall cause to be completed and signed a ballot recap form[.]” O.C.G.A. § 21-2-483(d). O.C.G.A. § 21-2-436 is similarly inapplicable; that statute contemplates the duties of the poll officers after the close of polls in precincts in which *paper ballots* are used, not ballot scanners or voting machines.

O.C.G.A. § 21-2-420(a) does provide that “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.” However, neither the statutes that prescribe the duties of poll officers after the close of the polls for precincts using voting machines, *see* O.C.G.A. § 21-2-454, nor the precincts using optical scanners, *see* O.C.G.A. § 21-2-485, suggest that the General Assembly contemplated that a hand-count of the ballots would be part of the “required accounting.”

There are thus no provisions in the statutes cited in support of these proposed rules that permit counting the number of ballots by hand at the precinct level prior to delivery to the election superintendent for tabulation. Accordingly, these proposed rules are not tethered to any statute—and are, therefore, likely the precise type of impermissible legislation that agencies cannot do. *See HCA Health Services of Ga., Inc., supra.*

We hope that this expedited informal analysis is helpful to the Board. Should there be further questions directed to this office as described herein, we will endeavor to assist the Board further.

cc: Mrs. Sara Tindall Ghazal (via email correspondence)
Dr. Janice W. Johnston (via email correspondence)
Mr. Rick Jeffares (via email correspondence)
Mrs. Janelle King (via email correspondence)
Mr. Michael Coan (via email correspondence)

EXHIBIT D

RETRIEVED FROM DEMOCRACYDOCKET.COM



Office of the Secretary of State

Brad Raffensperger

SECRETARY OF STATE

Charlene McGowan

GENERAL COUNSEL

September 16, 2024

Mr. John Fervier
Chairman, Georgia State Election Board
jfervier.seb@gmail.com

Mr. Chairman,

This letter is in response to your request for comment from the Secretary's office on the 11 proposed new rules and 2 petitions on the agenda for the next State Election Board meeting on September 20, 2024. We have received an overwhelming number of comments from county election officials expressing concern about the Board changing Georgia's election rules and procedures with the General Election only 50 days away.

The Board should be mindful of upcoming deadlines. The deadline for counties to mail UOCAVA ballots is **September 21** and counties will begin mailing absentee ballots on **October 7**. Advanced voting starts on **October 15** and counties are conducting preparations for in-person voting such as logic & accuracy testing. The earliest possible date new rules could take effect if passed is **October 14**, which is **22 days** before the General Election when **Georgia voters will already be voting**.

It is far too late in the election process for counties to implement new rules and procedures, and many poll workers have already completed their required training. If the Board believes that rules changes are important for an election, the process should begin much sooner to allow for smooth implementation and training and include the input of election officials.

To underscore the absurdity of the timing of the Board's actions, the amendment to Rule 183-1-12-.01 would change the form of absentee/provisional/emergency ballots, which have **already been printed**, and counties will have already begun mailing absentee ballots to voters before any rule change would take effect. It is simply impossible to implement this change for 2024. And even if it were, the Board lacks the legal authority to pass this rule because the form of the ballot is exclusively within the control of the Secretary of State under Georgia law. O.C.G.A. § 21-2-50(a)(1), (15).

The two petitions under consideration would similarly interfere with the Secretary's legal authority. The proposed amendments to Rule 183-1-12-.19 interfere with the Secretary of State's exclusive authority over the state's voter registration database and conflict with the provisions of O.C.G.A. § 21-2-110, § 21-2-111, and § 21-2-225.

The most concerning rules under consideration would require hand-counting of ballots for every day of advance voting (Rule 183-1-14-.02(8)) and on Election Day (Rule 183-1-12-.12(a)(5)). As election officials have repeatedly told the Board, these new procedures would require tremendous personnel resources and time, and could lead to significant delays in reporting. These new procedures would disrupt existing chain of custody protocols under the law and needlessly introduce the risk of error, lost ballots, or fraud. Election workers are prohibited from tabulating ballots before the close of the polls on Election Day, which would be compromised by the viewing and counting of ballots during advance voting. There are strict legal prohibitions against the tabulation and reporting of results during early processing of absentee by mail ballots. O.C.G.A. § 21-2-386. There are no similar security and ballot secrecy controls in the proposed amendment to Rule 183-1-14-.02(8).

Other rules such as expanded poll watcher access and posting of certain reports on county websites are not objectionable, but we share the concerns of counties that there is insufficient time to implement and train elections workers on new policies now that they have already been trained. The General Assembly recently expanded poll watcher access with our support this past session with the passage of H.B. 1207. And the Elections Division already provides the absentee voter file and other data on the Secretary's website.

The U.S. Supreme Court's *Purcell* principle cautions that last-minute changes to election procedures harm both voters and elections officials in the orderly administration of an election. As Justice Kavanaugh wrote, it is a "bedrock tenet of election law" that "[w]hen an election is close at hand, the rules of the road must be clear and settled" to avoid "unfair consequences for candidates, political parties, and voters." *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

The Secretary's office would welcome the opportunity to return to the normal course of business of working with the Board and GAVREO on common-sense rules that benefit voters and are consistent with law, after the election. But for now, the Board should heed the words of Justice Kavanaugh and pause any further rulemaking to ensure that the rules are "clear and settled" and avoid "unfair consequences" in the 2024 General Election.

Sincerely,

Charlene S. McGowan

General Counsel

EXHIBIT E

RETRIEVED FROM DEMOCRACYDOCKET.COM

MUSCOGEE COUNTY BOARD OF
ELECTIONS AND REGISTRATION,

V.

Respondent.

1

in improving the administration of elections and help Americans participate in the voting process. I also sit on the Executive Committee of this commission. I am one of only 10 people from the Standards Board sitting on the Executive Committee.

5. I am the state regional facilitator for Region 8 of the Georgia Association for Voter Registration and Election Officials. In this role, I serve 17 counties as a resource, providing training and information to these counties.

6. I have read and reviewed the State Election Board (“SEB”) rule amending Rule 183-1-12-.12(a)(5) (the “Hand Count Rule”). Based on my experience, I believe it will be nearly impossible for Muscogee County to adequately prepare for this last-minute rule change.

Background On Muscogee’s Elections

7. There are approximately 150,000 registered voters in Muscogee County and we project that approximately 85,000 people will vote in the 2024 election with 35% voting in-person on Election Day.

8. Muscogee County has 25 precinct managers overseeing the same number of polling places. The larger polling places will likely process over 3,000 ballots on Election Day.

9. The Elections and Registration office has seven employees who handle a long list of competing deadlines. These include registering voters, proofing ballots, training and managing temporary staff, and a host of other activities. The deadlines and range of activities are particularly demanding in the lead up to a Presidential election.

10. This year has also been a taxing year for my team. The November election will be the fifth election administered during this calendar year.

11. Our office has always planned far in advance of elections to ensure a smooth, efficient and accurate election process. We hold ourselves and all of our poll workers to a very high standard.

12. Together with my staff, I secured polling locations for the November election as well as our primaries back in January. We submitted our budget in February and the Columbus Council approved the final budget for this year's election by July 1, 2024. Incorporated into that budget were projections for costs such as how many locations we would have for early voting (for which we have committed to staying open for the entire eligible period), hours needed for security, how many poll workers we would hire in the coming elections, and other costs.

13. As I understand the Hand Count Rule, I must do the following *in addition to all of my other pre-existing statutory duties* in the coming weeks in order to prepare my team for implementation of this last-minute change:

- a. Identify and potentially hire three poll workers in each precinct to hand count all the ballots cast in that precinct;
- b. Create instructions and guidance for the poll manager to decide when, whether and how to conduct the hand count at the precinct on the evening of Election day or the following day(s);
- c. Identify or create forms for the hand count;
- d. Create protocols to ensure security of the ballots during the hand count, including chain of custody protocols;
- e. Create protocols and add resources to ensure security for the poll workers during the hand count;

- f. Find locations for the hand count that will accommodate the number of people required for the hand count plus observers;
- g. Ensure these poll workers are sworn in and trained on procedures and forms they will use for the hand count; and
- h. Add several steps in the closing of the polls process, including for example, posting the hand counting information on the doors of the poll places.

