

Case No. S25M0259

IN THE SUPREME COURT OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE, et al.

Petitioners,

v.

ETERNAL VIGILANCE ACTION, INC., et al.,

Respondents.

On Appeal from the Superior Court of Fulton County
Civil Action File No. 24CV011558

**BRIEF OF MUSCOGEE AND COBB COUNTY BOARDS OF
ELECTIONS AND REGISTRATION IN SUPPORT OF
RESPONDENTS**

James C. Clark, Jr.
Georgia Bar No.: 127145
Thomas F. Gristina
Georgia Bar No.: 452454

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

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

Michael A. Caplan
Ga. Bar No. 601039
T. Brandon Waddell
Ga. Bar No. 252639
Ashley C. Brown
Ga. Bar No. 287373

CAPLAN COBB LLC
75 Fourteenth Street, NE, Suite 2700
Atlanta, Georgia 30309
(404) 596-5600

[continued on inside cover]

Elaine Poon
Georgia Bar No.: 321308

PUBLIC RIGHTS PROJECT
490 43rd Street, Unit #115
Oakland, CA 94609
(510) 738-6788

*Counsel for Muscogee County Board
of Elections and Registration*

Daniel W. White
Georgia Bar No. 153033
William A. Pinto, Jr.
Georgia Bar No. 405781

HAYNIE, LITCHFIELD &
WHITE, PC
222 Washington Avenue
Marietta, Georgia 30060
(770) 422-8900

Nikhel S. Sus*
Citizens for Responsibility and Ethics
in Washington
1331 F Street NW, Suite 900
Washington, DC 20004
Telephone: (202) 408-5565

**pro hac vice forthcoming
Counsel for Cobb County Board
of Elections and Registration*

TABLE OF CONTENTS

STATEMENT OF INTEREST.....	1
BACKGROUND AND SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	8
I. PETITIONERS ARE UNLIKELY TO PREVAIL ON THE MERITS WITH REGARD TO THE HAND COUNT RULE, THE POLL WATCHER RULE, AND THE DAILY REPORTING RULE.....	8
A. The Three Rules Are Not Authorized By Law	9
B. The Three Rules Are Inconsistent With The SEB’s Limited Rulemaking Authority.....	14
II. NEITHER PETITIONERS NOR THE SEB WILL FACE IRREPARABLE HARM IF THE HAND COUNT RULE AND OTHER RULES DO NOT TAKE EFFECT.....	16
III. THE COUNTY BOARDS FACE IRREPARABLE INJURY IF THE COURT ALLOWS THE HAND COUNT RULE AND OTHER RULES TO TAKE EFFECT.....	19
A. Administrative Burden On Election Staff.....	20
B. Training And Retention Of Poll Officials	21
C. New Financial Burdens	22
D. Toll On Election Workers	23
IV. DENYING THE STAY REQUEST FURTHERS THE PUBLIC INTEREST.....	25
A. Security Risks	26
B. Voter Trust.....	28
CONCLUSION	29

TABLE OF AUTHORITIES

CASES

<i>Bd. of Tax Assessors of Columbus, Ga. v. Tom’s Foods, Inc.</i> , 264 Ga. 309 (1994).....	9
<i>Black v. Bland Farms, LLC</i> , 332 Ga. App. 653 (2015)	3
<i>Cobb County v. Floam</i> , 319 Ga. 89 (2024)	3
<i>Deal v. Coleman</i> , 294 Ga. 170 (2013).....	9
<i>Dep’t of Hum. Res. v. Anderson</i> , 218 Ga. App. 528 (1995)	6, 9, 14
<i>Grace, Inc. v. City of Miami</i> , No. 23-12472, 2023 WL 5286232 (11th Cir. Aug. 4, 2023).....	15
<i>Green Bull Georgia Partners, LLC v. Register</i> , 301 Ga. 472 (2017).....	8
<i>HCA Health Servs. of Ga., Inc. v. Roach</i> , 265 Ga. 501 (1995).....	9, 14
<i>Merrill v. Milligan</i> , 142 S. Ct. 879 (2022)	15, 16
<i>N. Fulton Med. Ctr. v. Stephenson</i> , 269 Ga. 540 (1998).....	9
<i>Pope v. Cokinos</i> , 231 Ga. 79 (1973).....	6
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006)	16, 29
<i>Southern Co-op. Foundry Co. v. Drummond</i> , 76 Ga. App. 222 (1947)	9

<i>State v. Randall</i> , 318 Ga. 79 (2024)	9
--	---

<i>Wise v. Circosta</i> , 978 F.3d 93 (4th Cir. 2020)	16
--	----

STATUTES

O.C.G.A. § 5-6-1	4
O.C.G.A. § 21-2-31(1)–(2)	6, 15
O.C.G.A. § 21-2-70	1
O.C.G.A. § 21-2-300(a)	11
O.C.G.A. § 21-2-385(e)	13
O.C.G.A. § 21-2-408(c)	12, 13
O.C.G.A. § 21-2-420	11
O.C.G.A. § 21-2-436	11
O.C.G.A. § 21-2-483	11
O.C.G.A. § 21-2-483(a)	11
O.C.G.A. § 21-2-483(g)(1)	11
O.C.G.A. § 21-2-483(h)	11
O.C.G.A. § 21-2-485	12
O.C.G.A. § 50-13-4(b)	17
O.C.G.A. § 50-13-10	2

