

August 2, 2024

By Email

John Fervier, Chairman (jfervier.seb@gmail.com)
Sara Tindall Ghazal, Member (saraghazal.seb@gmail.com)
Janice W. Johnston, Member (jjohnstonmd.seb@gmail.com)
Rick Jeffares, Member (rjeffares.seb@gmail.com)
Janelle King, Member (jking.seb@gmail.com)
Georgia State Election Board
C/O Alexandra Hardin (SEBPublicComments@sos.ga.gov)
2 Martin Luther King Jr. Drive, S.E.
8th Floor West Tower Suite 802
Atlanta, GA 30334

Re: Comment on Proposed Amendment to SEB Rule 183-1-2-.02 *Definitions*

Dear Chairman Fervier and State Election Board Members:

On behalf of the SPLC Action Fund,¹ we write in response to the notice of proposed rulemaking issued by the State Election Board (“SEB” or “Board”) on July 3, 2024. We respectfully submit this comment to the proposed rule which seeks to amend SEB Rule 183-1-2-.02 *Definitions* (“Proposed Rule”) by altering the definition of election certification. We urge the SEB to reject the Proposed Rule because its suggested language is in conflict with the letter of Georgia law as well as longstanding Georgia caselaw such that the Board’s adoption of the Proposed Rule would exceed the SEB’s statutory authority. The Proposed Rule’s vague language would also lead to inconsistent applications and is ripe for abuse. The resulting electoral confusion and disorder stand to negatively impact voter and public confidence in Georgia’s elections. The Proposed Rule is therefore unreasonable in light of these undesirable effects.

Pursuant to O.C.G.A. § 50-13-4(a)(2), we request that the SEB include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it “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.”

¹ The SPLC Action Fund is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC Action Fund is the 501(c)4 affiliate organization to the Southern Poverty Law Center. For more information, visit www.splcactionfund.org.

I. Background

The Proposed Rule seeks to amend SEB Rule 183-1-12-.02 to include the following definition:

(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.²

Notice of the Proposed Rule states that the purpose of the rule is “to explicitly define certification, and to establish clear, standardized criteria for officially confirming the results of an election.”³

II. The Board Should Reject the Proposed Rule Because it Exceeds the Board’s Statutory Authority and it is Unreasonable

We urge the Board to reject the Proposed Rule because it would conflict with Georgia law and, as such, the Board’s adoption of the Proposed Rule would exceed the Board’s statutory authority. The Proposed Rule’s vague language also risks inconsistent application between counties and creates opportunities for abuse, all of which risks election chaos that negatively impacts public perception of Georgia’s elections. Such effects would run afoul of the purported purpose of the Proposed Rule and the SEB’s statutorily authorized charge and render the Board’s adoption of the Proposed Rule unreasonable.

a. The Proposed Rule Conflicts with Georgia Law

The Proposed Rule, which seeks to define election certification to mean to “attest, after reasonable inquiry, that the tabulation and canvassing of the election are complete and accurate and that the election results area true and accurate accounting of all votes cast in that election,” is contrary to Georgia law and therefore exceeds the Board’s statutory authority.

For the reasons detailed in the comment submitted by our colleagues at the Brennan Center for Justice and Protect Democracy on July 2, 2024,⁴ and the comment submitted by our colleagues at the American Civil Liberties Union of Georgia, Common Cause Georgia, Citizens for responsibility and Ethics in Washington, and the Public Rights Project on July 15, 2024,⁵ Georgia law provides no discretion to county election supervisors or election boards to reject or delay the certification of actual vote totals.⁶ This is further supported by nearly a century of Georgia caselaw that confirms the county election superintendent’s role in the certification process is “purely ministerial.”⁷ The Proposed Rule’s option for county election supervisors and election boards to certify election results only following a “reasonable inquiry” therefore runs contrary to the letter of Georgia law as well as longstanding Georgia caselaw,

² Notice of Proposed Rulemaking at 2.

³ *Id.*

⁴ See Brennan Center for Justice at NYU Law & Protect Democracy, *Comment to the Georgia State Election Board: Reject a rule re-defining election certification*, <https://www.brennancenter.org/our-work/research-reports/comment-georgia-state-election-board-reject-rule-re-defining-election> (July 2, 2024).

⁵ See ACLU of Georgia, Common Cause Georgia, Citizens for Responsibility and Ethics in Washington & Public Rights Project, *Comment on Proposed Amendment to Rule 183-1-12-02*, <https://www.citizensforethics.org/wp-content/uploads/2024/07/Comment-on-Proposed-Rule-Defining-Election-Certification-2024.07.11.pdf> (July 15, 2024).

⁶ O.C.G.A. §§ 21-2-493(a), (k); 21-2-497(b).

⁷ *Bacon v. Black*, 133 S.E.2d 883, 893 (Ga. 1947); *Darvis v. Warde*, 118 S.E. 378, 391 (Ga. 1923); *Tanner v. Deen*, 33 S.E. 832, 835-36 (Ga. 1899); *Brockett v. Maxwell*, 38 S.E.2d 176, 179 (Ga. Ct. App. 1946).

which does not grant county election superintendents discretion to reject or delay certification and compels county election certification of vote totals.

The Georgia election code also completely prescribes the procedures county election superintendents must follow to ensure ballots are lawfully cast and accurately counted, all of which reasonably precede the county election superintendent's duty to certify election results.⁸ The Proposed Rule would improperly add a new legal requirement to "confirm the results of an election."⁹

The Georgia General Assembly has empowered the SEB to "formulate, adopt, and promulgate such rule and regulations, *consistent with law*."¹⁰ Because Georgia law makes clear that county election certification is ministerial, non-discretionary, and mandatory and Georgia law already completely prescribes the procedures county election superintendents must take to confirm the accuracy of election results, the Proposed Rule's additional "reasonable inquiry" requirement for election certification runs afoul of Georgia law. Adoption of the Proposed Rule would therefore exceed the SEB's statutory authority.

b. The Proposed Rule Would Produce Deleterious Effects to Georgia's Elections, including Negative Impacts to Voter Confidence

The Proposed Rule's vague requirements increase the risk of election disorder, which would produce harmful effects on public perception of Georgia elections. While the Proposed Rule purportedly seeks to "establish clear, standardized criteria" for confirming election results, the vague "reasonable inquiry" language does the opposite.¹¹ Because the Proposed Rule provides no definition for what a "reasonable inquiry" means, the Proposed Rule creates opportunities for bad actors to abuse the rule for nefarious goals. This concern is not unfounded. Election denial movements encourage "supporters to infiltrate local election infrastructure to increase . . . control over electoral processes and outcomes."¹² This includes efforts to seat local election board members to deny or delay election certification.¹³ States are beginning to see the results of those efforts. In Arizona's Cochise County, for instance, members of the county election board were recently charged with conspiring to delay election certification based on disproven concerns about voting machines.¹⁴ In Pennsylvania, local actors abused an arcane law in 2022 to demand recounts for unfounded reasons, all to "delay the certification of elections."¹⁵

Leaving "reasonable inquiry" to interpretation could also result in different interpretations and applications from county to county or even between individual board members within a particular county. Rather than "establish clear, standardized criteria" for confirming election results as the

⁸ See also §§ 21-2-70; 21-2-493; 21-2-495(a)-(b); 21-2-497(b); 21-2-498.

⁹ Notice of Proposed Rulemaking at 2. See *Dep't of Human Resources v. Anderson*, 462 S.E.2d 439, 441 (Ga. Ct. App. 1995) (finding a rule requiring the filing of an administrative adjustment inappropriately adds a procedure where the statute was read to flatly state the entire procedure for "adjusting the child support award").

¹⁰ O.C.G.A. § 21-2-31(2) (emphasis added).

¹¹ Notice of Proposed Rulemaking at 2.

¹² Human Rights First, *Election Denialists Recruit Veterans and Threaten 2024 Election*, at 4, https://humanrightsfirst.org/wp-content/uploads/2023/11/Election-Denial-report_November-2023_Final.pdf.

¹³ *Id.*

¹⁴ American Oversight, *The Election Denial Movement's Misguided Push to Hand-Count Ballots*, <https://www.americanoversight.org/investigation/the-election-denial-movements-misguided-push-to-hand-count-ballots> (July 3, 2024).

¹⁵ Carter Walker, SpotlightPA, *Century-old law let voters file baseless recount petitions and delay Pa.'s election certification*, <https://www.spotlightpa.org/news/2022/12/pa-midterm-election-2022-recount-petitions-certification-history/> (Dec. 29, 2022).



Proposed Rule purports to do, the Proposed Rule could result in the unequal treatment of ballots in different counties.¹⁶ The legal violations of ballots being treated differently between counties alone are far-reaching.¹⁷

Importantly, both the potential for abuse and inconsistent applications would generate voter confusion and sow disorder. This, in turn, negatively impacts public confidence of Georgia's elections. Because the Proposed Rule would result in deleterious effects to Georgia's elections, the Proposed Rule is unreasonable.

III. Conclusion

Time and again, Georgia has proven that our elections are safe and secure. The Proposed Rule is unnecessary. But it is also in conflict with Georgia law, in excess of the SEB's statutory authority, risks inconsistent application, is subject to abuse, and is unreasonable in light of these deleterious effects. For these reasons, we urge the Board to reject the Proposed Rule.

Sincerely,

SPLC ACTION FUND

Pichaya Poy Winichakul, Senior Staff Attorney

Isabel Otero, Georgia Policy Director

Brian Nuñez, Georgia Senior Policy Associate

¹⁶ Notice of Proposed Rulemaking at 2. *See also* O.C.G.A. § 21-2-31 (describing the duties of the SEB to include promulgating rules and regulations to establish the "uniformity in practices and proceedings . . . as well as legality . . . in all primaries and elections" for election officials).

¹⁷ *See, e.g., Bush v. Gore*, 531 U.S. 98, 106-07 (2000).

August 9, 2024

By Email

John Fervier, Chairman (jfervier.seb@gmail.com)
Sara Tindall Ghazal, Member (saraghazal.seb@gmail.com)
Janice W. Johnston, Member (jjohnstonmd.seb@gmail.com)
Rick Jeffares, Member (rjeffares.seb@gmail.com)
Janelle King, Member (jking.seb@gmail.com)
Georgia State Election Board
C/O Alexandra Hardin (SEBPublicComments@sos.ga.gov)
2 Martin Luther King Jr. Drive, S.E.
8th Floor West Tower Suite 802
Atlanta, GA 30334

Re: Comment on Proposed Amendment to SEB Rule 183-1-2-.12 *Tabulating Results*

Dear Chairman Fervier and State Election Board Members:

On behalf of the SPLC Action Fund,¹ we write in response to the notice of proposed rulemaking issued by the State Election Board (“SEB” or “Board”) on July 18, 2024. We respectfully submit this comment to the proposed rule which seeks to amend SEB Rule 183-1-2-.12 *Tabulating Results* (“Proposed Rule”). **We urge the SEB to reject the Proposed Rule** because it is in conflict with the letter of Georgia law as well as longstanding Georgia caselaw such that the Board’s adoption of the Proposed Rule would exceed the SEB’s statutory authority. The Proposed Rule could also lead to statewide electoral confusion and disorder, which would negatively impact voter and public confidence in Georgia’s elections. The Proposed Rule is therefore unreasonable in light of these undesirable effects.

Pursuant to O.C.G.A. § 50-13-4(a)(2), we request that the SEB include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it “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.”

I. Background

The Proposed Rule seeks to amend SEB Rule 183-1-12-.12 to require the county election superintendent to perform additional procedures “before certifying the results.”² The purported purpose

¹ The SPLC Action Fund is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. SPLC Action Fund is the 501(c)4 affiliate organization to the Southern Poverty Law Center. For more information, visit www.splcactionfund.org.

² Notice of Proposed Rulemaking at 2.

of the Proposed Rule is to ensure that county election superintendents “follow the required procedures . . . and lawfully fulfill their duties.”³

II. The Board Should Reject the Proposed Rule Because it Exceeds the Board’s Statutory Authority and it is Unreasonable

We urge the Board to reject the Proposed Rule because it would conflict with Georgia law and the Board’s adoption of the Proposed Rule would exceed the Board’s statutory authority. Georgia law provides no discretion to county election supervisors or election boards to reject or delay the certification of actual vote totals.⁴ This is further supported by nearly a century of Georgia caselaw that confirms the county election superintendent’s role in the certification process is “purely ministerial.”⁵ The Proposed Rule’s *option* for county election supervisors and election boards to certify election results only following additional requirements unenumerated in the state election code therefore runs contrary to the letter of Georgia law as well as longstanding Georgia caselaw.

The Georgia election code also completely prescribes the procedures county election superintendents must follow to ensure ballots are lawfully cast and accurately counted, including any procedures to report and reconcile apparent fraud if any is uncovered.⁶ In other words, the election code already contemplates and comprehensively instructs how county election superintendents should ensure the election results are true and accurate. The Proposed Rule adds at least eight new legal requirements to purportedly address the same issue of ensuring results are true and accurate. The addition of these new requirements unenumerated by state law exceeds the SEB’s statutory authority and is therefore impermissible.⁷

The Georgia General Assembly has empowered the SEB to “formulate, adopt, and promulgate such rule and regulations, *consistent with law*.”⁸ Because Georgia law makes clear that county election certification is ministerial, non-discretionary, and mandatory and Georgia law already completely prescribes the procedures county election superintendents must take to confirm the accuracy of election results. The Proposed Rule is therefore inconsistent with Georgia law and exceeds the Board’s statutory authority.

III. The Proposed Rule Would Produce Deleterious Effects to Georgia’s Elections, including Negative Impacts to Voter Confidence

The Proposed Rule risks statewide election disorder, which would produce harmful effects on public perception of Georgia elections. While the Proposed Rule purportedly seeks to “ensure county superintendents and boards of elections follow the required procedures and can uniformly, properly, and lawfully fulfill their duties,” the Proposed Rule’s application could lead to the opposite.⁹ Because the

³ *Id.*

⁴ O.C.G.A. §§ 21-2-493(a), (k); 21-2-497(b).

⁵ *Bacon v. Black*, 133 S.E.2d 883, 893 (Ga. 1947); *Darvis v. Warde*, 118 S.E. 378, 391 (Ga. 1923); *Tanner v. Deen*, 33 S.E. 832, 835-36 (Ga. 1899); *Brockett v. Maxwell*, 38 S.E.2d 176, 179 (Ga. Ct. App. 1946).

⁶ See also §§ 21-2-70; 21-2-493(i); 21-2-495(a)-(b); 21-2-497(b); 21-2-498.

⁷ See *Dep’t of Human Resources v. Anderson*, 462 S.E.2d 439, 441 (Ga. Ct. App. 1995) (finding a rule requiring the filing of an administrative adjustment inappropriately adds a procedure where the statute was read to flatly state the entire procedure for “adjusting the child support award”).

⁸ O.C.G.A. § 21-2-31(2) (emphasis added).

⁹ Notice of Proposed Rulemaking at 2.

Proposed Rule would require at least eight new procedures before a county could certify election results, the Proposed Rule creates opportunities for bad actors to abuse the rule for nefarious goals. This concern is not unfounded. Election denial movements encourage “supporters to infiltrate local election infrastructure to increase . . . control over electoral processes and outcomes.”¹⁰ This includes efforts to seat local election board members to deny or delay election certification.¹¹ States are beginning to see the results of those efforts. In Arizona’s Cochise County, for instance, members of the county election board were recently charged with conspiring to delay election certification based on disproven concerns about voting machines.¹² In Pennsylvania, local actors abused an arcane law in 2022 to demand recounts for unfounded reasons, all to “delay the certification of elections.”¹³

Counties that are unable to timely complete certification due to abuse of the rule or intentional delay from bad actors could lead to non-certification in certain counties. The legal violations resulting from not counting lawful ballots in one county but counting lawful ballots in another alone are far-reaching.¹⁴

Importantly, the risks of generating voter confusion and sowing disorder are great. This, in turn, would negatively impact public confidence in Georgia’s elections. Because the Proposed Rule would result in deleterious effects to Georgia’s elections, the Proposed Rule is unreasonable.

I. Conclusion

Time and again, Georgia has proven that our elections are safe and secure. The Proposed Rule is unnecessary. But it is also in conflict with Georgia law, in excess of the SEB’s statutory authority, is subject to abuse, and is unreasonable in light of these deleterious effects. For these reasons, we urge the Board to reject the Proposed Rule.