14. Preparing for the Hand Count Rule will take an inordinate amount of time and divert resources the County has currently devoted to other election preparation tasks.

New Procedures and Guidance

15. Many of our protocols are laid out in our training manual and in a binder that we provide to all poll managers and assistant managers. They include the necessary forms, procedures, and sample paperwork they will need for their work. The training and binder materials have been developed over the course of the past many years. We updated and initially finalized these materials for the November election in April. Any last-minute updates were inserted into the binders before the training began on September 28.

16. Once training begins, we do not change these materials. The only changes we make are reserved for exigent situations such as if someone passes away or is no longer available to participate right beforehand.

17. The binders contain all of the specific forms authorized for the election, and each poll worker has been trained with the forms within the binder. We use the forms provided by the Secretary of State's office for anything mandated by rule or law.

18. Normally, when a new rule is passed, the law department of the Secretary of State develops the form and sends it to all offices.

19. On October 1, 2024 I received a notice from the office of the Secretary of State stating that it “does not intend to provide additional training on SEB rules until after any court decisions are made.” October 1, 2024 Letter of Secretary of State, attached hereto as Exhibit 1.

20. As of the date of this affidavit, we have not received any of the mandatory forms required for the hand count, and in turn, my office has not been able to incorporate the use of such forms in our materials.

21. The SEB has not provided guidance on how we will ensure security of the ballots during the hand count. Thus, our office must create a process from scratch for carrying out the hand count with safeguards and strict chain of custody procedures. We will need to identify protocols for each step of the process, which includes uniform record-keeping with all of the required details and a uniform methodology by which each step of the hand count should occur.

22. To illustrate, I will want to make sure there are careful records of who counted which batch of ballots to ensure and document a proper chain of custody. We must have procedures for details such as what safeguards to use when removing the ballots from the tabulator, where to store each of the batches as they are counting, and how to number the batches to keep track of them. The counters should follow a procedure such as signing or initialing a form (which currently does not exist) each time they remove ballots from the tabulator so that we can identify who removed the ballots and from which tabulator.

23. Among other things, we will need to decide whether we would permit the counting poll worker to hand the batch to the next person, or otherwise, and create a verification of chain of custody (another form that does not exist) for that handing off. We would also likely

want to start the count with one tabulator at a time at precincts with more than one tabulator, which will elongate the process.

24. The Hand Count Rule requires that the process be public, but provides no restrictions on the number of people or credentials for who can observe the hand count. Our office will need to devise protocols to ensure that poll workers can conduct the counts in secure conditions without disruption. We must consider how close to allow observers to be to the hand count, including whether there should be physical barriers or other protocols to ensure full security of the ballots during the entirety of the hand count.

25. We also need to establish protocols for potential disruptions, especially if we will not be able to afford additional security for these hand counts.

26. On Election Day, during the early voting period, and during the audit we hire security guards to secure our people, the ballots, and the general operation. We pay on an hourly basis.

27. We do not have funds set aside or earmarked for additional security. I will need to either try to adjust my existing budget or seek additional funds if I must hire security for the hand count.

28. I also worry if the security will even be available. Many of the security guards will have just finished three weeks of early voting and may not be available on the day following Election Day. I have not had time to think through answers to questions such as how to plan for the possible outcomes of the poll manager's decision on when to begin the hand count - do I need to hire guards for all 25 precincts in the event they decide to begin the count on site Election Day evening? How do I compensate security guards to be on call for both the evening of Election Day and for the following day(s)? How many guards are needed per precinct?

29. Subsection (a)(5)(d) of the Hand Count Rule makes it ambiguous on how and when the poll manager or assistant poll manager must make a decision about whether to start the hand count the evening of election day or the next day other than setting a deadline of 10:00 PM. The potential of every precinct taking a different approach risks creating a lack of uniformity across our jurisdiction that causes logistical problems for our office relating to space and communication with the public.

30. Communication and transparency are important to our office throughout the year, but particularly during an election. Because the decision to start the hand count can occur at any time until 9:59 PM, the public could have a difficult time planning if they wish to observe the hand count.

31. With 25 precincts able to make independent patchwork decisions, poll watcher coordinators will have to make quick decisions about where to deploy their observers as announcements of when and where the hand count issue throughout the day. The Hand Count Rule requires that we inform the candidates on the ballot as to the time and place of the hand count directly. However, for the public, the rule instructs us to post notice on the door outside of the polling place after the decision is made about when and where to conduct the count, meaning someone would need to be physically present at that time to know the details of the hand count. This is not accessible.

32. When a new procedure is mandated, our office normally ensures that all of the steps of the procedure are carefully planned out. We test and practice the protocols so that the process is streamlined, efficient and accurate on election day. We do not have time to do this with only weeks left before the election and many other tasks to complete before then.

33. I am very concerned that we do not and may not have protocols for this process only weeks before election day. Without these protocols, the security of the ballots and general order for the close of the election are in question and could cause serious confusion that evening and the following days.

Training

34. Once we've hired or identified poll workers to conduct the hand count, we will need to train them. One of my duties as Director is to ensure that all poll managers and other poll workers are properly trained to conduct the tasks required of them before, on, and after Election Day. I have personally assisted in preparing training materials and work to ensure that all election workers are trained in the same way to ensure consistency across Muscogee voting precincts.

35. Election worker training begins long before an election. For this coming election, our office has already hired more than 55 poll workers for early voting and 350 precinct or Election Day poll workers.

36. As of today, all of the early voting poll workers have completed their training and about half of the Election Day poll workers have completed their training. All these workers have been trained based on the laws and rules that existed prior to the adoption of the Hand Count Rule.

37. Our Election Operations Manager is in charge of training and coordinating our poll workers. She trains each precinct individually.

38. As noted above, one of the essential elements of poll worker training includes explanation and familiarization with the many forms that they will need to utilize in their work.

None of the mandated forms for the hand count yet exist, thus impeding our ability to even begin training at this eleventh hour.

39. For example, the Hand Count Rule requires that the three poll officers doing the count produce a “control document” with specified information about the ballots. Once that form is available (if it becomes available before this election), it will take at least several days, if not longer, to incorporate the form into our materials, schedule to bring all of our already-trained poll workers back for new training, and execute such new training with the missing forms.

40. Even assuming that training of these newly identified poll workers is possible without guidance or mandatory forms from the state, the Hand Count Rule will require the Election Operations Manager to both divert attention to the rule and work additional hours. She must schedule, prepare, and conduct training for the hundreds of poll workers who have already been trained in a very short period of time. This manager typically would be finishing off her training in the coming days and dedicating her time to other tasks.

41. In addition to training, the duties of the Election Operations Manager include coordinating logic and accuracy of machines, voter registration processes, mailing out ballots, and delegating work and responsibilities of temporary staff. We may have to consider increasing temporary staff hours to fill in where she cannot. Our temporary staff are paid on an hourly basis, so this may be even more costly as they will require overtime pay if we must engage them.

42. If this rule had been implemented months ago, we could have integrated it into our existing training and processes for Election Day.

Logistics for the Hand Count

43. In some precincts, it may not be possible to complete the hand count on election night. The Hand Count Rule allows the poll manager to choose to start the count the following

day if the scanner possesses more than 750 ballots. They can make this decision at the close of the polls based on issues such as fatigue of the poll workers. This means that I will not be able to predict ahead of time whether any of the 25 precincts in the county will need additional space for the hand count the next day. Therefore, I might need to secure space for all 25 precincts just in case. Polling locations usually serve other purposes after Election Day, and thus are unlikely to be available for hand counts that extend past Election Day or last for multiple days.

44. In larger precincts, it is very likely the poll manager will recommend that they do not start the count until the next day. In one of these larger precincts, poll workers arrive as early as 5:30 A.M. to begin setting up for voters. The closing process can stretch until 11:00 P.M. that evening without any hand count. For example, in one of the larger precincts, the closing process includes the following:

- a. The poll workers ensure that everyone standing in line at 7:00 P.M. is able to vote. This typically can take until about 7:30 P.M., but it can really vary because we never want to rush any voter and will let them take their time;
- b. Then the poll managers, assistant managers and poll workers set upon the long closing process. They must seal the machines, close the poll pads and in many cases clean the space up because it will be used for its normal function the next morning;
- c. At the close of the polls, they must post the result tape and provisional ballot recap sheet on the polling place door;
- d. They also need to pack up all of the machines—the printers (some locations have 27), ballot marking devices, batteries, and battery. They must be sealed, stacked, and packed into the equipment transport cart so

they are arranged and ready for pick up. If there is an event the next morning, then this equipment must be picked up that evening;

- e. The poll manager must pack up the poll pads and memory cards into their boxes along with a long list of equipment and bring everything to the city services center; and
- f. Poll managers from these larger precincts will be arriving at the central location as late as 11 P.M. on election night for the central tabulation.

45. Because of all of these requirements in the closing process, I believe that poll managers of these larger precincts will recommend a hand count after Election Day.

46. The Hand Count Rule permits the counting to move to the county election office, but the Muscogee County election office simply cannot accommodate a hand-count operation, particularly one with space for public viewing.

47. Our county election office could not hold the 25 precincts if all 25 precincts decided to begin their hand count the next day. Even if only a few of the precincts decided to start the day immediately following election day, I believe we could accommodate a maximum of three precincts. Likely, it would have to take place in our lobby and our warehouse. Even our largest room in the building (which is not technically part of the county election office) would not be able to accommodate all of the precincts and allow for public viewing with sufficient security to ensure that precincts remain separated.

48. At least one of our polling locations is at a paid location and several of the locations are unavailable because they have events the next day. In the event that we are permitted to conduct the hand count somewhere other than the county office, I do not have the

funds to pay for a location that can accommodate all of our precincts. I am also not sure I can secure a location at this last minute.

49. To comply with the Hand Count rule, we will need to identify and possibly hire additional workers to conduct the hand counting. Additional hours or additional workers will require an increase in the existing budget that we have set aside for this election, which would require tapping into funds from a different line item in the budget. This change will require approval from the city council through a mid-year budget amendment.

Impacts of Incorporating the Hand Count at This Late Hour

50. The Hand Count Rule poses a serious challenge to an already very busy closing process at the end of the day. This is because we already conduct a long list of safeguards to ensure accuracy of the ballot count at every stage of the process, including before and after Election Day.

51. Hand counting does not replace any of the current methodology that we utilize to safeguard accuracy of our process. Rather, it adds an unnecessary step that actually presents increased security risks.

52. Our current procedures are extensive and secure. We do the following to ensure accuracy of our systems:

- a. Before the election begins, the Election Supervisor tests the accuracy of the ballot scanners prior to each election. This is known as Logic and Accuracy testing;
- b. On Election Day, we advise each voter to watch the number increment by one after they have put their ballot into the scanner;

- c. Throughout the day, we also undergo an hourly inspection of the polling location that includes reconciliation, where the numbers on the poll pads and the ballot scanners are compared and documented;
- d. At the end of the day, we check again. All of our precincts are required by law to reconcile the number of ballots with the number of voters who came by comparing the count on the poll pads to the number of ballots cast on the tabulator. The precincts do so by printing out the total from the scanner, comparing this to the number of voters who checked in on the poll pad, accounting for any canceled or spoiled ballots, and checking the supplemental list to see if anyone was added throughout the day;
- e. If the numbers do not reconcile, the poll manager must explain why. Ballot counts are generally and accurately conducted by the ballot scanner in each precinct. The ballot scanners contain two separate memory cards for redundancy;
- f. After the election, we have the mandated risk limiting audit. The Secretary of State conducts a spot check that we have no notice of prior to the audit where numbers are compared to ensure accuracy; and
- g. Throughout the process, chain of custody of the ballots is strictly maintained for the mandating risk limiting audit and any potential recount.

53. Rather than providing more accuracy, the Hand Count Rule threatens to introduce more complexity and risk of error without sufficient time to set up sufficient safeguards, training and logistics as described above.

54. Complying with the Hand Count Rule risks delaying the delivery of the materials we need to begin the process of tabulating the votes from individual precincts to the Muscogee Board, as we are required to do by law. This is because the precinct managers are responsible for bringing all of the materials to the central office, but now must remain until the completion of the hand count.

55. There is a much greater probability of human error from hand-counting than error from a frequently-tested machine designed to count ballots, and hand-counting ballots slows down the process and makes ballots more vulnerable to interference. The Hand Count Rule could delay election results, which increases voter distrust in the results. And if hand counting introduces errors, it may create opportunities for misinformation about the certainty of the election results.

56. The Hand Count Rule significantly reduces our security for our ballots, increasing the number of hands that touch them. Currently, our procedure requires that every time the ballot box is unsealed, we have two people sign a form. Then when they return the ballots to the box, they sign another form and immediately seal the box again.

57. During the hand count, the ballots will be exposed, potentially in a myriad of environments. If the hand count occurs at the precincts, we will not be able to predict who will be present for the hand count, including whether the public will arrive to observe or a poll watcher decides to go home beforehand. For record-keeping, we will unlikely be able to verify who was present at any given count.

58. Without strict controls, eating or drinking around the ballots could damage ballots. Every time the ballots change hands there is a risk, and the hand count requires three people handling large quantities of ballots.

59. In Muscogee County, we have a team of seasoned, dedicated, hardworking, and reliable poll workers. Many of the workers are repeat workers who have been working elections for several years. This new rule will require additional hours and staff, but more concerning, will cause stress and fatigue for our dedicated poll workers.

60. On the day of the election, poll managers and supervisory staff are expected to arrive at 5:30 A.M. Poll workers are expected to arrive at 6:00 A.M. They stay on site until after the last person in line at 7:00 PM has completed voting. I know from my personal experience and conversations with poll workers that, by 7:00 P.M., these workers are exhausted.

61. Our poll workers are absolutely willing to do the hand count if required, but in every training session we have had, many are anxious about how the logistics of such a count will occur, when the count will take place, and how they will manage the hand count with all of the other deadlines that they are up against at the end of the evening.

62. Our poll workers are accustomed to our orderly and careful enactment of new procedures, where each step is clear and tested and where every possible scenario has been anticipated. We will not have time to do this before Election Day, which understandably has caused worry and concern amongst poll workers preparing for their responsibilities.

63. The Hand Count Rule also requires that the count be made public. While many among our staff are used to being under a microscope, our poll workers might become nervous or stressed under such conditions. I also worry about harassment and intimidation as a result of this hand count requirement. These potential threats and the stress of the situation are likely to cause hand counting processes to take more time than expected and certainly longer than occurs in any controlled and calm environment.

64. As noted above, we do not have the resources for public safety present in all of the precincts, and if the hand count occurs on the evening of the election, there will be counting processes with poll watchers, observers, and possibly the public without security.

65. The rules offer no additional funding or added resources with which to implement them.

66. My office and I do not want to violate any election laws or rules. Following the law carefully and diligently is of utmost importance to us. When the Attorney General's Office and counsel for the Secretary of State issued its opinion that the proposed rules were unlawful, but then the SEB passed the rules anyway, I have become very confused about how I am to conduct myself and direct my office with these conflicting actions and opinions.