Sincerely,

SPLC ACTION FUND

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¹⁰ Human Rights First, *Election Denialists Recruit Veterans and Threaten 2024 Election*, at 4, https://humanrightsfirst.org/wp-content/uploads/2023/11/Election-Denial-report_November-2023_Final.pdf.

¹¹ *Id.*

¹² American Oversight, *The Election Denial Movement’s Misguided Push to Hand-Count Ballots*, <https://www.americanoversight.org/investigation/the-election-denial-movements-misguided-push-to-hand-count-ballots> (July 3, 2024).

¹³ Carter Walker, SpotlightPA, *Century-old law let voters file baseless recount petitions and delay Pa.’s election certification*, <https://www.spotlightpa.org/news/2022/12/pa-midterm-election-2022-recount-petitions-certification-history/> (Dec. 29, 2022).

¹⁴ See, e.g., *Bush v. Gore*, 531 U.S. 98, 106-07 (2000).

August 13, 2024

By Email

John Fervier, Chairman (jfervier.seb@gmail.com)
Sara Tindall Ghazal, Member (saraghazal.seb@gmail.com)
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Janelle King, Member (jking.seb@gmail.com)
SEBPublicComments@sos.ga.gov
Georgia State Election Board
2 Martin Luther King Jr. Drive
Suite 802, Floyd West Tower
Atlanta, GA 30334

Re: Comment on Proposed Amendment to Rule 183-1-12-.12. Tabulating Results

Dear Chairman Fervier and State Election Board Members:

The American Civil Liberties Union of Georgia, Citizens for Responsibility and Ethics in Washington, and Public Rights Project respectfully submit this comment on the above-referenced proposed rule released by the State Election Board (“SEB” or “Board”) on July 18, 2024.¹ We object to the provision in the Proposed Rule stating that county “[b]oard members shall be permitted to examine all election related documentation created during the conduct of elections prior to certification of results.” That provision plainly exceeds statutory authority, would invite unscrupulous abuse, and could impose unreasonable burdens on election workers in the hectic six-day period between election day and certification. Because the Proposed Rule would not withstand judicial review, the Board should not adopt it.

Pursuant to O.C.G.A. § 50-13-4(a)(2), we request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it “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.” *Id.*

I. The Proposed Rule Exceeds Statutory Authority

The Legislature has empowered the Board “[t]o 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.”² The Georgia Supreme Court has made clear that an “agency rule” that is “unauthorized by statute” is not consistent with law and thus “[can]not

¹ See State Election Board, Notice of Proposed Rulemaking, Revisions to Subject 183-1-12-.12. *Tabulating Results* (July 18, 2024) [hereinafter Proposed Rule], https://sos.ga.gov/sites/default/files/2024-07/notice_of_proposed_rulemaking_183_1_12_12_1_v2.pdf.

² O.C.G.A. § 21-2-31(2) (emphasis added).

stand.”³ That is because the “promulgation of rules not authorized by statute constitutes an unconstitutional usurpation of legislative power.”⁴ Moreover, in the context of election canvassing and certification, Georgia has long followed the “general, if not indeed the universal, rule of law” that “election canvassers . . . are given no discretionary power except to determine if the returns are in proper form and executed by the proper officials and to pronounce the mathematical result, unless additional authority is expressed.”⁵ In other words, county election superintendents have “no discretionary power” absent “express[]” statutory authorization by the Legislature.

While some sections of the Proposed Rule mirror Georgia statutes, one provision improperly seeks to write new law. Specifically, section 183-1-12-.12(.1)(6) provides that individual county “[b]oard *members* shall be permitted to examine *all election related documentation* created during the conduct of elections *prior to certification of results*.”⁶ This provision is unauthorized by statute for two independent reasons.

First, Georgia law does not vest power in *individual members* of county election boards. Rather, the Election Code confers “powers” and “duties” on each county’s “election superintendent.”⁷ In counties that have county boards, the “election superintendent” is the *majority* of the board’s voting members, not the board’s individual members.⁸ The Election Code and this Board’s rules make that point clear by defining the “superintendent” to mean “the county board of elections” or “county board of elections and registrations . . . if a county has such.”⁹ County board bylaws similarly provide that “[a]ll actions of the Board shall require a vote of the majority of the members present and voting at any meeting.”¹⁰

None of the statutes cited as “Authority” in the Proposed Rule provide otherwise.¹¹ The

³ *Ga. Real Estate Comm’n v. Accelerated Courses in Real Estate, Inc.*, 214 S.E.2d 495, 498 (Ga. 1975).

⁴ *Id.* at 499.

⁵ *Thompson v. Talmadge*, 41 S.E.2d 883, 893 (Ga. 1947); *see also Tanner v. Deen*, 33 S.E. 832, 835-36 (Ga. 1899) (county superintendents’ duties are “regulated by statute, and not left to the discretion of the party performing” them).

⁶ Proposed Rule at 3 (emphasis added).

⁷ O.C.G.A. § 21-2-70.

⁸ *See* O.C.G.A. § 21-2-40(b) (providing that the “board[s] of elections and registration” have “the powers and duties of the election superintendent relating to the conduct of primaries and elections”).

⁹ O.C.G.A. § 21-2-2(35)(A); SEB Rule 183-1-12-.02(1)(g).

¹⁰ *E.g.*, Fulton County Board of Registration and Elections Bylaws, Art. III, § 6, <https://fultoncountyga.gov/-/media/Departments/Registration-and-Elections/Board-of-Registration-and-Elections/Monthly-Operations-Reports/BRE-BYLAWS42021.pdf>.

¹¹ *See* Proposed Rule at 3 (citing O.C.G.A. § 21-2-193(a) (irrelevant statute concerning the listing of names of candidates on presidential preference primary ballots), § 21-2-493(b) (referring to the “superintendent,” not individual board members), § 21-2-493(i) (same), § 21-2-493(k) (same), § 21-2-70(15) (oath of office requirement for board members)). The Proposed Rule’s reference to “§ 21-2-

only cited statute that even mentions individual county board members is the oath requirement of O.C.G.A. § 21-2-70(15)(B). But that provision does not confer any *power* on individual board members; to the contrary, it requires board members to affirm they will “truly, impartially, and faithfully perform [their] duties *in accordance with Georgia laws*.”¹² The oath requirement does not give individual board members any authority beyond that expressly provided by Georgia law, duly enacted by the Legislature, let alone any unfettered right to “examine all election related documentation created during the conduct of elections prior to certification of results.”

Second, no Georgia statute grants even *election superintendents* an unconditional right of access to “all election related documentation created during the conduct of elections prior to certification of results.” Rather, Georgia law enumerates specific circumstances in which the election superintendent may request such documentation. The Election Code provides that only “if, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned” from a precinct “exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, . . . [s]uch excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession.”¹³ Thus, the superintendent (*i.e.*, the voting majority of a county board) must first identify a numerical “excess” before the superintendent has any “authori[ty]” to “summon[] . . . the poll officers . . . with any primary or election papers in their possession.” The Proposed Rule improperly omits this statutory condition. It instead purports to grant individual board members an unconditional and unfettered right of access to all “election documentation” any time prior to certification for any reason, regardless of whether the superintendent has identified the requisite numerical “excess.” For sound reasons, no Georgia statute confers such authority—either on election superintendents or individual board members.¹⁴

For both reasons, the Proposed Rule is plainly unauthorized by statute and would not withstand judicial review.

II. The Proposed Rule Would Invite Disruption and Abuse of County Canvassing and Certification

There are many compelling reasons why Georgia law does not contemplate the kind of access granted by the Proposed Rule. Beyond its legal flaws, the Proposed Rule would invite

¹² 193(a)” appears to be a typographical error. Insofar as the Board intended to refer to § 21-2-493(a), that statute likewise refers to the “superintendent,” not individual board members.

¹³ O.C.G.A. § 21-2-70(15)(B) (emphasis added).

¹⁴ O.C.G.A. § 21-2-493(b).

¹⁴ While O.C.G.A. § 21-2-72 provides that “primary and election records . . . shall be open to public inspection,” that provision only applies when the records “are not necessarily being used by the custodian or his or her employees” and “such public inspection shall only be in the presence of the custodian or his or her employee and shall be subject to proper regulation for the safekeeping of such documents and subject to the further provisions of this chapter.” This provision plainly does not confer an unconditional right on the public or individual county board members “to examine all election related documentation created during the conduct of elections prior to certification of results.” Proposed Rule at 3.

disruptions to county canvassing and certification. It would empower individual county board members to make unreasonable and vexatious demands for any election-related documents—even ones that have no bearing on certification—without providing any basis for their requests. It provides no safeguards against requests unscrupulously designed to delay or obstruct the lawful certification process, nor does it limit access to documents containing sensitive personal identifying information. And because the Proposed Rule does not specify the election-related documents that must be provided to county board members (instead referring indiscriminately to “all election related documentation created during the conduct of elections”), elections staff have no way of knowing which documents board members may demand before certification. Responding to such unpredictable document demands could be incredibly burdensome for county elections staff in the hectic six-day period between election day and certification.¹⁵

This concern is not hypothetical. Julie Adams, a current member of the Fulton County Board of Registration and Elections, has burdened elections staff with unreasonable demands for documents that are not readily available and that the board itself (which is the “election superintendent” for Fulton County, not Ms. Adams) has deemed unnecessary for certification.¹⁶ And Ms. Adams abstained from certifying even after elections staff provided her with extensive election-related documentation, including the Poll Pad ePulse Report for Election Day; Poll Pad ePulse Report for Advance Voting; Election Night Summary Report; Results Tape for Advance Voting; Results Tape for Election Day; Batch Load Report; Statement of Votes Cast; Scanner List for Absentee by Mail; Scanner list for Election Day; Memory Card Chain of Custody report; Ballot Recap Sheets; Numbered List of Provisional Voters; and Provisional Summary Report.¹⁷ Ms. Adams provided no credible explanation as to why the provided materials were insufficient, raising questions about whether her document demands were pretextual. The Proposed Rule places no limits on even pretextual demands for document production.

If the Board adopts the Proposed Rule, such vexatious document demands could become the reality in every Georgia county with an election board. This would threaten the orderly administration of Georgia elections and could lead to chaos.

III. Technical Errors in the Proposed Rule

The Proposed Rule repeatedly refers to “the Board”¹⁸—presumably in reference to county boards of election or county boards of registration and election. But the term “board” is imprecise and disregards that the election superintendent in some counties is a probate judge, not

¹⁵ See O.C.G.A. § 21-2-493(k) (mandating that consolidated election “returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which [the] election was held”).

¹⁶ See Video of Fulton County Board of Registration & Elections Special Meeting (May 28, 2024), <https://www.youtube.com/live/Rp5uVVslzhg?t=23397s>; George Chidi & Sam Levine, *Republican who refused to certify Georgia primary a member of election denialist group*, The Guardian (June 4, 2024), <https://www.theguardian.com/us-news/article/2024/jun/04/republican-julie-adams-georgia-election-integrity-network>.

¹⁷ See *id.*

¹⁸ See Proposed Rule at 2.

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a “board.”¹⁹ That is why the Election Code and this Board’s rules consistently refer to the “election superintendent” or the “superintendent,” not “the board.”

* * *

We respectfully urge the Board not to adopt the Proposed Rule.

Sincerely,

AMERICAN CIVIL LIBERTIES
UNION OF GEORGIA

Rachel Lastinger
[REDACTED]

Caitlin May
[REDACTED]

PUBLIC RIGHTS PROJECT
Sophie House
[REDACTED]

CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON

Donald Sherman
[REDACTED]

Nikhel Sus
[REDACTED]

CC:

Alexandra Hardin (ahardin@sos.ga.gov)

¹⁹ O.C.G.A. § 21-2-2(35)(A); SEB Rule 183-1-12-.02(1)(g).

July 15, 2024

By Email

John Fervier, Chairman (jfervier.seb@gmail.com)
Sara Tindall Ghazal, Member (saraghazal.seb@gmail.com)
Janice W. Johnston, Member (jjohnstonmd.seb@gmail.com)
Rick Jeffares, Member (rjeffares.seb@gmail.com)
Janelle King, Member (jking.seb@gmail.com)
Georgia State Election Board
2 Martin Luther King Jr. Drive
Suite 802, Floyd West Tower
Atlanta, GA 30334

Re: Comment on Proposed Amendment to Rule 183-1-12-.02

Dear Chairman Fervier and State Election Board Members:

The American Civil Liberties Union of Georgia, Common Cause Georgia, Citizens for Responsibility and Ethics in Washington, and Public Rights Project respectfully submit this comment on the proposed rule issued on July 3, 2024 by the State Election Board (“SEB” or “Board”),¹ which would amend the Board’s rules to define “election certification.” We urge the Board not to adopt the Proposed Rule because it is contrary to Georgia law, exceeds the Board’s statutory authority, and would increase the risk of certification abuse and electoral chaos in Georgia.

This comment supplements the preliminary comment we submitted on June 24, 2024, prior to the Board’s release of the Proposed Rule. Pursuant to O.C.G.A. § 50-13-4(a)(2), we request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it “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.” *Id.*

I. Background

A. Rulemaking to Amend SEB Rule 183-1-12-.02

On March 26, 2024, Fulton County Board of Registration and Elections (“BRE”) member Michael Heekin petitioned the Board, pursuant to SEB Rule 183-1-1.0.1 and the Georgia Administrative Procedure Act, to amend SEB Rule 183-1-12-.02 to include a definition of the

¹ See State Election Board, Notice of Proposed Rulemaking, Revisions to Subject 183-1-12-.02 (July 3, 2024) [hereinafter Proposed Rule], <https://sos.ga.gov/sites/default/files/2024-07/Notice%20of%20Proposed%20Rulemaking%20-%20183-1-12-.02.pdf>.

term “Certify the results of a primary, election or runoff.”² The Petition asserts that Georgia law entrusts election officials to “properly tabulate, certify, and report” election results, but does not define “what it means to certify an election.”³ The Petition claims that, without a “standard for certification,” it is unclear whether election “superintendents [are] performing a simple bureaucratic act of certifying the tabulated results of an election even if those results are suspect” or are instead “entrusted to use their professional judgment in the certification process.”⁴ The Petition thus proposes a definition of election certification purportedly based on “several authorities including the United States Election Assistance Commission” which “suggest[] that certifying the results of an election requires election officials to pass judgment on the election as a whole, including making sure that every valid vote is included in the final results.”⁵

Specifically, the Petition proposes amending SEB Rule 183-1-12-.02 to include the following definition:

(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.⁶

The Board considered the Petition at its May 8, 2024 meeting and voted 2-1 to initiate rulemaking. Members Johnston and Jeffares voted yes, and former Member Lindsey voted no.⁷ Mr. Lindsey noted that the Board had already voted unanimously at the same meeting to designate two Board members to work on a separate proposed rule regarding the types of information superintendents would be entitled to receive prior to certifying elections, and that he preferred to “do this all together” in a single rule.⁸ Mr. Lindsey also expressed concern that adopting the “reasonable inquiry” language could allow county boards to “unfairly” or “unduly delay certification.”⁹

On July 3, 2024, the Board released the Proposed Rule. Its text mirrors the language proposed in Mr. Heekin’s Petition, quoted above. The Board explains that “[t]he purpose of the rule is to explicitly define certification, and to establish clear, standardized criteria for officially

² Letter from Michael Heekin to John Fervier, Petition to Amend SEB Rule 183-1-12-.02, at 1 (Mar. 26, 2024) [hereinafter Heekin Petition], https://sos.ga.gov/sites/default/files/forms/Rule%20Petition%20-%20Heekin_redacted.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

⁷ See Transcript of May 8, 2024 State Election Board Meeting, at 301-04 [hereinafter May 8 Board Meeting], <https://sos.ga.gov/sites/default/files/forms/24-05.08.2024%20SEB%20307%20final.pdf>.

⁸ *Id.* at 113, 289-90, 293-94, 301-02 (Statement of Member Lindsey).

⁹ *Id.* at 298-99.

confirming the results of an election.”¹⁰ It adds that the “main features of the amendments to this rule are that it adopts the U.S. Election Assistance Commission’s definition of certification, while stating explicitly that certifying officials should properly conduct a reasonable inquiry in arriving at the certification decision.”¹¹

B. Legal Framework for County-Level Election Certification

Under Georgia law, the “elections superintendent” is the election administrator in charge of certification at the county level. O.C.G.A. § 21-2-70(9). Although the person or entity who fills this role varies by county, the legislature has created BREs in most counties that have “the powers and duties of the election superintendent relating to the conduct of primaries and elections.” *Id.* § 21-2-40(b). In such counties, the BRE itself is the superintendent, not its individual members. *See id.*; SEB Rule 183-1-12.02(1)(g).

Georgia law imposes clearly defined duties on election superintendents. The election superintendent “shall ... receive from poll officers the returns of all primaries and elections, ... canvass and compute the same, and ... certify the results thereof to such authorities as may be prescribed by law.” *Id.* § 21-2-70(9). The superintendent oversees the computation, canvassing, tabulation, and ultimate certification of the returns, *see id.* § 21-2-493, as well as a mandatory pre-certification audit process, *see id.* § 21-2-498. The superintendent may order a pre-certification recount or recanvass in precincts in the county where there appears to be a “discrepancy” or “error, although not apparent on the face of the returns.” *Id.* § 21-2-495(a), (b). Each of these processes are governed by a detailed set of rules established by statute and regulation, *see* SEB Rules 183-1-12.01-.20, none of which give superintendents the discretion to throw out votes or substitute their own judgment for the actual vote totals.

“Upon the completion of ... computation and canvassing, the superintendent *shall* tabulate the figures for the entire county or municipality and sign, announce, and attest the same, as required by this Code section.” *Id.* § 21-2-493(a) (emphasis added). “The consolidated returns *shall then be certified* by the superintendent in the manner required by this chapter. Such returns *shall 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.” *Id.* § 21-2-493(k) (emphasis added). “Each county and municipal superintendent shall, upon certification, furnish to the Secretary of State in a manner determined by the Secretary of State a final copy of each ballot used for such election.” *Id.* § 21-2-497(b).

The legislature’s repeated use of the word “shall” means that certification by the statutory deadline is mandatory and non-discretionary. *See Hall Cnty. Bd. of Tax Assessors v. Westrec Props., Inc.*, 809 S.E.2d 780, 786 (Ga. 2018) (“The word ‘shall’ is generally construed as a word of command. The import of the language is mandatory.”); *Mead v. Sheffield*, 601 S.E.2d 99, 100 (Ga. 2004) (applying principle in construing the Election Code); 1978 Ga. Op. Att’y Gen. 246 (No. U78-44) (Oct. 27, 1978) (“[T]he use of the word ‘shall’ ... with respect to the duties imposed upon a ... superintendent of elections ... indicates the imposition by the General

¹⁰ Proposed Rule at 2.

¹¹ *Id.*

Assembly ... of a mandatory duty to perform certain enumerated functions,” and “an action for mandamus ... may lie to require performance ... of [these] duties.”).

Moreover, longstanding Georgia Supreme Court precedent holds that election certification and similar acts are non-discretionary or “ministerial.” *See, e.g., Thompson v. Talmadge*, 41 S.E.2d 883, 893 (Ga. 1947) (recognizing the “general, if not indeed the universal, rule of law applicable to election canvassers” that “they are given no discretionary power except to determine if the returns are in proper form and executed by the proper officials and to pronounce the mathematical result, unless additional authority is expressed”); *Bacon v. Black*, 133 S.E. 251, 253 (Ga. 1926) (“The duties of the managers or superintendents of election who are required by law to assemble at the courthouse and consolidate the vote of the county are purely ministerial.”); *Davis v. Warde*, 118 S.E. 378, 391 (Ga. 1923) (“The duties of canvassers are purely ministerial; they perform the mathematical act of tabulating the votes of the different precincts as the returns come to them.”); *Tanner v. Deen*, 33 S.E. 832, 835-36 (Ga. 1899) (issuing writ of mandamus requiring superintendents to consolidate election returns because their duties were “regulated by statute, and not left to the discretion of the party performing” them); *Brockett v. Maxwell*, 38 S.E.2d 176, 179 (Ga. Ct. App. 1946) (“ascertaining and declaring the result of the election” is “ministerial”).

Election superintendents cannot withhold certification based on suspected fraud or errors in returns; such issues are instead resolved in the courts. The Election Code requires that “[i]f any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.” O.C.G.A. § 21-2-493(i); *see also id.* § 21-2-522(1), (3), (4) (authorizing election contests based on alleged misconduct, fraud, irregularities, illegal votes, and counting errors). If “the results of an election contest change the returns so certified, a corrected return shall be certified and filed by the superintendent which makes such corrections as the court orders.” *Id.* § 21-2-493(l). “The determination of the judicial question affecting the result in such county elections is confined to the remedy of contest as provided by law.” *Bacon*, 133 S.E. at 253. This longstanding rule reflects that election “superintendents [are] not selected for their knowledge of the law” and lack authority to render legal judgments on the validity of election returns. *Tanner*, 33 S.E. at 835.

This is not just the law in Georgia: “The doctrine that canvassing boards and return judges are ministerial officers possessing no discretionary or judicial power,” has been “settled in nearly or quite all the states” since the late nineteenth century. George W. McCrary, *A Treatise on the American Law of Elections*, at 200, § 264 & n.1 (4th ed. 1897); *see also* Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 *Stan. L. & Pol’y Rev.* 1, 26-31 (2024) (discussing cases).¹²

¹² *See, e.g., Stearns v. State ex rel. Biggers*, 100 P. 909, 911 (Okla. 1909) (“To permit canvassing boards who are generally without training in the law . . . to look elsewhere than to the returns for a reason or excuse to refuse to canvass the same and adjudicate and determine questions that may be presented aliunde, often involving close legal questions, would afford temptation and great opportunity for the commission of fraud.”); *Lewis v. Marshall Cty. Comm’rs*, 16 Kan. 102, 108 (1876) (“[I]t is a common error for a canvassing board to overestimate its powers. . . . Its duty is almost wholly ministerial. It is to

II. The Board Should Not Adopt the Proposed Rule

Insofar as the Proposed Rule purports to give county officials discretionary power to conduct a “reasonable inquiry” of election results prior to certification, it is contrary to Georgia law and exceeds the Board’s statutory authority. Nor would the Proposed Rule achieve the Board’s stated goal “to establish clear, standardized criteria for officially confirming the results of an election.”¹³ To the contrary, its open-ended language would invite certification abuse and electoral chaos. It should not be adopted.

The Board is no doubt empowered to adopt reasonably detailed canvassing rules consistent with the Election Code. Indeed, the Board unanimously voted at its May 8 meeting to designate two Board Members to work with interested parties in crafting such rules.¹⁴ That is a sensible path for addressing any legitimate concerns with the canvassing process, not this rulemaking.

A. The Proposed Rule is Contrary to Georgia Law

At the May 8 Board meeting, Chairman Fervier repeatedly expressed caution at adopting rules that might “exceed what the legislature has put in the statute.”¹⁵ He stressed: “This Board should never get in front of the legislature, and do more than what the legislature has put into statute and I just want to make sure that before we adopt rules that they are within our . . . guidelines of what the statute allows for.”¹⁶

The legislature has spelled out in painstaking detail election superintendents’ duties and powers. *See supra* Part I.B. Nowhere has the legislature authorized superintendents to conduct a free-roaming “reasonable inquiry” of the election results prior to certifying consolidated returns under O.C.G.A. § 21-2-493(k). That omission matters, because where the legislature has desired to give superintendents discretionary power, it has done so expressly. *See, e.g.*, O.C.G.A. § 21-2-493(c) (“In precincts in which paper ballots have been used, the superintendent *may* require the production of the ballot box and the recount of the ballots contained in such ballot box . . . *in the discretion of the superintendent*”) (emphasis added). Thus, “we must presume that if the General Assembly had wished to” give election superintendents discretionary authority over the certification process, “the legislature would have done so expressly” and that its “failure to do so . . . was a matter of considered choice.” *In re Est. of T. M. N.*, 892 S.E.2d 819, 825 (Ga. Ct. App.

take the returns as made to them from the different voting precincts, add them up, and declare the result. Questions of illegal voting, and fraudulent practices, are to be passed upon by another tribunal.”).

¹³ Proposed Rule at 2.

¹⁴ *See* May 8 Board Meeting at 113 (Board voting unanimously not to proceed with rulemaking on petition proposed by Bridget Thorne and instead “to appoint two Members to work with the petitioner to come up with an alternate rule to be presented at the next [Board] meeting”).

¹⁵ *Id.* at 71-72 (Statement of Chairman Fervier).

¹⁶ *Id.*

2023); *accord Lyman v. Cellchem Int'l, Inc.*, 796 S.E.2d 255, 257 (Ga. 2017); *Kemp v. Kemp*, 788 S.E.2d 517, 524 (Ga. Ct. App. 2016).

This conclusion is reinforced by a long line of Georgia Supreme Court precedent. For more than a century, that court has made clear that election certification is ministerial and non-discretionary—not an opportunity to conduct a roving “inquiry” of election results to determine whether they are “suspect” or “true” based on the superintendents’ “professional judgment.”¹⁷ *See, e.g., Thompson*, 41 S.E.2d at 893; *Bacon*, 133 S.E. at 253; *Davis*, 118 S.E. at 391; *Tanner*, 33 S.E. at 835-36; *Brockett*, 38 S.E.2d at 178-79. The Georgia Attorney General has likewise long embraced the view that the Election Code imposes “mandatory dut[ies]” on “superintendent[s] of elections.” 1978 Ga. Op. Att’y Gen. 246. Although these authorities predate the current version of the Election Code, “the legislature is presumed to know the condition of the law and to enact statutes with reference to it,” and “the legal backdrop against which a statute is enacted is often a key indicator of a statute’s meaning.” *Ford Motor Co. v. Cospers*, 893 S.E.2d 106, 115 (Ga. 2023); *see also Dove v. Dove*, 680 S.E.2d 839, 842 (Ga. 2009) (“[O]ur legislature is presumed to enact statutes with full knowledge of existing law, including court decisions.”).

With the current Election Code, the legislature has kept in place the “general, if not indeed the universal, rule of law applicable to election canvassers” that “they are given no discretionary power except to determine if the returns are in proper form and executed by the proper officials and to pronounce the mathematical result, unless additional authority is expressed.” *Thompson*, 41 S.E.2d at 877. Insofar as the proposed amendment would grant election superintendents “discretionary power” beyond that expressly conferred by statute, it is contrary to settled Georgia law.

The Board has not acknowledged this judicial precedent and, indeed, fails to cite any Georgia authority supporting its proposed definition of “certification.” The Board instead cites non-binding guidance by the U.S. Elections Assistance Commission.¹⁸ But even that guidance is taken out of context. The guidance does not purport to offer a universal definition of election certification for all 50 states. To the contrary, it recognizes that “[s]tate laws guide the certification process at the local level”; that “[t]he method, scope, and timing of post-election activities vary by state”; and that “[l]ocal election officials certify election results using a variety of methods, as outlined in state law.”¹⁹ Nor does the guidance contain the problematic “reasonable inquiry” language included in the Proposed Rule.²⁰

¹⁷ Heekin Petition at 1.

¹⁸ Proposed Rule at 2; *see also* Heekin Petition at 2.

¹⁹ U.S. Election Assistance Comm’n, *Election Certification*, at 1-2 (Feb. 2022), https://www.eac.gov/sites/default/files/electionofficials/postelection/Guide_to_Election_Certification_EAC.pdf.

²⁰ *See id.*

Ultimately, this Board must follow Georgia law. And Georgia “law” includes not just statutes passed by the legislature, but also precedential decisions of the Georgia Supreme Court. The Board is bound by that precedent and must consider it in conducting this rulemaking.

B. The Proposed Rule Exceeds the Board’s Statutory Authority

The legislature has empowered the Board “[t]o 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) (emphasis added). As outlined above, the Proposed Rule is not “consistent with law.” The Board plainly lacks authority to grant election superintendents any discretionary power of “reasonable inquiry” where the legislature has not conferred such power and where the “legal backdrop against which [the Election Code] was enacted,” *Ford Motor Co.*, 893 S.E.2d at 115, makes clear that certification is a ministerial, non-discretionary function.

C. The Proposed Rule’s Vague Language Would Invite Certification Abuse and Electoral Chaos

The Board must also consider the context of the Proposed Rule. County election certification generated little controversy prior to 2020. But in recent years, dozens of county officials across the country have improperly refused to certify election results—sometimes in open defiance of state law and court orders.²¹ In one extreme case, New Mexico county commissioner Couy Griffin voted not to certify a primary election in 2022 based on distrust of voting systems and defied a writ of mandamus by the New Mexico Supreme Court directing him to certify, stating: “My vote to remain a ‘no’ isn’t based on any evidence. It’s not based on any facts . . . It’s only based on my gut feeling and my own intuition.”²² Griffin was later criminally convicted and removed from office for his participation in the January 6, 2021 attack on the U.S. Capitol.²³

This troubling pattern of county-level election subversion has unfortunately spread to Georgia.²⁴ Indeed, several BRE members who appeared at the May 8 Board meeting have

²¹ See Miller & Wilder, *supra*, at 14-22 (discussing cases in Michigan, New Mexico, Nevada, Arizona, and Pennsylvania); Protect Democracy, *Election Certification is Not Optional* (Mar. 2024) (discussing cases in Georgia, North Carolina, and Colorado), https://protectdemocracy.org/wp-content/uploads/2024/03/PD_County-Cert-WP_v03.1.pdf.

²² Susan Montoya Bryan & Morgan Lee, *Screams, threats as New Mexico counties certify vote*, Associated Press (June 17, 2022), <https://apnews.com/article/2022-midterm-elections-new-mexico-government-and-politics-donald-trump-fa26178d77b421ff7317d1a6ae83e0c4>.

²³ Morgan Lee, Nicholas Riccardi, & Mark Sherman, *Supreme Court rejects appeal by former New Mexico county commissioner banned for Jan. 6 insurrection*, Associated Press (Mar. 18, 2024), <https://apnews.com/article/supreme-court-insurrection-capitol-attack-new-mexico-cc69572ec4a4404c69947d7d91b3960a>.

²⁴ Mark Niese, *Several Republican officials vote against certifying Georgia elections*, Atlanta J. Const. (Nov. 22, 2023), <https://www.ajc.com/politics/several-republican-officials-vote-against-certifying-georgia-elections/XRALMPAOZFHABLVH7756GILWD4/>.

recently voted against certifying election results.²⁵ Even if these officials have legitimate complaints about the canvassing process, they must act within the confines of the law. And as explained above, Georgia law does not empower election superintendents to refuse or delay certification because they think in “their professional judgment” that the election results are “suspect.”²⁶

While the Board understandably seeks “to establish clear, standardized criteria for officially confirming the results of an election,”²⁷ the Proposed Rule is anything but “clear” and it lacks any “standardized criteria.” If adopted, it will likely make matters worse. As former Member Lindsey noted at the May 8 meeting, the term “reasonable inquiry” is amorphous and susceptible to abuses that could “unfairly” or “unduly delay certification.” The same is true of the phrase “true and accurate.” Rogue county officials seeking to subvert the will of the people could try to exploit this vague language in refusing to certify election results they dislike, potentially throwing the state and even the nation into electoral chaos. And if county officials delay certification in violation of their mandatory duties, the Secretary of State might still proceed with his reporting of results without counting ballots from that county—thereby disenfranchising the county’s voters. *See* O.C.G.A. § 21-2-499(b).

Such a widespread denial of Georgians’ fundamental right to vote would be unconscionable. *See* Ga. Const. art. 2, § 1, ¶ II. As the Georgia Supreme Court presciently wrote more than a century ago:

In a republican government, where the exercise of official power is but a derivative from the people, through the medium of the ballot box, it would be a monstrous doctrine that would subject the public will and the public voice, thus expressed, to be defeated by either the ignorance or the corruption of any board of canvassers. The duties of these boards are simply ministerial.

Houser v. Hartley, 120 S.E. 622, 625-26 (Ga. 1923) (quoting *People ex rel. Att’y Gen. v. Van Cleve*, 1 Mich. 362, 366 (1850)).