67. I am uncertain and require guidance on how I am to abide by the new SEB hand count rule while also meeting mandatory requirements.

68. For all of these reasons, this recently adopted Hand Count Rule directly affects me in my role as the Director of Elections and Registration and threatens to cause me and the voters in my county irreparable harm.

Signature on following page

Nancy Boren

NANCY BOREN

Director of Elections and Registration

Muscogee County, GA

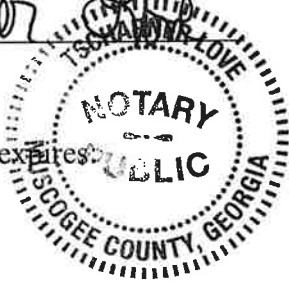
Sworn to before me this 14th day of October, 2024

Scharmer

Notary Public

My commission expires

9-19-25



RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT F

RETRIEVED FROM DEMOCRACYDOCKET.COM

VASU ABHIRAMAN, et al.,)
)
 Petitioners,)
) Case No: 24CV010786
vs.)
)
STATE ELECTION BOARD,)
)
 Respondent.)

(Before Honorable Judge Robert C.I. McBurney)

9:27 a.m.

136 Pryor Street

Atlanta, Georgia

Reported by: Marsi Koehl, CCR-B-2424

October 1, 2024
ABHIRAMAN V. STATE ELECTION BOARD

1 And you know, that is something that I would
2 think that they would be doing with or
3 without this rule.

4 I'll talk really briefly about the
5 sovereign immunity oral argument.

6 THE COURT: Okay.

7 MS. YOUNG: You know, basically the --
8 our understanding of State versus Sass -- in
9 a case like the you've got to pick a lane
10 and --

11 THE COURT: Remind me, I know that the
12 primary provision under which petitioners
13 are traveling is the declaratory judgment
14 action pursuant to the APA, but you allude
15 that elsewhere they reference title line and
16 your argument is --

17 MS. YOUNG: Yes, they're --

18 THE COURT: -- oops, because you strayed
19 over there, then you need to be suing the
20 State and not the State Election Board.

21 MS. YOUNG: Correct.

22 THE COURT: And we all know the
23 consequences of getting that wrong.

24 MS. YOUNG: You know, obviously under
25 50-13-10 there is a statutory waiver, under

October 1, 2024
ABHIRAMAN V. STATE ELECTION BOARD

1 the declaratory judgment statute, there's
2 statutory waiver, the thing that caught the
3 attention of our office in reading the
4 additional paragraph 50 at 131 to 138.

5 Where it seems to suggest that there's a
6 declaratory judgment claim in addition.

7 We'll leave it to the Court to determine
8 whether that's the case. And in fact if the
9 Court does agree that that is an issue, we
10 would be happy to work with plaintiffs as I
11 understand as happened with the Adams case

12 --

13 THE COURT: Resurrected in a different
14 format.

15 MS. YOUNG: Correct.

16 THE COURT: Got it. Okay.

17 MS. YOUNG: And you know what? I think
18 that's all I've got for now unless you have
19 any questions.

20 THE COURT: No, you helped me work
21 through the questions that I had. I
22 appreciate your work.

23 MS. YOUNG: Thank you.

24 THE COURT: All right. Mr. Drennon.

25 MR. DRENNON: Good morning, Your Honor.

October 1, 2024
ABHIRAMAN V. STATE ELECTION BOARD

CERTIFICATE

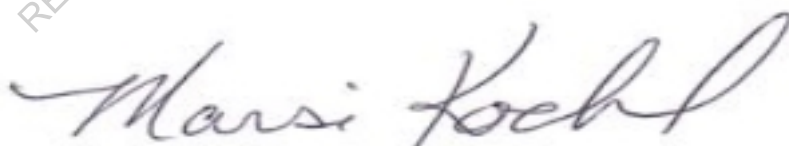
STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This the 2nd day of October, 2024.



Marsi Koehl, CCR-B-2424



EXHIBIT G

RETRIEVED FROM DEMOCRACYDOCKET.COM

MUSCOGEE COUNTY BOARD OF
ELECTIONS AND REGISTRATION,

V.

Respondent.

1

- b. Ensuring that changes to the election procedures since the last election are being implemented;
- c. Consulting on the budget; and
- d. Approving voting places, precincts, locations, and other governance of the elections infrastructure in Muscogee County.

5. The Board is the superintendent of elections of Muscogee County. As a result, the Board is responsible for canvassing, computing, tabulating, certifying, and transmitting to the Secretary of State the election returns from Muscogee County. The Board is responsible for carrying out rules set by the State Election Board (the “SEB”) itself and through its supervision of the election office staff.

6. If there is an allegation against Muscogee County by the SEB—for example, for not properly complying with any of rules promulgated by the SEB—the Board and I as a board member would face investigation, civil penalties, and even removal.

7. However, the SEB has put us in an impossible position of deciding whether to follow the clear guidance of the Attorney General and Secretary of State’s offices or the newly enacted SEB rules.

8. I have read and reviewed the SEB rule amending Rule 183-1-12-.12(a)(5) (the “Hand Count Rule”) and discussed it extensively with our Elections and Registration Director and other elections staff about its implications.

9. Based on my experience, implementation of this rule will disrupt the very well run procedures of a high-quality, precise election office.

The Muscogee County Election Operations

10. We in Muscogee County have an election infrastructure that runs smooth, secure, orderly and fair elections.

11. Our elections office is organized, precise and diligent. They plan far in advance of events, anticipate possible circumstances before they arise and take a thoughtful approach to all that they do.

12. We as a Board are committed to doing what is right and best for voters, and consider ourselves a very nonpartisan board. We work collaboratively on the Board and with the election office. Over the years, the Board has overseen many improvements to the voting process. Voters in our county trust our elections administration because of our track record of efficient, accurate and smoothly run elections.

13. Nancy Boren, in particular, has a very good reputation and the Board works closely with her. Muscogee County and Nancy Boren have been commended for our work and our Secretary of State called Director Boren “one of the best election directors in Georgia.”¹

14. Director Boren has been given several awards and recognitions, including the 2020 Democracy Action Hero USC Schwarzenegger Institute Award and the 2021 Liberty Bell Award from the Columbus Bar Association. Most recently, she was named a 2022 Urban League Legacy of the League Honoree and the 2022 Omega Psi Phi Fraternity Citizen of the Year. Rosa Parks Woman of Courage from Alpha Kappa Alpha Sorority in 2010. Our city council also commended her for her years of excellent service in January 2023.

15. Based on our decades of experience running elections, the Board assessed that the August and September rulemakings by the SEB, just weeks before the general election, were

¹ Georgia Secretary of State Brad Raffensperger, *Secretary Raffensperger Praises County Election Director Nancy Boren, Dismisses Attacks from Dark Money Group*, dated Jan. 20, 2023, <https://sos.ga.gov/news/secretary-raffensperger-praises-county-election-director-nancy-boren-dismisses-attacks-dark>.

problematic. That is why our Board decided to pass the first resolution in Georgia asking the SEB for a 90-day quiet period on rule-making.

16. I also wrote a letter to the SEB objecting to the Hand Count Rule which is attached as Exhibit 1.

17. The SEB did not respond to either our Board resolution or my letter.

Logistical and Security Problems

18. As I have noted, our elections teams plan far in advance and make every effort to create the conditions for a smooth, transparent, and accurate election every time. The new Hand Count Rule introduces logistical and security issues that we do not have time to iron out, because the election has already begun.

19. I have helped with managing the locations for upcoming elections, and it requires a great deal of work. Given how long the hours are on election day, I am sure many precincts will want to conduct this hand count the following day, but it is likely that many of the precinct locations have events the next day and will not be able to accommodate our poll workers and observers the next day.

20. Finding new locations for the hand count, if it is allowed under the rules, will be onerous and be a diversion of time and money if we have to pay for a location.

21. Related to the logistics of where the hand count might occur, if the hand count must be done at the elections office, I have concerns that we have not yet thought through the public health and other questions of having personnel and public observers from up to 25 precincts in one space counting ballots.

22. The Hand Count Rule requires that the count be “public,” but the last minute timing of the rule and the logistics do the opposite: they create a situation where it will be very difficult for poll watchers or observers to participate in an important process.

23. Because the Hand Count permits the poll manager to decide at the end of the day whether to start the count that evening or the following day (potentially in a new location), this creates a great deal of logistical hurdles for the public—particularly poll watchers and their coordinators—to plan on how to observe the hand count. *See also* Exhibit 1.

24. In addition, the security and chain of custody issues associated with the hand count are deeply concerning. Election ballots generally should be handled as little as possible. The existing policies are very strict about reducing any handling of the ballots, and keeping the ballot receptacles sealed as much as possible.

25. Instead, the Hand Count Rule requires the ballots be opened in a myriad of places—potentially in many different locations, possibly at different times, and without much guidance of exactly how to do so.

26. There is also a much greater probability of human error from hand-counting than error from a frequently-tested machine designed to count ballots, and hand-counting ballots slows down the process and makes ballots more vulnerable to interference.

27. The preparation we must undertake for these new requirements under the Hand Count Rule will drain our time and resources. We try to be thoughtful and plan for all potential hurdles we might face, but given the last-minute passage of this Hand Counting Rule as the election fast approaches we risk not being able to do so.

Changing the Rules in the Fourth Quarter

28. Changing the processes for the election only weeks away from the election will cost the county money, cause a great deal of stress, and could create confusion for both poll workers and voters. I very much worry about how even the introduction of these last-minute rules has planted a seed of public distrust in the system.

29. I have had experience with making the hard decision not to make last-minute changes to an election process as a board member. In 2014, the Board was asked to make changes to our procedures and we voted to defer it to 2015. We felt strongly that we could not change the rules in the middle of an election. Ultimately, we agreed with the request and have since implemented the change, but the last-minute nature of the change was too great a risk.

30. The same is true here. I am not against hand counting of ballots if there is a reason to do so. But I am not in favor of changing the rules at the last minute.

31. The Board has consulted on the budget for the upcoming election, which was created as far back as February and set in July. If this rule moves forward, the county will need to pay for additional hours for poll workers, additional hours for security, and possibly even for locations. I do not believe we have sufficient funds in our current budget to cover these additional costs. We will have to seek additional funding from the county in order to pay for the Hand Counting Rule if it goes into effect.

32. Adding new rules and procedures right before the election will cause stress and confusion among our poll workers, who are used to very precise procedures from our team.

33. Every time we have a meeting about last minute rules like this, we could create doubt in the system. I worry this disruption in procedure could hurt the turnout because of trust in the system.

Uncertainty and Need for Clarity

34. Muscogee County is presently prepared to facilitate a smooth and fair election in compliance with state law.

35. The conflicting opinions by the Attorney General, the Secretary of State, and the SEB cause uncertainty and confusion for my board, the staff we supervise, and for the voting public in general. Even without these conflicting opinions, the Hand Count Rule itself at this late stage of the election creates uncertainty in how we should conduct ourselves as a Board to comply with the law and support our elections office team members.

36. Declaring the Hand Counting Rule unlawful will allow us to administer the 2024 general election in compliance with all other rules and laws.

37. This recently adopted Hand Count Rule directly affects me in my role as a member of the Board and threatens to cause me and the voters in my county irreparable harm.

Signature on the following page

Uhlend Roberts

UHLAND ROBERTS

Chair of Elections and Registration Board

Muscogee County, Georgia

Sworn to before me this 14th day of October, 2024

Ischarner Love

Notary Public

My commission expires

9-19-25



RETRIEVED FROM DEMOCRACYDOCKET.COM

EXHIBIT H

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE ELECTION BOARD
NOTICE OF PROPOSED RULEMAKING

Revisions to Subject 183-1-12-.12 *Tabulating Results*

TO ALL INTERESTED PERSON AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia State Election Board, (hereinafter "SEB") proposes the attached amendments to Subject 183-1-12-.12 (Tabulating Results).

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

To provide the public an opportunity to comment upon and provide input into the proposed rule amendments, a public hearing will be held on Friday, September 20, 2024 at 9:00 A.M. The meeting will take place at the Georgia State Capitol, Room 341.

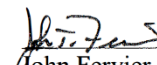
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board's webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events> .

Public comments given at the meeting will be limited to two minutes per person. Additional comments may be given using the following means and must be received by noon on September 19 to be considered by the State Election Board:

- Electronically by emailing SEBPublicComments@sos.ga.gov
- By mailing comments to:
State Election Board
C/O Alexandra Hardin
2 Martin Luther King Jr. Drive, S.E.
8th Floor West Tower Suite 802
Atlanta, Georgia 30334

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

This 21st day of August 2024.


John Fervier

Chair, State Election Board

Posted: August 21, 2024

**SYNOPSIS OF THE PROPOSED RULE
OF THE STATE ELECTION BOARD
RULE 183-1-12-.12 *Tabulating Results***

Purpose: The purpose of the rule is to ensure the secure, transparent, and accurate counting of ballots by requiring a systematic process where ballots are independently hand-counted by three sworn poll officers. The rule mandates detailed documentation, sealing, and certification of ballot counts, with provisions for resolving inconsistencies and communicating any counting that occurs outside the polling location to relevant parties.

Main Features: The main features of the amendments to this rule are that requires the poll manager and two sworn poll officers to unseal ballot boxes, remove and record the ballots, and have three poll officers independently count them. Once all three counts match, they sign a control document. If discrepancies arise between the hand count and recorded totals, the poll manager must resolve and document the inconsistency. The counted ballots are sealed in labeled containers, signed to ensure integrity.

**DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED
AMENDMENTS OF THE STATE ELECTION BOARD,
RULE 183-1-12-.12 *Tabulating Results***

NOTE: Underlined text is proposed to be added.

Rule 183-1-12-.12(a)(5)

5. The poll manager and two witnesses who have been sworn as poll officers as provided in O.C.G.A. § 21-2-94 and 21-2-95 shall unseal and open each scanner ballot box, remove the paper ballots from each ballot box, record the date and time that the ballot box was emptied and present to three sworn precinct poll officers to independently count the total number of ballots removed from the scanner, sorting into stacks of 50 ballots, continuing until all of the ballots have been counted separately by each of the three poll officers. When all three poll officers arrive at the same total ballot count independently, they shall each sign a control document containing the polling place, ballot scanner serial number, election name, printed name with signature and date and time of the ballot hand count. If the numbers recorded on the precinct poll pads, ballot marking devices [BMDs] and scanner recap forms do not reconcile with the hand count ballot totals, the poll manager shall immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken. A separate container shall be used for the hand counted paper ballots from each ballot box and the container shall be labelled with the polling place, ballot scanner serial number, the number assigned to the ballot scanner for that election, the scanner counts of the ballots from the tabulation tape, and the hand count ballot total as certified by the three poll officials. The container shall be sealed and signed by the poll manager and two of the three hand count poll officers such that it cannot be opened without breaking the seal. The poll manager and two witnesses shall sign a label affixed to the container indicating that it contains all the hand counted ballots from the indicated scanner box and no additional ballots.