Suggesting that election superintendents have discretionary power over certification could also make them targets for threats of violence by those seeking to subvert election results—just as election officials, Congress, and the Vice President were targeted after the 2020 election. In light of the increasingly volatile threat environment facing election workers in Georgia,²⁸ the Board must stay vigilant of such risks.

²⁵ *See* Mark Niese, *Georgia election board proposes an ‘inquiry’ before certifying results*, Atlanta J. Const. (May 9, 2024), <https://www.ajc.com/politics/georgia-election-board-proposes-a-new-rule-before-certifying-results/TW3BLX7EQFAQ7I4OD43IF6SSZ4/>.

²⁶ Heekin Petition at 1.

²⁷ Proposed Rule at 2.

²⁸ Mark Niese, *Preparing for the worst, Georgia election officials and police plan ahead*, Atlanta J. Const. (Apr. 23, 2024), <https://www.ajc.com/politics/georgia-election-officials-and-police-prepare-for-voting-dangers/TFJXE7AS6NFGVLLMJ25DEYEIF4/>.

Georgia courts have a long history of protecting against certification abuse. In 1899, Democratic superintendents in Coffee County refused to certify election returns, citing minor procedural flaws that they claimed invalidated returns from the McDonald precinct (without counting the votes from that precinct, the Democrats’ candidates for representative and sheriff would have narrowly won the election). *See Tanner*, 33 S.E. at 833. The Georgia Supreme Court appropriately shut down this effort, issuing a writ of mandamus “requiring the superintendents to reassemble . . . and consolidate the vote of the county, including the returns from the McDonald precinct.” *Id.* at 836.

Tanner is a powerful example of Georgia courts standing as a bulwark against abuse of the certification process. But courts are only a backstop. In the first instance, this Board should not adopt vague rules that invite such abuse. The Proposed Rule would do just that and thus should not be adopted.

D. The Board Should Consider Adopting Clear Canvassing Procedures Instead of Vague and Abusable Certification Rules

Instead of the Proposed Rule, we urge the Board to consider adopting reasonably detailed canvassing procedures—potentially as part of the rulemaking initiative the Board unanimously approved at the May 8 meeting.²⁹ The Board doubtless has the authority to adopt such rules, so long as they are consistent with state and federal law.

In crafting such rules, the Board must provide sufficient clarity and detail to help election officials do their jobs within statutory confines. A checklist of discrete requirements has far more utility—and creates far less opportunities for abuse—than open-ended grants of discretion. Other states have successfully adopted and implemented such rules.³⁰ Adopting similar rules in Georgia could help ensure, in Member Johnston’s words, “basic ballot accounting.”³¹

At all times, the Board must keep in mind its charge “[t]o 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) (emphasis added).

²⁹ May 8 Board Meeting at 113.

³⁰ *See, e.g.*, Colo. Election R. 10 (Canvassing and Recount), 8 Colo. Code Regs. § 1505-1 (2023), https://www.sos.state.co.us/pubs/rule_making/CurrentRules/8CCR1505-1/Rule10.pdf.

³¹ May 8 Board Meeting at 80-82.

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III. Conclusion

We respectfully urge the Board not to adopt the proposed amendment to SEB Rule 183-1-12.02.

Sincerely,

AMERICAN CIVIL LIBERTIES
UNION OF GEORGIA

Rachel Lastinger
[REDACTED]

Caitlin May
[REDACTED]

CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON

Donald Sherman
[REDACTED]

Nikhel Sus
[REDACTED]

COMMON CAUSE GEORGIA

Aunna Dennis
[REDACTED]

PUBLIC RIGHTS PROJECT

Sophie House
[REDACTED]

CC:

Alexandra Hardin (ahardin@sos.ga.gov)

GEORGIA ASSOCIATION OF VOTER REGISTRATION AND ELECTION OFFICIALS

August 2, 2024



Dear Members of the State Election Board,

The Georgia Association of Voter Registrars and Election Officials offers the following comments and feedback on the petitions to begin the rulemaking process that will be discussed at the August 6, 2024 State Election Board Meeting. Please note that we will also have members in attendance and would be happy to expand on or explain any of these positions at your request.

Sincerely,

GAVREO Executive Board

1. Rule 183-1-12-.07 - Submitted by Christina Loop

Requires changes to voter instructions on the screen of the Ballot Marking Device

GAVREO opposes the implementation of this rule prior to the 2024 General Election Cycle, but wholeheartedly supports its implementation in 2025.

The process to update the instructions on the BMDs would require that an updated configuration file be installed on every election management system (EMS) in Georgia. Once the file is installed, the Secretary of State's Office would have to recreate and redistribute vital security applications to every county in Georgia as well as retest every EMS in the state – all before L&A testing starts in the first half of September. There is simply not enough time or resources to complete the task, but it could (and should) be included in the software update that is already scheduled for next year.

It is also worth noting that there are multiple required notices in every polling place in Georgia that instruct voters to review their printed ballots, and poll workers are required to remind every voter to review their ballot before they scan it by an existing SEB rule. We are happy to provide copies of these notices to you at your request.

2. Rule 183-1-13-.05 - Submitted by Julie Adams

Renews a request that the State Election Board send a letter to all counties instructing them about the cited rule.

As this is not a rule we neither support or oppose it. However, please note that the requested letter was distributed to counties on July 3, 2024 and we are happy to provide Ms. Adams a copy of it at her request as we believe her request has already been satisfied.

3. 183-1-12-.01 - Submitted by David Cross

Requires that Emergency and Provisional Ballots be visually distinct from Absentee by Mail ballots.

GAVREO opposes this rule as we secure and track any hand marked paper ballot by its precinct, ballot or card style, and stub number for chain of custody purposes. We also save a significant amount of taxpayer money by not ordering two sets of ballots.

We appreciate the rule's author taking our previous comments into account, and see significant improvements in this version of the rule. However, it would still force us to order more than one set of ballots without adding any meaningful security to the process.

Every ballot is printed with a numbered stub that includes its precinct, ballot (or card) style, and a sequential number. Note that the stub number is not on the ballot so that we cannot link a ballot to a voter. We use that information to track what ballots were issued to each polling place, what purpose they were issued for, and which ballots were issued through the mail. The stubs are used for investigations into discrepancies, reconciliation purposes, and are retained by the Clerk of Court for 24 months as part of the record of the election.

Also, one of our fears is running out of ballots. We always order more than we need just in case, and having one set allows us to use them wherever needed. Imagine voters being disenfranchised because we ran out of one type of ballot and could not use the other.

Again, we appreciate the author's commitment to assisting to secure our ballots, but we suggest that the chain of custody language that passed through the legislature this year addresses many if not all of his concerns.

4. 183-1-14-.11 - Submitted by David Cross

Requires that any absentee by mail ballot is tracked when it is sent to a voter.

GAVREO continues to oppose this rule because of the significant increase in cost to our jurisdictions.

Again, we appreciate the author taking our previous concerns into account as this rule addresses many of those issues. However, the cost for tracking mail is significantly higher than first class postage (about \$4.00 per ballot), and would require us to complete additional forms for every ballot we send.

We strongly suggest that you discuss the ballot tracking software that the Secretary of State uses and what is possible through that system. We believe that most of what the author requests already exists. For example, we manually record when we send, receive, accept, and reject ballots and most of that is available directly to voters through the My Voter Page. Also, it is true that voters have to sign up for Ballottrax to receive notifications and that counties do not have records from that system. However, that doesn't mean the records don't exist – they are just in the custody of the Secretary of State's Office.

We believe that a solution exists through the Secretary of State's Office and the legislature that will not place any additional burdens on counties and will not require a rule to achieve.

5. 183-1-20-? - Submitted by Debra Fisher

Requires the removal of individuals from the official list of registered voters if notification is received from another state that indicates the individual was issued a out of state driver's license.

GAVREO opposes this rule as it would violate state and federal law.

The author of the bill cited most applicable statutes, but neglected to include case law or the section of the National Voter Registration Act (NVRA) that discusses voter removal programs which states:
“(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant-

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice."

We are frustrated by these restrictions as well, but the act of another state notifying us that someone resides in that state is not sufficient to remove them from the list if they do not include the required information in that notice that includes the voter's signature. Many states have laws that prevent them sending personal identifiable information or signatures to other states. So, while we receive the notice, we cannot act on it beyond asking the voter to complete the steps so they can be removed and starting the confirmation process described in federal law. Some notices include all the required information. In those cases we remove the voters from our lists without any further action by the voter.

6. 183-1-12-.12 - Submitted by John Fervier

Clarifies the certification process.

GAVREO helped to write this rule and support it moving forward in the rulemaking process.

7. 183-1-12-.12 and 183-1-14-.02 - Submitted by Garland Favorito

Requires additional reconciliation of ballots cast in Image Cast Precinct (ICP) scanners.

GAVREO opposes the rule as it is currently written, but would support it with small changes.

Most of what the rule requires is already part of the process, but poll workers normally record the number of ballots scanned from the screen of the scanner during the closing procedures rather than the tapes so that there is an additional point of comparison. Incidentally, poll watchers can also record the number from the screen and the tapes as part of their duties.

However, the list of numbers to reconcile should not include the Absentee Ballot Recap because the Absentee Ballot Recap is not completed until after 5:00 PM on the Friday after the election and is actually the form where the final comparison described in the rule takes place.

Our last concern is that election night is hectic and we are required by law to report absentee ballot results no later than 8:00 PM. Rather than requiring "no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the Election Superintendent" we suggest that the discrepancy is investigated prior to the certification of the election. Remember that all results released on election night are unofficial, incomplete, and may change prior to certification.

8. 183-1-12-.13 - Submitted by Garland Favorito

Clarifies what information must be retained as part of the record of the election.

GAVREO opposes this rule as it is currently written, but acknowledges the need for a rule in this area and would support it with changes.

First, we think it is important to note that Federal Law does not require us to retain everything involved in an election for 22 months. It states:

“§20701. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation

*Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, **all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election...**”*

That being said, we believe that retaining memory cards for a longer period of time would be advantageous. However, we do not have enough memory cards to do so. The recommended memory cards cost \$46.20 per card. We are not sure if less expensive cards would work with the voting system and not violate its warranty. However, even if cheaper cards are available, purchasing an additional set for every election would be a significant expense. We are also unsure of how counties would preserve the meta data from the memory cards. We are willing to explore options to do so in a way that would preserve the data without impacting our operations.

We suggest that we jointly request the legislature fund the purchase of two additional sets of memory cards for each county during their next session and that they be retained for 60 days after any election prior to being reused. That would give a court time to order their continued preservation in the event of an election contest and would not be an ongoing cost to counties.

9. 183-1-12-.21 - Submitted by Rick Jeffares

Would require us to break down the report required by 21-2-385(e) by party during primary elections, and would require the Secretary of State’s Office to make statewide precinct results available in one file on their Election Night Reporting (ENR) website.

GAVREO supports this rule, but would like to point out that most of its requirements are standard practices as they are already in law.

10. 183-1-1-.01 - Submitted by Lucia Frazier

Require the Secretary of State’s Office to post statewide voter list online for free.

GAVREO is neutral on this rule.

11. 183-1-15-.03 - Submitted by Marilyn Marks

Requires that all recounts be conducted by hand.

GAVREO opposes this rule because hand counts are less accurate than machine counts.

We appreciate the author's confidence in the hand audits that our members routinely conduct, but are still concerned about the accuracy of counting ballots by hand. The current rule allows us to recount ballots manually if there is an issue with the tabulation by the scanners. That has worked well for us to this point. We also would like to mention that the new software that you are currently implementing will address many of the author's concerns – especially if the original ballots are rescanned through that software.

12. 183-1-12-.02 - Submitted by Marilyn Marks

Creates procedures for cybersecurity incidents.

GAVREO agrees with the need for a rule on this topic, but opposes this specific rule.

GAVREO agrees in principle with the reporting requirements enumerated in the rule, and generally agrees that clear reporting requirements for any security incident is a good idea. However, this rule seems to be focused on moving toward hand marked paper ballots rather than addressing the needs of unique cybersecurity incidents.

This is a complicated issue. The timelines and definitions described in the proposed rule could easily conflict with existing state and federal laws and policies. We would be happy to work with the State Election Board and Secretary of State's Office to create a rule to properly address these issues.

13. 183-1-6-.07 - Submitted by United to Protect Democracy

Establishes guidelines for voter challenges.

GAVREO supports this rule as written.

14. 183-1-14-.02 - Submitted by Sharlene Alexander

Requires that the total number of ballots in each ballot box be hand counted at the polling place on Election Night.

GAVREO opposes this rule, but believes that counties have the authority to follow the procedures described in the proposed rule at their discretion.

These procedures were attempted during the pilot of our current voting system in 2019 and they delayed results without adding any additional security to the process. We agree with the Secretary of State's Office that the best practice is to publicly remove all the ballots from the

ballot box and immediately place them in a sealed container to be transported to the election office. This ensures that any necessary investigation can be conducted in a controlled setting to minimize any mistakes. However, we acknowledge that counties may conduct a hand count of ballots if a situation necessitates it on Election Night, but strongly disagree that this should be a required step for every polling place during every election.

We suggest that if you believe that this is a best practice that counties should follow, then you should send guidance to counties explaining their options rather than making this a rule. In turn, we will reinforce to our members that each local board has the authority and the right to make this decision for themselves. We also suggest that poll watchers be allowed to verify that the box is empty and allow them to record the seal number from the sealed ballot transport container to ensure that chain of custody is not broken.



214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400
heritage.org

August 14, 2024

Honorable John Fervier
Chairman
Georgia State Board of Elections
2 MLK Jr. Drive
Suite 802 Floyd West Tower
Atlanta, Georgia 30334

Re: Comment in support of proposed rule 183-1-12-.12

Dear Chairman Fervier and Members of the Board of Elections:

My name is Hans A. von Spakovsky and I am submitting a comment in favor of the Board of Elections adopting proposed rule 183-1-12-.12. I understand that the Board may be holding a virtual hearing on Monday, August 19. I request the opportunity to briefly address the Board as a witness.

I am a Senior Legal Fellow and Manager of the Election Law Reform Initiative in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation. However, the views I express here are my own and do not reflect an institutional position for The Heritage Foundation or its board of trustees.

By way of background, prior to joining The Heritage Foundation, I was a Commissioner on the U.S. Federal Election Commission for two years (2006-2007). Before that, I spent four years at the U.S. Department of Justice as a career civil service lawyer in the Civil Rights Division, including as Counsel to the Assistant Attorney General for Civil Rights, coordinating the enforcement of federal voting rights laws.

I am a former member of the Presidential Advisory Commission on Election Integrity (2017-2018) and was a member of the first Board of Advisors of the U.S. Election Assistance Commission. In Virginia, I served for three years as the Vice Chairman of the Fairfax County Electoral Board, which administers elections in the largest county in that state. I formerly served on the Virginia Advisory Board to the U.S. Commission on Civil Rights.

Relevant to my comments on the proposed Georgia rule, I also served for five years on the Fulton County Board of Registration and Elections from 1996 to 2001 and am personally and professionally very familiar with the responsibilities and duties of Georgia election officials.

The Heritage Foundation is concerned with ensuring the security of the voter registration and election process so that every eligible citizen is able to register and vote with confidence in the administration and integrity of our elections, including the error-free tabulation of all votes cast in an election. The citizen members of county boards of elections – as I once was in Fulton County – are key officials in that process. Under Georgia law, those county boards act as the superintendents of their county elections with a fiduciary duty to administer their elections in compliance with all applicable state and federal laws and to correct any errors, mistakes, or discrepancies that may occur.

One of the key requirements for an accurate election is a reconciliation of the number of votes cast by registered, eligible voters with the number of actual ballots tabulated by election officials. This duty of reconciliation is a requirement of state law, as outlined in Georgia Code § 21-2-493(b). If those numbers do not match, that is “deemed a discrepancy and palpable error,” which in turn triggers a requirement under this statutory provision that the discrepancy “shall be investigated.” Moreover, the statute requires that no “votes shall be recorded” until that investigation has determined the source of the error and corrected it.

The proposed rule simply sets out commonsense procedures that county election boards should follow in implementing the statutory requirements that must be complied with before county boards can complete the tabulation of ballots cast and certify the results of the election. That includes matching the number of voters to ballots cast through all methods of voting, from in-person to absentee to early voting, and correcting any duplications of the same ballot that were counted more than once.