- a. The decision about when to start the process described in this rule is up to the Poll Manager or Assistant Poll Manager. This decision can be made at the end of Election Day, or if a scanner possesses more than 750 ballots on Election Day, the Poll Manager can choose to start the next day and finish during the week designated for county certification. This decision should take into account factors such as staffing requirements, fatigue, and concerns about efficiency and accuracy.
- b. If the ballot counting is to take place after Election Day, the relevant ballots, tabulation tapes, enumerated voter lists, and polling information shall be sealed in a tamper-proof container and the number of the seal noted. The counting shall occur in the County election office on the next business day following Election Day and must conclude prior to any scheduled or announced post-election audits. The process must be completed within the designated county certification period.
- c. Counting will take place as mentioned in this rule. The process of opening, counting, and resealing ballots must be conducted in the presence of the relevant poll manager or assistant poll manager. These procedures must be conducted publicly to ensure transparency.
- d. If the counting of ballots takes place at any time or place other than the polling location, the supervisor of elections must immediately communicate the date, time, and place of such action with all candidates on the ballot and the county chair of both major political parties no later than 10:00 pm on Election Day. The poll manager shall post such information on the outside windows of the polling location together with all other information required to be so posted.

Authority: O.C.G.A. §§ 21-2-483(a), 21-2-436, 21-2-420(a)

COPY OF THE PROPOSED NEW RULE

Rule 183-1-12-.12(a)(5)

5. The poll manager and two witnesses who have been sworn as poll officers as provided in O.C.G.A. § 21-2-94 and 21-2-95 shall unseal and open each scanner ballot box, remove the paper ballots from each ballot box, record the date and time that the ballot box was emptied and present to three sworn precinct poll officers to independently count the total number of ballots removed from the scanner, sorting into stacks of 50 ballots, continuing until all of the ballots have been counted separately by each of the three poll officers. When all three poll officers arrive at the same total ballot count independently, they shall each sign a control document containing the polling place, ballot scanner serial number, election name, printed name with signature and date and time of the ballot hand count. If the numbers recorded on the precinct poll pads, ballot marking devices [BMDs] and scanner recap forms do not reconcile with the hand count ballot totals, the poll manager shall immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken. A separate container shall be used for the hand counted paper ballots from each ballot box and the container shall be labelled with the

polling place, ballot scanner serial number, the number assigned to the ballot scanner for that election, the scanner counts of the ballots from the tabulation tape, and the hand count ballot total as certified by the three poll officials. The container shall be sealed and signed by the poll manager and two of the three hand count poll officers such that it cannot be opened without breaking the seal. The poll manager and two witnesses shall sign a label affixed to the container indicating that it contains all the hand counted ballots from the indicated scanner box and no additional ballots.

- a. The decision about when to start the process described in this rule is up to the Poll Manager or Assistant Poll Manager. This decision can be made at the end of Election Day, or if a scanner possesses more than 750 ballots on Election Day, the Poll Manager can choose to start the next day and finish during the week designated for county certification. This decision should take into account factors such as staffing requirements, fatigue, and concerns about efficiency and accuracy.
- b. If the ballot counting is to take place after Election Day, the relevant ballots, tabulation tapes, enumerated voter lists, and polling information shall be sealed in a tamper-proof container and the number of the seal noted. The counting shall occur in the County election office on the next business day following Election Day and must conclude prior to any scheduled or announced post-election audits. The process must be completed within the designated county certification period.
- c. Counting will take place as mentioned in this rule. The process of opening, counting, and resealing ballots must be conducted in the presence of the relevant poll manager or assistant poll manager. These procedures must be conducted publicly to ensure transparency.
- d. If the counting of ballots takes place at any time or place other than the polling location, the supervisor of elections must immediately communicate the date, time, and place of such action with all candidates on the ballot and the county chair of both major political parties no later than 10:00 pm on Election Day. The poll manager shall post such information on the outside windows of the polling location together with all other information required to be so posted.

Authority: O.C.G.A. §§ 21-2-483(a), 21-2-436, 21-2-420(a)

EXHIBIT I

RETRIEVED FROM DEMOCRACYDOCKET.COM

Subject 183-1-12 PREPARATION FOR AND CONDUCT OF PRIMARIES AND ELECTIONS

Rule 183-1-12-.01 Conduct of Elections

Beginning with the 2020 Presidential Preference Primary, all federal, state, and county general primaries and elections, special primaries and elections, and referendums in the State of Georgia shall be conducted via an Optical Scanning Voting System as defined by O.C.G.A. [21-2-1](#)(19.1). Voting at the polls, including both Election Day and absentee-in-person voting shall be conducted via ballots marked by electronic ballot markers and tabulated by ballot scanners. The electronic ballot markers and ballot scanners shall be supplied by the Secretary of State or purchased by the counties with the authorization of the Secretary of State. Absentee-by-mail voting shall also be conducted through the use of an optical scanning voting system.

The Superintendent shall cause every polling place and advance voting location to have a sufficient number of blank paper ballots that can be marked by pen available for use in the event of emergency. The election superintendent shall also be prepared to resupply polling places with emergency paper ballots in needed ballot styles in a timely manner while voting is occurring so that polling places do not run out of emergency paper ballots.

Rule 183-1-12-.02 Definitions

(1) As used in this rule, the term:

- (a) "Ballot" shall have the meaning set forth in O.C.G.A. § [21-2-2](#).
- (b) "Ballot scanner" shall have the meaning set forth in O.C.G.A. § [21-2-2](#).
- (c) "Ballot Style" shall mean the specific offices, candidates, and questions displayed on an electronic ballot marker or paper ballot for voters according to their assigned precinct.
- (c.2) "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.
- (d) "Electronic ballot marker" shall have the meaning set forth in O.C.G.A. § [21-2-2](#).
- (e) "Election management system" is an electronic system that contains

databases for elections, allows for the creation of ballots, generates

Copyright © 2024 Fastcase, Inc - All rights reserved. | Email Us | 844-838-0769

The ballots in the emergency bin shall be counted when the ballot scanner is properly functioning, by a replacement ballot scanner brought to the polling place, or, if neither are available, by another scanner at the county elections office. Poll officers may scan ballots placed into the emergency bin through the ballot scanner or a replacement ballot scanner when doing so will not interfere with voting. A voter placing his or her ballot into the emergency bin is considered to have voted that ballot and shall not be permitted to cast another ballot.

- (c) Accredited poll watchers shall be allowed to observe the process described in this rule; however, they must do so in a manner that does not interfere with poll officials or voters.

12. Polling Place Wait Time Recordings

- (a) On the day of any state or federal general primary, election, or runoff therefrom, the chief manager of a precinct shall measure and record the time a voter waits in line prior to checking into vote.
- (b) The wait times shall be measured a minimum of three times while voting is occurring, in accordance with the following specifications:
 - i. Morning wait times shall be measured only during the hours between 7:00AM and 11:00AM.
 - ii. Midday wait times shall be measured only during the hours between 11:00AM and 3:00PM.
 - iii. Evening wait times shall be measured only during the hours of 3:00pm and 7:00PM.
- (c) Such results shall be recorded on a form provided by the Secretary of State and provided electronically in a manner determined by the Secretary of State.

Rule 183-1-12-.12 [Effective until 10/22/2024] Tabulating Results

- (a) After the Polls Close.
 - 1. Immediately after the polls close and the last voter has voted, the poll manager and two witnesses who have been previously sworn as poll officers as provided in O.C.G.A. §§ [21-2-94](#) and [21-2-95](#) shall begin the closing procedure on each ballot scanner so that no further votes are cast and record the number of scanned ballots from every ballot scanner used in the polling place. The poll manager and the two witnesses shall record the number of scanned ballots from each scanner on a recap form to be developed by the Secretary of State. The poll manager and the two witnesses shall cause each ballot scanner to print three tapes of the tabulated results and shall sign each tape indicating that it is a true and correct copy of the tape produced by the ballot scanner. If the poll manager or the witnesses

tabulation of the ballots scanned by that ballot scanner, the poll manager or witness shall document the reasons and evidence for that belief and inform the election superintendent, who shall take appropriate action, in his or her discretion, so that the ballots in the ballot box associated with the ballot scanner are accurately tabulated.

2. The poll manager shall cause the number of printed ballots from each ballot marking device to be recorded on the recap form. The poll manager shall further cause the number of spoiled ballots and ballots placed in the emergency bin of the scanner that were unable to be scanned to be recorded on the recap form. The poll manager shall cause the total number of voter check ins from the electronic poll book and/or paper voter list to be recorded on the recap form. If the numbers recorded on the recap form do not reconcile with each other, the poll manager shall immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken.
3. As soon as possible after the polls close and the last elector votes, the poll manager shall advise the election superintendent of the total number of ballots scanned into the ballot scanner, the total number of provisional ballots issued at the precinct, and the total number of any cast but unscanned ballots in a scanner emergency bin in the manner prescribed by the Secretary of State.
4. One of the three tapes of the tabulated results printed from the ballot scanner shall be affixed to the door of the polling place for the information of the public along with a copy of the provisional ballot recap form for the polling place. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purposes) provided by the election superintendent, along with the "poll officer" memory card from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The poll manager and the two witnesses shall initial the envelope indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the polling place recap form.
5. The poll manager and two witnesses who have been sworn as poll officers as provided in O.C.G.A. §§ [21-2-94](#) and [21-2-95](#) shall unseal and open each ballot box, remove the paper ballots from each ballot box, and place the paper ballots into a durable, portable, secure and sealable container to be provided for transport to the office of the election superintendent. A separate container shall be used for the paper ballots from each ballot box and the container shall be labelled

assigned to the ballot scanner for that election, the count of the ballots from the tabulation tape, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the poll manager and the same two witnesses such that it cannot be opened without breaking the seal. The poll manager and the two witnesses shall sign a label affixed to the container indicating that it contains all of the correct ballots from the indicated ballot box and no additional ballots.

6. The poll manager and the same two witnesses who emptied the ballot box shall complete and sign a form indicating that the ballot box was properly emptied and the ballots were properly stored and secured. Such form shall be delivered to the election superintendent with the completed polling place recap form. The ballot box shall be resealed and the new seal numbers shall be documented.
7. The envelopes containing the tabulation tape and the memory card, the containers containing the paper ballots, the completed polling place recap forms, voter access cards, supervisor's cards, electors lists, numbered lists of voters, electronic poll books, and other such paperwork shall be delivered to the election superintendent by the poll manager and at least one other sworn poll officer or law enforcement official. The election superintendent or his or her designee shall receive the materials and shall issue a receipt to the poll manager for the materials. The poll manager and any poll officers who travelled with the materials shall sign a form indicating that no sealed documents were unsealed enroute and that the materials have not been tampered with. The election superintendent, in his or her discretion, may allow a designee of the poll manager to deliver the envelopes or containers containing the ballot scanner tabulation tapes and memory cards to be used for unofficial reporting of results prior to the delivery of the other polling place materials provided that the same procedures for transit and delivery set forth herein are followed.
8. Before leaving the polling place, the poll manager shall power off, secure, and seal all electronic ballot markers, ballot boxes, and ballot scanners. The polling place shall be locked to prohibit unauthorized entry.
9. Accredited poll watchers shall be allowed to observe the process described in this rule; however, they must do so in a manner that does not interfere with poll officials.

(b) Consolidation of Results.

1. All persons involved with the tabulation and consolidation of the election results and who will operate the computer programs or handle the memory cards shall be sworn in the same manner that custodians are sworn before entering into their duties.

2. Only persons who are permanent employees of the election superintendent or have been duly sworn as poll officers or custodians shall touch or be in contact with any ballot, container, returns, tapes, device, memory card, or any other such election materials. Only persons who are employed by the election superintendent or have been duly sworn shall be in the immediate area of the tabulating center designated by the superintendent for the officers to conduct the tabulation and consolidation of the election results.
3. The tabulation and consolidation shall be performed in public. However, the election superintendent may make reasonable rules and regulations for conduct at the tabulating center for the security of the results and the returns and to avoid interference with the tabulating center personnel.
4. The election superintendent shall ensure all properly cast ballots that are received by the deadline to receive ballots are processed, verified, and tabulated as soon as possible and shall not cease such count and tabulation until all such ballots are counted and tabulated. However, counting may cease prior to tabulating provisional ballots that are cured by the prescribed deadline and validated pursuant to O.C.G.A. § [21-2-419](#), so long as those ballots are processed, verified, and tabulated as soon as possible. Counting may also cease prior to tabulating ballots from 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. ("UOCAVA"), that are received after the deadline to receive non-UOCAVA ballots but before the deadline for UOCAVA ballots set forth in O.C.G.A. § [21-2-386\(a\)\(1\)\(G\)](#) so long as those ballots are processed, verified, and tabulated as soon as possible following their timely receipt.
 - a. For the purposes of this rule, "shall not cease" allows for reasonable or limited breaks so long as the processing, counting, and tabulating of ballots resumes as soon as possible. If the election superintendent, in its reasonable discretion, determines that due to mechanical or technological failures, emergency circumstances, or other circumstances that do not allow the processing, counting, and tabulating of ballots to continue reliably and accurately, the election superintendent shall report as soon as possible in writing to the Secretary of State in the manner prescribed by the Secretary of State the reason the processing, counting, and tabulating of ballots cannot continue reliably and accurately and the estimated time that the processing, counting, and tabulating ballots will resume.
5. Upon the delivery of any election materials from a polling place, the election superintendent or his or her designee shall provide a receipt that clearly states what election materials have been delivered.

6. Upon receiving the paper ballots and the memory cards, the election superintendent shall verify the signatures on the sealed envelopes and containers, verify that the seals are intact, that the envelopes or containers have not been opened, and that there is no evidence of tampering with the envelopes, containers, or their contents.
7. In the case of elections for county, state, and federal office, after verifying that the envelopes and containers are properly sealed and have not been opened or tampered with, the election superintendent shall break the seal and open each envelope and remove the memory card and results tape. The election superintendent or his or her designee shall then insert the memory card into the election management system computer and transfer the vote totals from the memory card into the election management system for official tabulation and consolidation.
8. After transferring all of the vote totals from the memory cards to the election management system and consolidating such totals with the totals from the absentee ballot system and such votes from any provisional ballots which have been found by the registrars to be authorized pursuant to O.C.G.A. § [21-2-419](#), the election superintendent shall prepare the official consolidated returns for the primary, election, or runoff.
9. The election superintendent shall not list and certify in the official consolidated returns for an election any results for write in candidates who were not properly qualified under O.C.G.A. § [21-2-133](#).
10. In the case of primaries, elections, and runoffs for county, state, and federal office, the county election superintendent shall transmit to the Secretary of State the election returns by precinct for the county in electronic format or by electronic means, as may be specified by the Secretary of State, within fourteen days following a primary, election, or runoff.

(c) Publicly Posting Total Number of Ballots Cast After Close of Polls.

1. For the purposes of publicly posting the number of ballots cast, including the total number of ballots scanned into the ballot scanner, the total number of provisional ballots issued at the precinct, and the total number of any cast but unscanned ballots in a scanner emergency bin, as soon as possible after the close of polls and the number of absentee ballots received as soon as possible following the deadline to receive such absentee ballots as required by O.C.G.A. § [21-2-421\(a\)](#), posting information in a prominent public place means:
 - a. If the county or municipality maintains a publicly accessible website, publishing information on the homepage of the county's publicly accessible website associated with elections and/or registrations.