As someone who helped administer multiple elections in the largest county in Georgia on a bipartisan basis, I am disturbed that anyone would oppose this rule. Every type of retail and commercial establishment, such as banks, restaurants, and other stores have to reconcile their receipts and cash/credit, which is no different than reconciling the number of voters with the votes cast. Elections are even more important because they are the fundamental building block of our democratic republic.

Anyone who argues that members of county election boards have no authority to administer elections and that their positions are “ministerial only” is ignoring the statutory and fiduciary duties imposed on the board members.

Ensuring reconciliation is essential to maintaining public confidence in the integrity of our elections. Nothing could be more damaging to that public confidence than the certification of inaccurate, error-ridden results. Such a lack of confidence in the election process would inevitably lead to disenfranchisement as voters stay home because they do not trust their election officials and do not trust the results of elections.

The State Board of Elections has a fiduciary duty to the voters of the State of Georgia to promulgate rules and regulations that ensure that county boards of elections do their job and carry out their sworn duties to administer fair, accurate, and honest elections. It is a matter of public trust.

Proposed Rule 183-1-12-.12 should be approved.¹

Sincerely,



Hans A. von Spakovsky

¹ I would note for members of the Board that the type of reconciliation procedures outlined in the proposed rule are amongst the type of procedures outlined in a Heritage study on election audits. See Hans von Spakovsky, “Best Practices and Standards for Election Audits,” Heritage Foundation Legal Memorandum No. 304 (June 15, 2022), <https://www.heritage.org/sites/default/files/2022-06/1.M304.pdf>.



MARY MARGARET OLIVER

REPRESENTATIVE, DISTRICT 84
150 EAST PONCE DE LEON AVENUE
SUITE 260
DECATUR, GEORGIA 30030
(404) 377-0485 (O)
EMAIL: mmo@mmolaw.com

HOUSE OF REPRESENTATIVES

COVERDELL LEGISLATIVE OFFICE BUILDING
ROOM 604 -G
ATLANTA, GEORGIA 30334
404-656-0272
404-463-2634 (fax)

STANDING COMMITTEES

APPROPRIATIONS
GOVERNMENTAL AFFAIRS
JUDICIARY
JUVENILE JUSTICE
PUBLIC HEALTH
TECHNOLOGY and INFRASTRUCTURE
INNOVATION

Dear Members of the Georgia State Election Board,

My name is State Representative Mary Margaret Oliver and I am an elected official in District 84 and represent the people of DeKalb County.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how

safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Thank you,

A handwritten signature in black ink, appearing to read "Mary Margaret Oliver". The signature is written in a cursive, flowing style.

Mary Margaret Oliver



John Fervier <jfervier.seb@gmail.com>

Fwd: My comments on revising Rule 183-1-12-02

1 message

Tina Smith <[REDACTED]>
To: "jfervier.seb@gmail.com" <jfervier.seb@gmail.com>

Mon, Aug 5, 2024 at 3:21 PM

----- Forwarded message -----

From: **Tina Smith** [REDACTED]
Date: Mon, Aug 5, 2024, 9:52 AM
Subject: My comments on revising Rule 183-1-12-02
To: <SFBPublicCimments@sos.ga.gov>, <jfervirr.seb@gmail.com>, saraghazal.seb@gmail.com
<saraghazal.seb@gmail.com>, ijohnstonmd.seb@gmail.com <jjohnstonmd.seb@gmail.com>, rjeffares.seb@gmail.com
<rjeffares.seb@gmail.com>, [REDACTED]

To the Georgia Elections Board,

I am a registered voter in Cherokee County and a retired teacher of 30 years experience in Georgia public schools. I currently live in Canton.

I am writing to urge you to please not accept the petition to revise Rule 183-1-12-02 which creates a definition for certifying results of a primary, election or runoff.

The proposed revision is unreasonable and unfair because it is written so vaguely! The definition reading "after reasonable inquiry " is very unclear and open ended begging for clarification and with no specific time frame!

There needs to be a legitimate and evidence based reason for the board not to certify an election!! We MUST keep the election a democratic process with total transparency otherwise it will lead to fear, distrust and obvious discrepancies including unnecessary audits and intimidation of poll workers!

Pursuant to O.C.G.A. 50-13-4 (a) (2) please include these remarks at my urging in the rule making record.

If the Board adopts the proposed rule, I request that it issue a statement as to the reasons for and against its adoption and the reason for overruling the consideration we urge against such an adoption as required by statute.

Thank you,
Tina Savage Smith
[REDACTED]



John Fervier <jfervier.seb@gmail.com>

Oppose Proposed Election Rules Change Making County Election Certification Discretionary

1 message

Campbell, Lisa <Lisa.Campbell@house.ga.gov>

Mon, Aug 5, 2024 at 6:36 PM

To: "SEBPublicComments@sos.ga.gov" <SEBPublicComments@sos.ga.gov>, "jfervier.seb@gmail.com" <jfervier.seb@gmail.com>, "saraghazal.seb@gmail.com" <saraghazal.seb@gmail.com>, "jjohnstonmd.seb@gmail.com" <jjohnstonmd.seb@gmail.com>, "rjeffares.seb@gmail.com" <rjeffares.seb@gmail.com>, "jking.seb@gmail.com" <jking.seb@gmail.com>

Dear Members of the Georgia State Election Board,

As the Georgia House Representative for District 35, I represent the people of Kennesaw, Acworth, and Cobb County. Today, I am writing to urge you to oppose proposed election rules that would make county election certification discretionary. I oppose the unreasonable certification proposals by Mr. Michael Heekin and Ms. Salleigh Grubb because they are vague, lack sufficient and uniform detail for implementation, prohibit public transparency, and may undermine Georgia's proven record of election integrity.

I oppose these proposed rule changes for several reasons. First, the vague descriptions proposed in these certification petitions include the words, "after reasonable inquiry," without a definition of the phrase. It is unclear what kind of inquiry could be initiated and the time frame for inquiry resolution. At a minimum, "reasonable inquiry" should be specifically defined in both substance, circumstance, and time frame.

Also, the Grubbs' proposal specifies that "all election-related documentation" be available for review in the certification process. This request is open ended and has the potential to overwhelm election workers without specific parameters, formats, confidentiality or security protections, or timeframe for adherence. As the Georgia code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots.

The statute states that they "shall" certify the results, which the Supreme Court of Georgia has ruled, makes certification a ministerial process, rather than a discretionary one. The current code ensures that if the Board does not choose to certify an election they must have a legitimate and evidence-based reason for doing so. An election should not be certified based on speculation or undisclosed criteria. The proposed changes have the potential to sow fear and distrust in our proven, and trusted democratic process. Further, these proposed changes have the potential to create more harassment towards our election officials and possibly cause counties to miss election certification deadlines.

Allowing the Board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one Board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of election certification across Georgia.

These two certification proposal rules impose burdensome requirements on county Boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing alleged discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such vague rules risks eroding public confidence in elections.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, I request that it issue a concise statement of the primary reasons for and against its adoption and incorporate therein the reason for overruling the consideration urged against its adoption.

Sincerely,



Lisa Campbell
Representative for Georgia State House District 35
Coverdell Legislative Office Building
18 Capitol Square, Suite 507
Atlanta, GA 30334
404.656.0202 Office



Rep Lisa Campbell Urges Against Proposed Election Certification Rule Changes_August 5_2024.pdf
181K



LISA CAMPBELL
Representative, District 35
2001 Duncan Drive, Unit 2281
Kennesaw, Ga 30156
lisa.campbell@house.ga.gov

HOUSE OF REPRESENTATIVES
COVERDELL LEGISLATIVE OFFICE BUILDING
ROOM #507 F
ATLANTA, GEORGIA 30334
(404) 656-0202
(404) 463-6381 FAX

STANDING COMMITTEES
Budget and Fiscal Affairs Oversight
Human Relations and Aging
Interstate Cooperation

August 5, 2024

SENT VIA EMAIL: Members of the Georgia State Election Board

SUBJECT: Oppose Proposed Election Rules Change Making County Election Certification Discretionary

Dear Members of the Georgia State Election Board,

As the Georgia House Representative for District 35, I represent the people of Kennesaw, Acworth, and Cobb County. Today, I am writing to urge you to oppose proposed election rules that would make county election certification discretionary. I oppose the unreasonable certification proposals by Mr. Michael Heekin and Ms. Salleigh Grubb because they are vague, lack sufficient and uniform detail for implementation, prohibit public transparency, and may undermine Georgia's proven record of election integrity.

I oppose these proposed rule changes for several reasons. First, the vague descriptions proposed in these certification petitions include the words, "after reasonable inquiry," without a definition of the phrase. It is unclear what kind of inquiry could be initiated and the time frame for inquiry resolution. At a minimum, "reasonable inquiry" should be specifically defined in both substance, circumstance, and time frame.

Also, the Grubbs' proposal specifies that "all election-related documentation" be available for review in the certification process. This request is open ended and has the potential to overwhelm election workers without specific parameters, formats, confidentiality or security protections, or timeframe for adherence.

As the Georgia code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has ruled, makes certification a ministerial process, rather than a discretionary one. The current code ensures that if the Board does not choose to certify an election they must have a legitimate and evidence-based reason for doing so. An election should not be



LISA CAMPBELL
Representative, District 35
2001 Duncan Drive, Unit 2281
Kennesaw, Ga 30156
lisa.campbell@house.ga.gov

HOUSE OF REPRESENTATIVES
COVERDELL LEGISLATIVE OFFICE BUILDING
ROOM #507 F
ATLANTA, GEORGIA 30334
(404) 656-0202
(404) 463-6381 FAX

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certified based on speculation or undisclosed criteria. The proposed changes have the potential to sow fear and distrust in our proven, and trusted democratic process. Further, these proposed changes have the potential to create more harassment towards our election officials and possibly cause counties to miss election certification deadlines.

Allowing the Board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one Board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of election certification across Georgia.

These two certification proposal rules impose burdensome requirements on county Boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing alleged discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such vague rules risks eroding public confidence in elections.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, I request that it issue a concise statement of the primary reasons for and against its adoption and incorporate therein the reason for overruling the consideration urged against its adoption.

Sincerely,

Lisa Campbell,
Representative for Georgia State House District 35



John Fervier <jfervier.seb@gmail.com>

**Public Comment Addressing Proposed Revisions to Subject 183-1-12-.02.
Definitions**

1 message

Debra Mihalic Staples [REDACTED]

Fri, Aug 2, 2024 at 4:31 PM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Georgia State Election Board Members,

I'm a registered voter in Cherokee County, Georgia. I am writing to ask that you do NOT accept the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of an election, a primary, or a runoff. The proposed rule is problematic and unreasonable since it fails to specify what constitutes a "reasonable inquiry," nor does it specify a time period for when it must occur. Further, it does not seem to require a legitimate reason, one that is supported by evidence, for the board not to certify an election. It gives the individual board members the means and methods to disrupt and delay certification. As a voter, this directly harms me because it undermines my trust in the board to properly perform its duty to certify the actual election results.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Respectfully,

Debra M. Staples
Canton, GA



John Fervier <jfervier.seb@gmail.com>

Public Comment Addressing Revisions to Subject 183-1-12-02 Definitions

1 message

Efrat, Stacy <Stacy.Efrat@cobbcounty.org>

Mon, Aug 5, 2024 at 11:49 AM

To: "SEBPublicComments@sos.ga.gov" <SEBPublicComments@sos.ga.gov>, "jfervier.seb@gmail.com" <jfervier.seb@gmail.com>, Sara Ghazal <saraghazal.seb@gmail.com>, "jjohnstonmd.seb@gmail.com" <jjohnstonmd.seb@gmail.com>, "rjeffares.seb@gmail.com" <rjeffares.seb@gmail.com>, "jking.seb@gmail.com" <jking.seb@gmail.com>, "Alexandra (SEB)" <ahardin@sos.ga.gov>

To Members of the GA State Election Board:

My name is Stacy Efrat. I am currently serving on the Cobb County Board of Elections.

I am writing today to ask that you deny the petition to revise Rule 183-1-12-02. This rule creates a definition for certifying the results of a primary, election or runoff that is inconsistent with the current Georgia code requiring that we "shall" certify the results indicating our votes are not discretionary.

This proposed rule jeopardizes the ability to certify results in a timely manner. We do not have the resources in our Elections office to generate the additional materials and be able to certify the election on time. There is already a judicial process in place to handle discrepancies and errors if they occur which does not delay certification.

I reiterate and urge you to reject this proposed rule revision.

"Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Sincerely,

Stacy Efrat
Board Member, Cobb County Board of Elections




John Fervier <jfervier.seb@gmail.com>

Public Comment on upcoming Petitions- Sharlene Alexander-- Hand Count of Ballot paper

Jennifer E. Logan <jelogan@jacksoncountygov.com>

Mon, Jul 29, 2024 at 5:09 PM

To: "jking.seb@gmail.com" <jking.seb@gmail.com>, "rjeffares.seb@gmail.com" <rjeffares.seb@gmail.com>, "jjohnstonmd.seb@gmail.com" <jjohnstonmd.seb@gmail.com>, "sarag hazal.seb@gmail.com" <sarag hazal.seb@gmail.com>, "jfervier.seb@gmail.com" <jfervier.seb@gmail.com>

I thank you for your service to oversee that Georgia Elections are conducted Fair and Accurate. I share an open invite to any board member that would like to come to my county and learn the process of our elections during any testing, election, or any other time, to see firsthand the processes my county has in place to ensure things are done properly and that the elections are conducted Accurately and Fairly.

My public comments for Petition submitted by Sharlene Alexander (advance hand count of ballots at the precinct)

It has never been in code for our poll officials to count the number of ballots within the precinct scanner (pieces of paper). Legislation was put out but not passed requesting the ballot totals be counted. It wasn't passed because it didn't make sense. The equipment counts each piece of paper and takes an image of the front and back of every piece of paper (ballot). We do an hand count audit, that matches what was in the scanner. The poll official turned board member was clearly working outside her prevue as a poll official and if had been in my county would have been fired. Again, the scanner is a tabulator—which counts the pieces of paper while capturing the images. Her reasons for having this amendment are not valid and if she actually knew the processes that took place, she would understand that the change to this rule is not needed and would be a major burden to the counties and poll officials.

This November we are expected to have between 4,000 to 5,000 ballots at some of our polling locations scanned on election night, it would take about 4 hours for three poll officials to hand count that amount of ballots—if the poll officials were accurate and counting one ballot per second. The more teams you add, the risk you have of mixing scanner batches. We have up to five (5) scanners at a polling location. We only allow ballots from one scanner at a time to be removed. This would keep my county from meeting the reporting deadlines of midnight. There are better, more efficient options to provide the same result.

1. A hand count of the ballot paper from the scanner does not ensure that the memory cards are uploaded. A form, such as the attached form that my county created and the SOS request that counties use, does account for all the memory cards being uploaded and that all ballots are accounted for on election night—require counties to use a form like this one.
2. One ballot left in the scanner, does not cause issues in the reconciliation or audit of the ballots. The reason being is that the staff members once the scanners are received back, verify seal numbers placed by poll officials and do a search of the scanners prior to the audit. If any ballots are found to be left in a scanner, they would be fully documented. Give the counties a form to complete that a search was made of each scanner to unsure all memory cards are removed and no ballots are found in the scanner prior to each audit.

The ballots should not be handled so much—for recount purposes. We have very detailed instructions for how ballots are to be handled at the polling locations. If you would like to see a copy of all our poll official procedures or if you would like to attend a poll official training class, please let me know, we would love to have you sit in on a class. Please reconsider the requested rulemaking for the hand count of ballots and please consider coming to Jackson County to visit and learn our BEST practices for keeping our elections Fair, Safe, and Accurate.

Jennifer Logan

Jackson County Elections & Registration Director

441 Gordon St, Jefferson, GA 30549

Office: 706-367-6377 Fax: 706-367-1193

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Upcoming elections:

November 5, 2024 – General Election

December 3, 2024 – General Election Runoff (if needed)



Election Night Upload Verification Form .pdf

116K

ELECTION:

Form is to be submitted on Election Night with Election Summary Report to: electionsdata@sos.ga.gov

[illegible]

Absentee By Mail Ballots:	
Total Number of ABM Ballots Accepted into GARVIS:	
Total Number of ABM Ballots Scanned on ICC Scanner(s):	

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Page _____ of _____



John Fervier <jfervier.seb@gmail.com>

Revisions to Subject 183-1-12-.02 Definitions

1 message

anita.h.tucker@gmail.com [REDACTED]

Thu, Aug 1, 2024 at 2:31 PM

To: sebpubliccomments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

I am the Assistant Secretary of the Forsyth County Board of Registrations & Elections as well as an engaged voter in Georgia.