- b. If the county or municipality does not maintain a publicly accessible website, affixing information on the door of the county or municipality's election office such that the information is viewable to the public.
 - c. At the same time that such information is publicly posted, it shall be transmitted to the Secretary of State in a manner determined by the Secretary of State.
- (d) Election Night Reporting. The election superintendent shall transmit to the Secretary of State unofficial election results for all races for state offices in any primary, election, or runoff as soon as possible after the closing of the polls for such primary, election, or runoff. Such results shall be transmitted in a format prescribed by the Secretary of State. At a minimum, the results shall be transmitted upon one third of the precincts reporting results, upon two thirds of the precincts reporting results, and upon all precincts reporting results, including absentee ballots within all precincts. Except upon prior notice to and consultation with the Secretary of State, no election superintendent shall conclude the tabulation of votes on election night in any primary, election, or runoff in which there are contested races for federal and state offices until and unless all such unofficial results, including absentee ballots, have been transmitted to the Secretary of State.
- (e) Reconciliation Report.
 - 1. As soon as possible but no later than 30 days following the certification of election results, the election superintendent shall transmit to the Secretary of State a reconciliation report that reconciles the aggregate total of all ballots cast in each precinct as reported in the precinct-level election results to the aggregate number of voters who received credit for voting in each precinct on the form made available by the Secretary of State. Any discrepancies in the aggregate total of ballots cast in each precinct compared to the aggregate number of voters who received credit for voting in a precinct shall be fully investigated by the election superintendent or designee. The explanation for any discrepancy shall be included in the Reconciliation Report.
- (f) Preparing for County Certification.
 - 1. After each election but not later than 3:00 P.M. on the Friday following the date on which the election was held, the Board shall meet to conduct a review of precinct returns.
 - 2. After all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast in person on Election Day and all provisional ballots (that have been validated) have been tabulated, the total number of ballots cast by each vote method shall be reported for each precinct.

3. A list of all voters who voted in the election shall be compiled including by category the number of voters who voted Election Day In Person, Advance Voting, Absentee and Provisionally. The list shall be examined for duplicates. The list shall then be sorted by precinct. The total number of unique voter IDs from each precinct shall be counted. The total number of unique voters who voted by each vote method shall be reported for each precinct.
4. For each precinct, the board members shall compare the total number of ballots cast to the total number of unique voter ID numbers. In any precinct in which the number of ballots exceeds the number of unique voters, the Board shall determine the method of voting in which the discrepancy exists. The Board shall investigate the discrepancy and no votes shall be counted from that precinct until the results of the investigation are presented to the Board as required in GA Code § [21-2-493\(b\)](#).
5. If any error is discovered that cannot be properly corrected, the Board shall determine a method to compute the votes justly as required in GA Code § [21-2-493\(i\)](#). If fraud is discovered, the Board shall determine a method to compute the votes justly and report the facts to the district attorney for action as required in GA Code § [21-2-493\(i\)](#).
6. Board members shall be permitted to examine all election related documentation created during the conduct of elections prior to certification of results.

(g) Certification Meeting.

1. After all precinct discrepancies have been investigated and resolved as required by GA Code § [21-2-493](#), the correct or corrected returns shall be recorded until all the returns from each precinct which are entitled to be counted are recorded; then they shall be added together, announced, and verified as accurate.
2. The consolidated returns shall then be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.

Rule 183-1-12-.12 [Effective 10/22/2024] Tabulating Results

(a) After the Polls Close.

1. Immediately after the polls close and the last voter has voted, the poll manager and two witnesses who have been previously sworn as poll officers as provided in O.C.G.A. §§ [21-2-94](#) and [21-2-95](#) shall begin the closing procedure on each ballot scanner so that no further votes are cast and record the number of scanned ballots from every ballot scanner used in the polling place. The poll manager and the two witnesses shall record the number of scanned ballots from each

EXHIBIT J

RETRIEVED FROM DEMOCRACYDOCKET.COM



Georgia
Secretary of State
Brad Raffensperger



[Home](#) > [News & Announcements](#) > Raffensperger Defends Georgia's Election Integrity Act from Last Minute Changes Delaying Election Results

August 15th, 2024

Atlanta, GA – Today Secretary Raffensperger defended Georgia's election integrity laws, denouncing the 11th-hour effort to impose new activist rulemaking that would undermine key provisions of Georgia's Election Integrity Act (S.B. 202) and other reforms like S.B. 189. Since taking office, Secretary Raffensperger has supported reforms that foster voter confidence in elections. The Secretary was proud to work with the General Assembly to require Photo ID for absentee ballots, expedite reporting and certification of election results, strengthen chain of custody procedures, and implement rigorous citizenship verification to ensure that only U.S. citizens can vote in our elections. Because of these efforts, Georgia has been identified by the Heritage Foundation as having some of the best election integrity measures in the country.

"Activists seeking to impose last-minute changes in election procedures outside of the legislative process undermine voter confidence and burden election workers," said Secretary of State Brad Raffensperger. "The General Assembly knew that quick reporting of results and certification is paramount to voter confidence and passed S.B. 202, but misguided attempts by the State Election Board will delay election results and undermine chain of custody safeguards. Georgia voters reject this 11th hour chaos, and so should the unelected members of the State Election Board."

One of the main election integrity measures that the General Assembly put in place in both S.B. 202 and S.B. 189 are procedures to ensure the quick and



Georgia
Secretary of State
Brad Raffensperger



Georgia voters deserve confidence that election results will be timely reported on Election Night as required by S.B. 202 and S.B. 189. Misguided efforts to impose new procedures like hand counting ballots at polling locations make it likely that Georgians will not know the results on Election Night. Additionally, having poll workers handle ballots at polling locations after they have been voted introduces a new and significant risk to chain of custody procedures. Georgia law already has secure chain of custody protocols for handling ballots, and efforts to change these laws by unelected bureaucrats on the eve of the election introduces the opportunity for error, lost or stolen ballots, and fraud.

Throughout this year, the Secretary of State's office has been traveling across the state working with county election officials to conduct audits and site inspections that ensure the state's voting equipment is secure and in working order. Each of Georgia's 159 counties have passed the test. Georgia's voter rolls are the cleanest in the nation, and Secretary Raffensperger is the first Secretary of State to conduct a citizenship audit to ensure only U.S. citizens can vote in Georgia elections. The Secretary's office has also coordinated tabletop exercises between county election workers, law enforcement and cybersecurity partners to reinforce the security of our election processes. These misguided, last-minute changes from unelected bureaucrats who have never run an election and seem to reject the advice of anyone who ever has could cause serious problems in an election that otherwise will be secure and accurate.

###

Georgia is recognized as a national leader in elections. It was the first state in the country to implement the trifecta of automatic voter registration, at least 17 days of early voting (which has been called the "gold standard"), and no-excuse



Georgia
Secretary of State
Brad Raffensperger



2022 achieved the largest single day of in-person early voting turnout in Georgia midterm history utilizing Georgia's secure, paper ballot voting system. Most recently, Georgia ranked #1 for Election Integrity by the Heritage Foundation, a top ranking for Voter Accessibility by the Center for Election Innovation & Research and tied for number one in Election Administration by the Bipartisan Policy Center.

More News & Announcements

Election Recovery Efforts Underway; Minimal Long Term Damage, Raffensperger Says

Georgia Voter Alert: Ballot Tracking Now Available on MVP

Secretary Raffensperger Launches Required Polling Place Warning: "This election will be decided by U.S. Citizens. Period."

Secretary Raffensperger Announces Cross-State Double Voting Indictment

Secretary Hosts Law Enforcement Tabletop on Secure Elections

Secretary Raffensperger Brings Together Nearly 300 State Election Officials for Election Security Event



Georgia
Secretary of State
Brad Raffensperger



Office of Brad
Raffensperger

News & Announcements

Privacy Policy

Security

214 State Capitol
Atlanta, Georgia 30334

Contact Us

© 2024 Georgia
Secretary of State

RETRIEVED FROM DEMOCRACYDOCKET.COM