Today I am writing to urge you to not adopt the petition to revise Rule 183-1-12-.02, Definitions, which creates a definition for certifying the results of an election including primaries, general elections and runoffs.

From a past poll worker, poll manager now board member perspective, this proposed rule is unreasonable because:

1. The proposed definition for "after reasonable inquiry" is far too vague and overly broad. Without a clear definition, 159 counties will read this in at least 159 different ways.
2. "Reasonable inquiry" must be more refined with types of inquiries allowed and a solid timeline to insure that county elections offices will meet the legally required certification deadlines. This rule definition will no doubt create confusion and potentially a chaotic mess of the November, 2024 Presidential Election. Surely no one wants that to happen.
3. As a Board member, I know that county boards play an active role in the certification process. I have every confidence that the Forsyth County Director and Supervisor will represent a complete and accurate count of the Forsyth County ballots.
4. Statute states that the Board "shall" certify the results. According to the Supreme Court of Georgia, certification of elections results is a ministerial process, not a discretionary process.
5. Boards must present a legitimate and evidence-based reason to not certify an election. Clearly, not certifying an election will create mistrust in an elections system that many hard working elections staff and leaders work diligently to preserve and secure. As a board member, I can tell you we do not need any further mistrust at the county level.
6. Leadership and staff at the Forsyth County elections office already spend hundreds of hours working on voter challenges that are beyond reasonable expectations. Adding more work for some perceived benefit costs counties additional money and more importantly, a severe drop in morale.
7. Processes already exist to identify and resolve discrepancies. That is why we know about the few issues Georgia has had in the past. A concerted, deep dive examination is required to determine if any additional "reasonable inquiries" add any value.

It is imperative that the Georgia State Election Board actively work with leadership in GAVREO to discern what rule changes actually add value to the processes that they administer. Leaving their wise voice out is a disservice to them and to the voters in Georgia.

Pursuant to O.C.G.A. 50-13-4(a)(2), I request that this board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, I request that a concise statement of the principal reasons for and against its adoption be issued to the public. Therein, provide the Board's reason for overruling this consideration that is urging against the adoption as required by statute.

Best Regards,

Anita Tucker

Assistant Secretary, Forsyth County BRE



John Fervier <jfervier.seb@gmail.com>

SEB Rule 183-1-12-.02 and SEB Rule 183-1-14-.02 Proposed amendments

1 message

Loretta Mirandola [REDACTED]

Mon, Aug 5, 2024 at 5:41 PM

To: sebpublishcomments@sos.ga.gov, "saraghazal.seb@gmail.com" <saraghazal.seb@gmail.com>, "jfervier.seb@gmail.com" <jfervier.seb@gmail.com>, "jjohnstonmd.seb@gmail.com" <jjohnstonmd.seb@gmail.com>, "rjeffares.seb@gmail.com" <rjeffares.seb@gmail.com>, "jking.seb@gmail.com" <jking.seb@gmail.com>, mcoan@sos.ga.gov, ahardin@sos.ga.gov

Dear Members of the State Election Board:

I currently serve on the Gwinnett Board of Voter Registrations and Elections, having been sworn in on December 26, 2023. For the past six years prior to being on the Board I was very involved in advocacy for voters in Georgia, having acted as a liaison to Gwinnett County for Georgia Democratic Party's Voter Protection and as a captain on the voter hotline. I have been a resident of Lawrenceville in Gwinnett County for thirty-nine years and have been an active Georgia voter since 1981.

I urge the State Election Board to reject the petition to revise SEB Rule 183-1-12-.02 which would add (c.2) to define "certification", for the following reasons:

- 1) The proposed amendment is unnecessary as certification has been held by the Georgia Supreme Court to be a ministerial act by a county's superintendent of elections.
- 2) Language in OCGA Section 21-2-493(k) requires that "consolidated returns **shall** be certified by the superintendent". The term "shall" in the statute makes this a mandatory action by the superintendent of elections, not a discretionary action.
- 3) Several of the terms in the proposed amendment are vague, namely "reasonable inquiry", "complete and accurate", and "a true and accurate accounting". These vague terms are not consistent with the statutory language of OCGA Section 21-2-493(k), which already provides sufficient guidance for certification. In addition, such indistinct terms will lead to confusion and disparate interpretations and actions throughout Georgia's 159 counties.
- 4) Each county's professional elections staff as well as hired poll officials are required to follow very specific processes in the operation of elections, including accounting for and calculating returns. Such statutory processes are sufficient to ensure a secure and fair election. Adding a new definition of "certification" with unclear terms will lead to delay in certification and uncertainty in the public's perspective concerning election returns.

In addition, I urge the State Election Board to reject the petition to revise SEB Rule 183-1-14-.02 which would add subsections (18) and (19), requiring additional paperwork relating the receipt of absentee ballots at absentee ballot drop locations and video surveillance of drop boxes. This amendments should be rejected for the following reasons:

- 1) The process for the collection of absentee ballots, including the chain of custody for such ballots as they are returned to the county's election office, is already set forth under Georgia law. The proposed amendment requires unnecessary and time-consuming paperwork which will additionally burden poll officials and election staff.
- 2) Video surveillance of drop boxes is unnecessary because the drop boxes by law are required to be situated inside the Advanced In Person polling sites. In addition, counties will incur additional costs in providing unnecessary video surveillance.

Pursuant to O.C.G.A. 50-13-4(a)(2), I request that this board include this comment in the rulemaking record. If the Board ultimately adopts the Proposed Rule, I request that a concise statement of the principal reasons for and against its adoption be issued to the public, providing therein the Board's reason for overruling this consideration that urges against the adoption of the above-referenced amendments.

Sincerely,

Loretta J. Mirandola
Member, Gwinnett Board of Voter Registrations and Elections





John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions Subject to 183-1-14.02 Definitions

1 message

Mark Mosbacher [REDACTED]

Sun, Aug 4, 2024 at 3:39 PM

To: SEBPublicComments@sos.ga.gov, rjeffares.seb@gmail.com, jjohnstonmd.seb@gmail.com, saraghazal.seb@gmail.com, jfervier.seb@gmail.com, "jking.seb@gmail.com" <jking.seb@gmail.com>

Cc: [REDACTED], ahardin@sos.ga.gov

Dear members of the State Election Board,

My name is Mark Mosbacher and I am a registered voter and a poll worker in Cobb County.

I am writing to express my deep concerns and urge you to not accept the petition to revise Rule 183-1-14.02 which creates regulations regarding the counting of ballots at each precinct on election night.

The proposed rule is an unreasonable ask for election workers, many of whom are exhausted after a 14 hour workday.

For background, I have spent many election nights on the floor, crawling into the ballot scanners, trying to organize 4000 plus pieces of paper into plastic ziplock bags to return to the election office. I do that after a long grueling day of working at my polling place, providing excellent customer service for the voters of Cobb County. I understand that you are considering requiring in Rule 183-1-14.02 that 3 poll workers must independently count each piece of scanned ballot paper and match the count on the scanner before organizing them into the ziplocks.

Every poll worker is very busy doing all the work required to close out the polls, having 3 undistracted workers count like this is simply an untenable task. I challenge each of you on the board to count about 4000 anything right now and each come up with an accurate count. Time yourself and see how long it takes and report back to the SEB. Keep in mind how big a ream of paper is, well that is only 500 sheets, so you are requiring 3 people in every large polling place to count 8 to 9 REAMS of paper.

Not only is this an onerous task, **it will greatly delay the delivery of the memory cards to the election office** for upload to the Secretary of State at a time when you have already compressed the deadline for loading the results to the SOS.

I implore you to reject this proposed rule amendment on behalf of election workers throughout the great State of Georgia and every voter who deserves results in a timely manner!

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Thank you,

Mark Mosbacher
[REDACTED]



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02. Definitions

1 message

Lauren Randolph [REDACTED]

Tue, Aug 6, 2024 at 7:07 PM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Lauren Randolph and I am a registered voter in Fulton county.

I am writing to urge you to reject the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because:

1. The proposed definition is far too vague and overbroad. The definition proposed in this petition includes "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within.
2. As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.
3. Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Sincerely,

Lauren Randolph



John Fervier <jfervier.seb@gmail.com>

**SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02.
Definitions**

1 message

Melissa Elejalde [REDACTED]

Mon, Aug 5, 2024 at 12:03 PM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Melissa Elejalde, I am a voter in Cherokee County.

I am writing to urge you to not accept the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of a primary, election, or runoff.

I am writing to express my concerns about the proposed revision to Rule 183-1-12-.02, specifically regarding the definition of "reasonable inquiry," which is notably vague. Approving this petition will lead to inconsistent certification practices across different jurisdictions and create confusion that impacts accuracy of election results.

I strongly encourage you to reject this proposed revision.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Thank you,

Melissa



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02. Definitions

1 message

Nicole Ogden [REDACTED]

Mon, Aug 5, 2024 at 11:50 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Nicole Ogden and I am a registered voter in Cherokee County.

I am writing to urge you to reject the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because:

- The proposed definition is far too vague and overbroad. The definition proposed in this petition includes "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within.
- As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.
- Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

"Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Sincerely,

Nicole Ogden



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02. Definitions

1 message

Karen Kaplan [REDACTED]

Mon, Aug 5, 2024 at 11:48 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com
Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Karen Kaplan and I am a registered voter, and resident in Cherokee County, Ga.

I am writing to urge you to not accept the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because :

- It promotes partisanship and interference by potentially partisan poll workers.

I find it curious that these rules were never suggested or put in place when

Republicans were always the party previously winning by large numbers, especially unopposed,

The State Election Board never proposed these changes until Democrats began to run and win elections in Georgia.

- The proposed definition is far too vague and over broad. The definition proposed in this petition

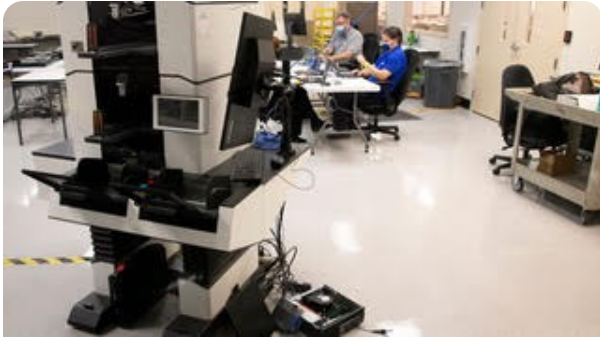
includes "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. "Reasonable" can be interpreted differently and very subjectively by different parties. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

- As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification is a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

- Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

- This rule directly harms me as a voter by creating a possibility where my county board members could choose to delay election certification due to a suspicion or perceived need for more inquiry to be done.

Our poll workers are volunteers who spend long hours already in service to the community & adding stress with increased hours and fatigue incurred in this pursuit of an inquiry, as well as a high potential cost to the running of elections, including potential unlawful access to equipment that the State of Arizona has recently incurred, a \$2.8 Million added expense, is a financial risk to all Georgians.



Maricopa County will spend millions to replace
voting machines turned over to the Arizona
Senate for audit
[azcentral.com](https://www.azcentral.com)

“Pursuant to O.C.G.A. § 50-13-4(a)(2),
I request that the Board include this comment in the rulemaking
record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Please vote NO on the acceptance of this petition to revise Rule 183-1-12-02

Sincerely,
Karen Kaplan
Cherokee County GA



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02. Definitions

1 message

Jessica Elejalde [REDACTED]

Mon, Aug 5, 2024 at 11:26 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Jessica Elejalde and I am a registered voter in Cherokee County. I am writing to urge you to **not** accept the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of primary, election, or runoff.

The proposed definition, "after reasonable inquiry," is alarmingly vague and open to broad interpretation. This lack of clarity could result in varying standards being applied by different jurisdictions, undermining the uniformity and reliability of the election certification process across Georgia.

As an Air Force veteran who values integrity in all aspects of life, including our democratic processes, I am deeply concerned that this petition could introduce inconsistencies in our certification practices and erode public trust. If the standards for certifying results vary significantly from one jurisdiction to another, it raises serious questions about the fairness and integrity of our elections. Additionally, differing interpretations of what constitutes a "reasonable inquiry" could lead to discrepancies in how election outcomes are recognized and accepted.

For the sake of maintaining a fair and consistent electoral process, I strongly encourage you to reject this proposed revision.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Respectfully,

Jessica Elejalde



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02. Definitions

1 message

Steve McLaughlin [REDACTED]

Mon, Aug 5, 2024 at 10:11 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Steven I McLaughlin and I am a registered voter in Dekalb county.

I am writing to urge you to reject the petition to revise Rule [183-1-12-.02](#), which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because:

- The proposed definition is far too vague and overbroad. The definition proposed in this petition includes “after reasonable inquiry,” without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within.
- As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they “shall” certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.
- Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers “reasonable inquiry” might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

“Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Sincerely,

Steve

Steven I McLaughlin DVM, MPH, DACVPM



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12.02. Definitions

1 message

Donna Wolfe [REDACTED]

Mon, Aug 5, 2024 at 9:45 AM

To: SEBPublicComments@sos.ga.gov, "jking.seb@gmail.com" <jking.seb@gmail.com>, jfervier.seb@gmail.com, saraghal.seb@mail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com

Dear Members of the Georgia State Election Board,

My name is Donna Wolfe and I am a registered voter in Cherokee County.

I am asking you to not accept the petition to revise Rule183-1-12-.02. This revision creates a definition for certifying results of a primary, election or runoff.

The proposed rule is not reasonable because the proposed definition is too vague and lacks specificity. The type of inquiry as well as the time frame for this inquiry are not defined in operational terms .

I am concerned that the election results in my county could be delayed and in essence my vote not counted.

Thank you

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule,

I request that it 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 as required by statute.



John Fervier <jfervier.seb@gmail.com>

**SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02.
Definitions**

1 message

Julia Franks [REDACTED]

Mon, Aug 5, 2024 at 9:35 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Julia Franks and I am a poll worker in Dekalb county.

I am writing to urge you to reject the petition to revise Rule [183-1-12-.02](#), which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because:

- The proposed definition is far too vague and overbroad. The definition proposed in this petition includes “after reasonable inquiry,” without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within.
- As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they “shall” certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.
- Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers “reasonable inquiry” might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

“Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Sincerely,

Julia Franks



John Fervier <jfervier.seb@gmail.com>

**SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02.
Definitions**

1 message

Peter DiFazio [REDACTED]

Mon, Aug 5, 2024 at 7:36 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Peter DiFazio, and I am a registered voter in Cherokee county.

I am writing to urge you to not accept the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because:

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

The proposed definition is far too vague and overbroad. The definition proposed in this petition includes "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum, "reasonable inquiry" should be more specifically defined in both substance and time frame.

This rule directly harms me as a voter by by creating a possibility where my county board members could choose to delay election certification due to a suspicion or perceived need for more inquiry to be done.

"Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Thank you for your consideration.

Peter DiFazio



John Fervier <jfervier.seb@gmail.com>

**SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02.
Definitions**

1 message

Alexandra [REDACTED]

Sun, Aug 4, 2024 at 10:28 PM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Alexandra Sears-DiFazio, and I am a registered voter in Cherokee County.

I am writing to ask that you not accept the petition to revise Rule 183-1-12-.02, which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because the proposed definition is far too vague and overbroad. The definition proposed in this petition includes "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum, "reasonable inquiry" should be more specifically defined in both substance and time frame.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

This rule directly harms me as a voter by creating a possibility where my county board members could choose to delay election certification due to a suspicion or perceived need for more inquiry to be done.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Thank you for your time,

Alexandra Sears-DiFazio



John Fervier <jfervier.seb@gmail.com>

**SEB Written Public Comment Addressing Revisions to Subject 183-1-12-.02.
Definitions**

1 message

Julie R. Glade [REDACTED]

Sun, Aug 4, 2024 at 8:11 PM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the Georgia State Election Board:

My name is Julie Glade. I am the Vice Chair of the Cherokee County Board of Elections and Registration, and am a registered voter in Georgia.

Please do NOT accept the petition to revise Rule 183-1-12-.02, regarding the definition for certifying the results of a primary, general, or runoff election. The proposed revision is UNREASONABLE, OVERLY VAGUE AND OVERLY BROAD.

Inserting into the definition that certification occurs after "reasonable inquiry" is not specific enough to provide necessary guidance to Boards of Election. It allows for a wide variety of results, when certification efforts and processes should be uniform throughout the state. The term "reasonable" could mean anything, with board members acting in bad faith using the term to avoid certification of the vote if they do not like the election results. A definition of the term "reasonable inquiry" is necessary to avoid inconsistent results amongst the counties, decisions on certification based on speculation and individual discretion instead of evidence and rational bases, litigation, delay and expense. Simply including the term without definition will contribute to ongoing mistrust of the election process.

The proposed change does not provide a time limit within which certifications after "reasonable inquiries" must be completed. This would allow bad actors who do not like the election outcome to delay certification indefinitely. If the term must be inserted, a concise, clear and detailed definition of reasonable inquiry must be provided, including a time frame within which these inquiries must be completed.

The election code states that BOE members "shall" certify election results, and the GA Supreme Court has interpreted this to mean that certification is a ministerial duty, not a discretionary one. The proposed revision violates existing law. Changes must be made by the legislature, not the SEB.

This proposed rule directly hampers my ability to function effectively as a Cherokee County Board of Elections and Registration member. The change as proposed simply introduces chaos, uncertainty and discord into our Board's certification process. Our primary obligation is to ensure that our voters' rights are protected and that the voters'

choices are honored. We all know that Georgia is a hot-bed for conspiracy theories, misinformation, suspicion and cynicism around voting. Accepting this rule as stated, without clear definitions and time frames, only allows the ongoing mistrust to blossom into chaos. Its the worst possible outcome that could be introduced prior to this very important election season. Accepting this proposed rule change as is, without definition, would constitute negligent administration on the SEB's part.

I appreciate your thoughtful consideration of these points. Please do not throw the BOERs' efforts and duties, and this consequential election, into disarray.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, I request that it 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 as required by statute.

Respectfully submitted,

--

Julie R. Glade, Vice Chair, Cherokee County Board of Elections





John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-02 Definitions

1 message

Barbara Kidder [REDACTED]

Fri, Aug 2, 2024 at 2:54 PM

To: sebpublishcomments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.se@gmail.com, jking.seb@gmail.com

Cc: [REDACTED]

Dear Members of the GA State Election Board,

My name is Barbara Kidder and I am a registered voter in Cherokee County, Georgia.

I am writing to not accept the petition to revise Rule 183-1-12-02 which creates a definition for certifying the results of a primary, election, or runoff.

The proposed rule is unreasonable because it is far too vague and over broad. "After reasonable inquiry", without a definition of that phrase is too open-ended and unclear about what type of inquiry is to be conducted and the time frame isn't stated. It leaves all elections open to political pressure any time the loser has the numbers advantage on the board.

This rule would sow mistrust of our elections and lead to political interference.

"Pursuant to O.C.G.A. 50-13-4(a)(2), I request that the board include this comment in the rule making record, and, if the board ultimately adopts the Proposed Rule, I request it issue a consideration statement of the principal reasons for and against the Proposed Rule and why you are overruling the consideration urged against its adoption as required by statute.

Sincerely,

Barbara Kidder

[REDACTED]



John Fervier <jfervier.seb@gmail.com>

SEB Written Public Comment Addressing Revisions to Subject 183-1-12-02. Definitions

1 message

Mon, Aug 5, 2024 at 12:12 AM

To: SEBPublicComments@sos.ga.gov, jfervier.seb@gmail.com, saraghazal.seb@gmail.com, jjohnstonmd.seb@gmail.com, rjeffares.seb@gmail.com, jking.seb@gmail.com
Cc: [REDACTED]

Dear Members of the Georgia State Election Board,

My name is Ronald Kraus and I am a registered voter in Cherokee county.

I am writing to urge you to not accept the petition to revise Rule 183-1-12-02, which creates definition for certifying the results of a primary, election, or runoff. The proposed rule is unreasonable for several reasons:

1. The proposed definition is bad law, in that it is far too vague and overbroad. "After reasonable inquiry" is not defined and left unclear and open-ended. It also does not define the time that inquiry must happen within.
2. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.
3. Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority will lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, impacting the uniformity and reliability of elections being certified across Georgia.

This rule directly harms me as a voter by creating a possibility where my Cherokee County board members could choose to delay election certification due to a suspicion or perceived need for more inquiry to be done. This is unacceptable.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

Ronald Kraus

[REDACTED]

[REDACTED]

JASON F. ESTEVES

District 6
2275 Marietta Blvd., Suite 270-180
Atlanta, Georgia 30318

319-A Coverdell Legislative Office Building
18 Capitol Square, S.W.
Atlanta, Georgia 30334

Email: jason.esteves@senate.ga.gov



COMMITTEES:

Agriculture and Consumer Affairs
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Interstate Cooperation
State and Local Governmental Operations

The State Senate
Atlanta, Georgia 30334

Dear Members of the Georgia State Election Board,

My name is Jason Esteves, and I am an elected official in district 6, I represent the people of Fulton County.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Sincerely,

A handwritten signature in black ink, appearing to be "JE", written over a horizontal line.

Jason Esteves, SD 6
Georgia State Senator

GLORIA S. BUTLER
District 55
Suite 420-C State Capitol
Atlanta, Georgia 30334
(O) 404-656-0075
(Fax) 404-657-9728
Gloria.Butler@senate.ga.gov



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SENATE MINORITY LEADER

The State Senate

Atlanta, Georgia 30334

August 5, 2024

Dear Members of the Georgia State Election Board,

My name is Gloria Butler and I am an elected official in district 55 and represent the people of Dekalb county.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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

Sincerely yours,

A handwritten signature in cursive script that reads "Gloria Butler". The signature is written in a dark ink and is positioned above the printed name.

Senator Gloria Butler
Minority Leader
District 55

Nikki Merritt

Senate District 9
319-B Coverdell Legislative Office Building
18 Capitol Square, SW
Atlanta, Georgia 30334
Phone: (404) 463-1310

E-mail: Nikki.merritt@senate.ga.gov



COMMITTEES:

Government Oversight
Insurance and Labor
Natural Resources and the Environment
Children and Family
Urban Affairs

The State Senate
Atlanta, Georgia 30334

Dear Members of the Georgia State Election Board,

My name is Nikki Merritt, and I am an elected official in district 9, and represent the people of Gwinnett County.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Sincerely,

Nikki Merritt, SD 9
Georgia State Senator

NAN GROGAN ORROCK

District 36
206 Washington Street, SW
420-B State Capitol
Atlanta, Georgia 30334
Phone: (404) 463-8054
Fax: (404) 657-9728



COMMITTEES:

Appropriations
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Health and Human Services
Higher Education

E-mail: Nan.Orrock@senate.ga.gov
Twitter: @SenNanOrrock
Facebook: SenatorNanOrrock

The State Senate
Atlanta, Georgia 30334

Dear Members of the Georgia State Election Board,

My name is Nan and I am an elected official in district 36 and represent the people of Fulton county.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Nan G. Orrock
State Senator, District 36



House of Representatives

SAM PARK

REPRESENTATIVE, DISTRICT 107
4850 Sugarloaf Pkwy Ste. 209-188
LAWRENCEVILLE, GA 30044
sam.park@house.ga.gov
Sam@samforgeorgia.com

COVERDELL LEGISLATIVE OFFICE BUILDING
18 CAPITOL SQUARE, 611-F
ATLANTA, GEORGIA 30334
(404) 656-0314 (O)
(678) 559-7272 (C)

MINORITY WHIP

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SMALL BUSINESS DEVELOPMENT
TECHNOLOGY & INFRASTRUCTURE
INNOVATION

August 5, 2024

Dear Members of the Georgia State Election Board,

My name is Samuel Park and I am an elected official in Georgia House District 107 and represent the people of Gwinnett County. I also serve as Minority Whip in the Georgia General Assembly.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include “after reasonable inquiry,” without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum “reasonable inquiry” should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they “shall” certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers “reasonable inquiry” might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how



House of Representatives

SAM PARK

REPRESENTATIVE, DISTRICT 107
4850 Sugarloaf Pkwy Ste. 209-188
LAWRENCEVILLE, GA 30044
sam.park@house.ga.gov
Sam@samforgeorgia.com

COVERDELL LEGISLATIVE OFFICE BUILDING
18 CAPITOL SQUARE, 611-F
ATLANTA, GEORGIA 30334
(404) 656-0314 (O)
(678) 559-7272 (C)

MINORITY WHIP

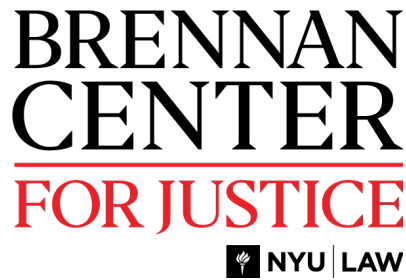
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SMALL BUSINESS DEVELOPMENT
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INNOVATION

safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Yours in service,

Rep. Sam Park
Whip, Georgia House Democratic Caucus
Georgia State Representative, District 107



July 2, 2024

Chairman John Fervier
Georgia State Election Board
2 Martin Luther King Jr. Drive
Suite 802, Floyd West Tower
Atlanta, GA 30334

Re: Proposed Amendment to SEB Rule 183-1-2-.02

Dear Chairman Fervier and Georgia State Election Board Members:

On behalf of the Brennan Center for Justice at New York University School of Law and United to Protect Democracy, we write to provide comment on the Petition to Amend Rule 183-1-2.02, on which the State Election Board voted to initiate rulemaking at its May 8, 2024, meeting.¹

We urge the Board to reject the proposed amendment defining election certification under Rule 183-1-2-.02. The suggested language conflicts with longstanding Georgia caselaw and would sow disorder in the state's election administration process, which already has safeguards to ensure election results are accurate and reliable.

The proposed amendment seeks to define election certification to mean to “attest, after reasonable inquiry, that the tabulation and canvassing of the election are complete and accurate and that the election results are a true and accurate accounting of all votes cast in that election.”² The petition

¹ The Brennan Center is a nonpartisan law and policy institute that works to reform, revitalize and when necessary – defend our country's systems of democracy and justice. This comment does not reflect views, if any, of the NYU School of Law.

United to Protect Democracy is a 501(c)(4) organization focusing on advocacy efforts to confront threats to our democracy.

² Petition to Amend Rule 183-1-2-.02, presented by Michael Heekin.

claims that without such a “standard,” the scope of an election official’s duty to certify election results is ambiguous.³

But this is false. Georgia law plainly outlines local election officials’ role in the certification process. State law requires the county election superintendent, board of elections, or election supervisor-designee of that board, to “receive from poll officers the returns of all primaries and elections, to canvass and compute the same, and to certify the results thereof to such authorities as may be prescribed by law.”⁴ The superintendent oversees the computation and canvassing of the returns, a mandated pre-certification audit process, and the certification of the results.⁵ They must carry out these duties pursuant to a detailed set of rules set forth by statute and the Secretary of State regulations.⁶

Importantly, Georgia law provides no discretion for the superintendent or board to throw out certain votes or substitute their own judgment for the actual vote totals as part of the certification process.⁷ Georgia law also provides no discretion for the superintendent or board to delay or refuse certification.⁸ Once the superintendent completes these processes, they must certify election results and “shall, upon certification, furnish to the Secretary of State in a manner determined by the Secretary of State a final copy of each ballot used for such election.”⁹ There is a clear mandatory deadline for this: the superintendent must certify the returns and transmit them to the Secretary of State by 5PM on the Monday after the election.¹⁰ The Georgia Supreme Court has consistently interpreted the county superintendents’ role in the certification process as a ministerial one. Nearly a century ago, the court held that the duties to both consolidate votes and certify at the local level were “purely ministerial.”¹¹ Separately, in 1898, the court compelled certification

³ See *id.* at 1. (“In the absence of a standard for certification, are superintendents performing a simple bureaucratic act of certifying the tabulated results of an election even if those results are suspect? Or are they entrusted to use their professional judgment in the certification process?”)

⁴ Ga. Code Ann. § 21-2-70(9), 21-2-70(15).

⁵ *Id.* § 21-2-493, 21-2-498.

⁶ See *id.*

⁷ See *id.*; see also *id.* § 21-2-492 (“assistants of the superintendent in the computation and canvassing of the votes shall be first sworn by the superintendent to perform their duties impartially and not to read, write, count, or certify any return or vote in a false or fraudulent manner”); *id.* § 21-2-498 (establishing detailed pre-certification audit process).

⁸ See, e.g., Ga. Code Ann. § 21-2-493(i) (“If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.”)

⁹ *Id.* § 21-2-497(b).

¹⁰ *Id.* § 21-2-493(k).

¹¹ *Bacon v. Black*, 133 S.E. 251, 253 (Ga. 1926). Historically, “[a] sizable body of case law” in Georgia “contrast[ed] the ‘discretionary’ acts of a state employee, for which official immunity applied to protect the employee from personal liability, and ‘ministerial’ acts of an employee, for

through a writ of mandamus after the Democratic superintendents in Coffee County refused to proceed with certification in light of a minor procedural issue at a single precinct.¹² There, the court made clear that the superintendents' duties were "regulated by statute, and not left to the discretion of the party performing."¹³

Designating certification as a discretionary act would do precisely what the Court sought to avoid in *Tanner v. Deen*—potential misconduct or misinterpretations of the law by local election officials who "were not selected for their knowledge of the law."¹⁴ Questions about the legality of votes may, in Georgia, be considered by a court hearing an election contest or fraud charges brought by a prosecutor.¹⁵

Georgia law contemplates a role for local election officials in safeguarding the elections *before* certification takes place. Before the election certification process even commences, local election officials in Georgia are required to take several steps to ensure ballots are lawfully cast and accurately counted in a multi-step election administration system. These protections include, but are not limited to, strict requirements for transparency and accountability in tabulating centers;¹⁶ mandatory pre-certification election audits;¹⁷ and optional pre-certification recanvassing and recounting of votes by the county superintendent.¹⁸ These safeguards – all of which precede the duty to certify election results – enable election administrators to protect the integrity of Georgia's elections.

Adding purported discretion or vague standards such as "reasonable inquiry" to Rule 183-1-2.02 will not only contradict the state's longstanding caselaw but will also risk burdening county election supervisors who are charged with collecting the necessary data to complete a canvass. The proposed amendment could subject these supervisors to unplanned-for demands for supplemental data from individual board members or other outside influences, each with their own interpretation of what a "reasonable inquiry" means. This concern is not unfounded; according to a recent

which the employee was potentially personally liable. The cases held that a discretionary act ... calls for the exercise of personal deliberation and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed." *NW Ga. Reg. Hosp. v. Wilkins*, 469 S.E.2d 786, 788 (citations and punctuation omitted).

¹² *Tanner v. Deen*, 33 S.E. 832, 833-36 (Ga. 1899).

¹³ *Id.* at 835 (quoting Horace Gay Wood, *A Treatise on the Legal Remedies of Mandamus and Prohibition, Habeas Corpus, and Quo Warranto: with Forms*. (2d. ed. 1891)); *see also* CREW comment <https://www.citizensforethics.org/wp-content/uploads/2024/06/Comment-on-rulemaking-to-amend-SEB-Rule-183-1-12-.02-FINAL-2024.06.24.pdf> at 6.

¹⁴ *Tanner v. Deen*, 33 S.E. at 835.

¹⁵ Ga. Code Ann. § 21-2-522; § 21-2-493(i).

¹⁶ *Id.* § 21-2-483.

¹⁷ *Id.* § 21-2-498.

¹⁸ *Id.* § 21-2-495(a).

Brennan Center for Justice survey of local election officials, more than three in five officials across the country are very or somewhat worried about political leaders engaging in efforts to interfere with their jobs.¹⁹ Political interference at the certification juncture will undoubtedly create substantial logistical challenges for election supervisors to overcome while operating under a firm deadline to transmit returns to the Secretary of State.²⁰

In addition to these concerns for local election officials, the proposed amendment will also amplify and validate harmful misinformation just months ahead of the November election. In the past two national election cycles, election officials have faced significant pressure to refuse to certify election results based on false allegations of election fraud.²¹ In some cases, election officials explicitly voted to not certify results in violation of state law, and in other instances, officials voted to delay the process while investigating unsupported allegations of fraud.²² Each refusal to certify election results invites confusion and casts doubt on the election administration process more generally. Fortunately, Georgia law does not permit discretionary refusals. If “error or fraud” is found, officials are not directed to decline to certify. Rather, they must “compute and *certify* the votes justly, . . . and shall report the facts to the appropriate district attorney for action.”²³ By inserting discretion into a well-established ministerial process, the proposed amendment will conflict with the statutory directive and sow distrust in elections across the state, all while encouraging bad actors to manipulate election outcomes.

With the consequential 2024 elections already underway, the integrity of Georgia’s elections must be protected. We urge the Board to do so by declining to adopt the proposed amendment to Rule 183-1-2-.02.

Sincerely,

¹⁹ Brennan Center for Justice, *Local Election Officials Survey – May 2024*, May 1, 2024, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-may-2024>.

²⁰ Ga. Code Ann. § 21-2-493(k).

²¹ See Alice Clapman, *How States Can Prevent Election Subversion in 2024 and Beyond*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/policy-solutions/how-states-can-prevent-election-subversion-2024-and-beyond> at 4; Lauren Miller Karalunas, *Election Denial Can’t Overcome Election Certification Protections*, Brennan Center for Justice, <https://www.brennancenter.org/our-work/analysis-opinion/election-denial-cant-overcome-election-certification-protections>; see also Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 Stan. L. & Pol’y Rev. 1, 14-23 (2024), <https://law.stanford.edu/wp-content/uploads/2024/02/MILLER-WILDER-FINAL-1.pdf>.

²² See Miller & Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 14-23.

²³ *Id.* § 21-2-493(i).

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW
Marina Pino
Gowri Ramachandran
120 Broadway, Suite 1750
New York, NY 10271

United to Protect Democracy
Peter Simmons
2020 Pennsylvania Avenue, NW
#163
Washington, DC 20006

From: [Susan Prutzman](#)
To: [SEB Public Comments](#)
Subject: Citizen concern
Date: Monday, July 29, 2024 2:03:43 PM

I do NOT support the adoption of the Heekin and Grubbs proposal regarding changes to the Georgia elections processes.

The current election disaster and reported results in Venezuela stand as an example of how improper oversight, reporting and certification of elections result in fraud. The proposed Heekin and Grubbs proposals would set an unorthodox unprecedented disastrous result for Georgia voters.

Respectfully,
Susan Prutzman
Savannah, Georgia voter and tax payer

From: [REDACTED]
To: [SEB Public Comments](#)
Cc: [Coan, Michael \(SEB\)](#)
Subject: Proposed Rule 183-1-12-.02. Definitions - Public Comment for Consideration
Date: Wednesday, July 24, 2024 2:29:30 PM
Attachments: [NVRA Eligibility Supreme Court.docx](#)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Georgia State Election Board

Mr. John Fervier, Chairman
Dr. Jan Johnston
Mr. Rick Jeffares
Ms. Janelle King
Ms. Sara Ghazal

C: Mr. Mike Coan

Please accept this public comment for the above Proposed Rule change to be discussed at the August 6th SEB meeting.

(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 (***eligible/legal/lawful, etc.**) votes cast in that election.

-
*The word **reasonable** is subjective and open to interpretation. I request it be removed. Per the previous rule change discussed at the July SEB meeting, pursuant to O.C.G.A. 21-2-72 [Georgia Code § 21-2-72 \(2022\) - Primary and Election Records to Be Open to Public :: 2022 Georgia Code :: US Codes and Statutes :: US Law :: Justia](#), all unsealed election documents are already legally available to the public, regardless of their position on a county BRE.

*Going forward, the SEB should notate in ALL RULES that votes cast should consist of only **eligible** voters. This is consistent with O.C.G.A. verbiage and NVRA. The NVRA states 17 times listing only eligible/valid voters and notates twice ineligible voters with the word "removal". I invite you to review the attached summary. If needed other descriptive words, i.e., legal, lawful could be considered as well. We must do a better job of acknowledging only eligible Georgia voters may vote in a county or state election.

Thank you for your consideration.

Kind regards,

Lisa Rutherford
Gwinnett County

National Voter Registration Act (NVRA): Eligible Voters vs. Ineligible Voters

On June 11, 2018, the United States Supreme Court issued its ruling in *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833 (2018). The opinion in that case stated that Section 8(d) provides that a State may remove a registrant who “(i) has failed to respond to a notice” and (ii) has not voted or appeared to vote.... during a period beginning on the date of notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.” (about four years). 52 U.S.C. 20507(d)(1)(B). Not only are States allowed to remove registrants who satisfy these requirements, but federal law makes this removal mandatory. *Id.* At 1841-42 (emphasis added), citing 52 U.S.C. 20507(d)(3); 52 U.S.C. 21083(a)(4)(A).

*“In creating a list of justifications for removal, Congress **did not intend** to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act protects only **“eligible”** voters from unauthorized removal.”* See 42 U.S.C. 1973gg-6(a)(1) (seeking to “ensure that any **eligible** applicant is registered to vote in an election”); *Id.* at 1973gg- 6(a)(3) (providing that “the name of a registrant may not be removed from the official list of **eligible voters except**” under specific circumstances) (emphases added). Eligible voters, at a minimum, are those who qualify as bona fide residents of the precinct in which they are registered or wish to register to vote. See e.g., *Dunn v. Blumstein*, 405 U.S. 330, 343-44, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972); *Evans v. Cornman*, 398 U.S. 419, 90 S.Ct. 1752.

Eligible Definition:

Adjective: having the right to do or obtain something; satisfying the appropriate conditions.

Noun: a person or thing that is qualified or permitted to do or be something : one that is eligible for something.

Georgia State Election Board
C/O Alexandra Hardin
2 Martin Luther King Jr. Drive,
S.E. 8th Floor West Tower Suite 802
Atlanta, Georgia 30334

31 July 2024

RE: Proposed revisions to Rule 183-1-12-.12(a)(5) Tabulating Results

Chairman Fervier & SEB Board Members,

The subject proposed revision has been reviewed with the following questions and concerns.

Q. It appears that the poll manager and 2 poll workers empty the ballot box(s) and then 3 different poll workers hand count the paper ballots?

The poll manager and two witnesses 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.

If so, what is the process for polling locations with just a poll manager and 2 co-managers?

Q. Does the method of counting the paper ballots need to be delineated in a rule, referring to the stack of 50 ballots?

Q. What is the purpose of having 3 poll workers count the paper ballots? Could it be done with 2 poll workers?

Q. What is the purpose of the additional "control document"? Could the poll workers that hand counted the paper ballots sign the label that is affixed to the container. The label could include "the polling place, ballot scanner serial number, the number assigned to the ballot scanner for that election, the count of the ballots from the tabulation tape, hand count of the ballots, the date and time that the ballot box was emptied and that it contains all of the correct ballots from the indicated ballot box and no additional ballots.". This is in addition to the "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."

Q. Does the "Control document" get delivered to Election Superintendent? Be sealed in the container with the ballots? Retained for some length of time?

I will be unable to physically attend the public hearing on Tuesday, August 19, 2024, at 9:00 A.M. I will be available online.

I am submitting these questions in advance to provide the SEB time to research and formulate answers.

Very Respectfully,

Kyle C. Rapp, Chair
Camden County, Board of Elections and Registration

Georgia State Election Board
C/O Alexandra Hardin
2 Martin Luther King Jr. Drive,
S.E. 8th Floor West Tower Suite 802
Atlanta, Georgia 30334

12 July 2024

RE: Proposed revisions to 183-1-14-.02 Advance Voting

Chairman Fervier & SEB Board Members,

The subject proposed revision has been reviewed with the following questions and concerns.

A. Paragraph (18)

Q. What is the definition of “Any absentee ballot drop location”, other than the United States Postal Service or authorized and defined drop box under Georgia Law?

Q. How would an elector know the “absentee ballot form” and photo ID are required for those authorized to hand deliver their mail-in absentee ballot?

I hope the answer is NOT “just add a notice to the outbound mail-in absentee packet. It’s just a piece of paper.”? It’s always just a piece of paper until it’s a burden.

Q. What types of photo ID would be acceptable? Would the rules of O.C.G.A. § 21-2-417(c) apply to the person hand delivering the mail-in absentee ballot?

Q. What mechanism would an elector use to cure this “new” category of provisional ballot? Especially “any ballot that is missing the chain of custody form” or the person hand delivering the mail-in absentee ballot that does not possess any ID.

Q. What “Provisional/challenged code” would election officials use to identify this “new” category of provisional ballots?

Q. Will there be proposed legislation to codify this “new” category of provisional ballots?

Q. Would the person hand-delivering the mail-in absentee ballot, if they did not provide ID, also fill out the forms for an absentee provisional ballot?

Q. Is there a future revision to the mail-in absentee ballot outer oath envelope to include this requirement?

Q. Is there also a revision to Rule 183-1-14-.03. Provisional Absentee Ballots?

Q. Does this rule apply to those voters confined to a hospital? Will the election official be required to fill out the “absentee ballot form”?

Q. When is the hand delivered mail-in absentee ballot considered received?

Example: A voter has an authorized person hand deliver their ballot on election night @6:59pm? It appears the mail-in absentee ballot is not considered received, until after the requirements of this rule and the other statutory requirements are satisfied?

If this is correct, an otherwise certifiable mail-in absentee ballot could be rejected or received late simply because the elector chose to have their ballot hand delivered to “Any absentee ballot drop location”.

Q. Is there a future SEB revision based on O.C.G.A. § 21-2-381(a)(1)(B) “satisfactory proof of relationship” concerning an absentee application?

B. Paragraph (19)

Q. Does this rule allow a ballot drop box, that is under video surveillance, to be open outside of advance voting hours?

Q. If so, does this new rule conflict with O.C.G.A. § 21-2-382 (c)(1)?

I will be unable to physically attend the public hearing on Tuesday, August 6, 2024, at 9:00 A.M. I will be available online. The link provided in the notification of this revision comes back as "Sorry, We Can't Find That Page"?

I am submitting these questions in advance to provide the SEB time to research and formulate answers.

Very Respectfully,

Kyle C. Rapp, Chair
Camden County, Board of Elections and Registration

KIMBERLY S. JACKSON

District 41
P.O. Box 1411
Pine Lake, Georgia 30072

321-B Coverdell Legislative Office Building
18 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-6882

Email: Kim.Jackson@senate.ga.gov



COMMITTEES:

Agriculture and Consumer Affairs
Children and Families
Health and Human Services
Public Safety

The State Senate
Atlanta, Georgia 30334

August 2, 2024
Georgia State Elections Board

Dear Members of the Elections Board,

As state Senator for Georgia Senate District 41, I am writing to urge you *not* to accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals, as they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has confirmed makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Regards,

A handwritten signature in black ink, appearing to read "Kim S. Jackson", with a small star or asterisk at the end.

Kimberly S. Jackson
Senator, District 41

OFFICE:
303B Coverdell Legislative Office
Building
18 Capitol Square, SW
Atlanta, Georgia 30334
(404) 656-9644
sonya.halpern@senate.ga.gov



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SENATOR SONYA HALPERN
Vice Chair, Senate Democratic Caucus
Chair, Fulton County Senate Delegation

August 5, 2024

Dear Members of the Georgia State Election Board,

My name is Sonya Halpern and I am an elected official in District 39 and represent the people of Fulton County.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Regards,

A handwritten signature in blue ink, appearing to read "Sonya Halpern", is written over a light blue circular stamp.

Senator Sonya M. Halpern
Georgia State Senate, District 39

HAROLD V. JONES II
District 22
121-B State Capitol
Atlanta, Georgia 30334
Phone: (404) 463-3942
E-mail: harold.jones@senate.ga.gov



The State Senate
Atlanta, Georgia 30334

COMMITTEES:
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Rules (Ex-Officio)
State Institutions & Property

DEMOCRATIC MINORITY WHIP

Dear Members of the Georgia State Election Board,

My name is Senator Harold Jones and I am an elected official in district 22 and represent the people of Richmond County.

I am writing to urge you to not accept proposed rules that would make county certification discretionary. I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals because they are far too vague and overbroad.

The definitions proposed in these petitions include "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and the time frame that inquiry has to happen within. At a minimum "reasonable inquiry" should be more specifically defined in both substance and time frame.

As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated makes that certification a ministerial process, rather than a discretionary one. There needs to be a legitimate and evidence-based reason for a board not to certify an election. When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials.

Allowing the board members to have this level of discretion above and beyond the limits of their statutory authority could lead to inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

These two certification proposal rules impose burdensome requirements on county boards by mandating the reporting of detailed ballot and voter information and demanding investigations into any discrepancies found. This could overwhelm local election officials and ultimately delay the certification process. These rules, as proposed, create avenues for malicious actors to disrupt the election process under the guise of addressing discrepancies and could be exploited to sow doubt and distrust in election outcomes. Implementing such rules risks eroding public confidence in elections. By magnifying discrepancies and delaying results from precincts under investigation, it amplifies opportunities for misinformation and accusations of fraud, regardless of how safe and secure our elections are. That is why I oppose the unreasonable Michael Heekin and Salleigh Grubbs certification proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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.

Harold V. Jones, II
Senator, District 22



P.O. Box 570738, Atlanta, GA 30357
770.303.8111|info@acluga.org

August 2, 2024

Dear Members of the State Election Board,

The ACLU of Georgia's Voter Access Project works to ensure voting is easy and accessible for all Georgians. We are writing to urge you to reject the petition to amend rule 183-1-12-.02 addressing the definition of certifying election results and the petition to amend rule 183-1-14-.02 addressing advance voting.

The proposed amendment to Rule 183-1-12-.02 is unreasonable and has the potential for great harm to our democratic process. The newly proposed definition is far too vague and overbroad. The definition proposed in this petition includes "after reasonable inquiry," without a definition of that phrase. It is unclear and open-ended what type of inquiry could be done and what time frame, if any, that inquiry has to happen within. As the code stands, Board members play an active role in our certification process by certifying that the results presented to them by the Election Supervisor represent a complete and accurate count of the ballots. The statute states that they "shall" certify the results, which the Supreme Court of Georgia has stated is a "mandatory" duty, rather than a discretionary one. *Hall County Bd. of Tax Assessors v. Westrec Properties, Inc.*, 303 Ga. 69, 75 (2018). The Georgia Court of Appeals relatedly found that the predecessor certification statute with similar language was ministerial. *Bacon v. Black*, 162 Ga. 222 (1926). And the Georgia Supreme Court found that that statute included no discretion for canvassers. *Thompson v. Talmadge*, 201 Ga. 867, 876 (1947). There needs to be a legitimate, numerical reason for a board not to certify an election. Any suspicion of fraud should be referred to the county's district attorney. O.C.G.A. § 21-2-493(i).

When an election is not certified based on speculation, this sows fear and distrust in our democratic process. This in turn also creates more harassment towards our election officials. Furthermore, allowing county board members this level of discretion beyond the limits of their statutory authority could lead to concerning inconsistencies in how election results are certified across different jurisdictions. What one board considers "reasonable inquiry" might differ from another, potentially impacting the uniformity and reliability of elections being certified across Georgia.

As the State Election Board, you have the critical role of overseeing the county level boards, ensuring their duties remain consistent with state statutes. Having an unclear definition of the certification process that does not require them to fulfill actions by a certain date runs the risk of allowing county board members to use their position to make their own politically motivated decisions.

The Petition to Adopt new Rule 183-1-14-.02 on the increased requirements for DropBoxes and absentee ballots creates requirements above and beyond what is required by statute to vote using these programs. The rule would create in effect a third check of ID when a voter chooses to submit their absentee ballot by drop box. This rule change could easily disenfranchise absentee voters because of administrative error and create unnecessary burdens on voters who need to cure their ballots by proving their identity for the third time in order to vote.

Pursuant to O.C.G.A. § 50-13-4(a)(2), I request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it 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 as required by statute.

We ask that you continue to put the rights of Georgia voters first.

Sincerely,

Rachel Lastinger
Associate Director, Voter Access Project, ACLU of Georgia