RULES

Ga. Comp. R. & Regs. 183-1-12-.12(a)(1)-(2)26

Ga. Comp. R. & Regs. 183-1-12-.12(a)(5).....2, 11

Ga. Comp. R. & Regs. 183-1-12-.212

Ga. Comp. R. & Regs. 183-1-13-.052, 13

OTHER AUTHORITIES

Attorney General’s Memorandum, dated Sept. 19,
2024*passim*

GAVREO Comment to the SEB, dated Sept. 17, 2024.....5

Notice of Proposed Rulemaking, Revisions to Subject
183-1-12-.12 *Tabulating Results* (August 21, 2024)10, 17

STATEMENT OF INTEREST PURSUANT TO O.C.G.A. § 5-6-1

The Muscogee County Board of Elections and Registration (the “Muscogee Board”) and the Cobb County Board of Elections and Registration (the “Cobb Board”) file this brief in support of Respondents and in opposition to the Emergency Motion for Supersedeas (“request for a stay” or “stay request”) of the Superior Court’s order.¹ As the “election superintendents” for their respective counties, the County Boards have the statutory duty to ensure elections are conducted honestly, fairly, uniformly, and in accordance with law. *See* O.C.G.A. § 21-2-70. They are deeply concerned about the slate of last-minute rules that the State Election Board (“SEB”) adopted at its September 20 meeting, over the objections of the Attorney General, the Secretary of State, and election officials and workers across the State. The rules, if permitted to go into effect, would make substantial changes to Georgia’s election procedures effective tomorrow—a week after the start of early voting and just 14 days from election day. The County Boards take their responsibilities seriously. They need time and guidance to implement new rules. Currently they have neither.

Given the quickly approaching election, the County Boards have taken emergency legal action to obtain judicial guidance. The Cobb Board has an action pending in the Fulton County Superior Court that challenges the

¹ No party of party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money intended to fund preparation or submission of this brief.

validity of the six rules adopted at the SEB's September 20 meeting under Georgia's Administrative Procedure Act ("APA"), O.C.G.A. § 50-13-10. *See Cobb County BOER v. SEB*, No. 24CV012491. Among the rules challenged both by Respondents and the Cobb Board is the new rule requiring that all precincts hand count ballots at the close of polls on election night (the "Hand Count Rule"). *See* Ga. Comp. R. & Regs. 183-1-12-.12(a)(5). Last week, the Superior Court granted an interlocutory injunction barring the Hand Count Rule from taking effect or being enforced. *See Cobb BOER v. SEB*, Order, Oct. 15, 2024, attached as Exhibit A. The Cobb Board's suit also challenges two other rules at issue here that the SEB adopted on September 20, one of which seeks to expand the enumerated locations where poll watchers may be designated (the "Poll Watcher Rule", Ga. Comp. R. & Regs. 183-1-13-.05) and another that seeks to expand reporting requirements for counties during advance voting (the "Daily Reporting Rule", Ga. Comp. R. & Regs. 183-1-12-.21). The Cobb Board's action challenges these three rules, as well as three additional rules not at issue in this case, on the grounds that they exceed the SEB's rulemaking authority, are procedurally invalid, and are unreasonable.

The Muscogee Board similarly has an action before the Muscogee County Superior Court specifically challenging the SEB's Hand Count Rule. *See Muscogee BOER v. SEB*, No. SU2024CV002288. The Muscogee Board is also

concerned about the legality and administrability of the Poll Watcher Rule and the Daily Reporting Rule and it has previously commented to the SEB about the need to avoid last-minute and significant changes to election administration.

As election superintendents, the County Boards have substantial interests in this litigation that are not adequately represented by the existing parties. In particular, the County Boards require declaratory relief on the validity of the SEB's September 20 rules to "guide and protect" them "from uncertainty and insecurity with respect to" the interaction between the SEB's rules and the County Boards' legal duties under the Election Code. *Cobb County v. Floam*, 319 Ga. 89, 97 (2024); *see also id.* at 101 & n.7 (noting that the Cobb Board would have had standing to seek declaratory relief as to the validity of redistricting maps given the Board's "duties in administering elections"); *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 659 (2015) (plaintiff has standing under the APA "to challeng[e] the adoption of a rule it is *automatically affected by*") (emphasis added).

Because the County Boards have a direct interest in preventing these rules from interfering with their fair, legal, and orderly administration of the General Election, this Court should take account of the numerous forms of irreparable harm the County Boards will suffer if these rules are allowed to

take effect two weeks before Election Day, and treat the County Boards as interested parties under O.C.G.A. § 5-6-1. In the alternative, the County Boards offer this brief as *amici curiae*.

BACKGROUND AND SUMMARY OF ARGUMENT

On September 20, 2024, the SEB adopted six rules that will, if implemented, substantially alter Georgia’s election procedures. Three of those rules—the Hand Count Rule, the Poll Watcher Rule, and the Daily Reporting Rule—are at issue in this case.² Unless the Superior Court’s order in this case and the interlocutory injunction in *Cobb BOER v. SEB* remain in place, these last-minute rules will become effective tomorrow, October 22—seven days after the start of early voting and just 14 days before Election Day. The County Boards have each sought declaratory and injunctive relief with respect to the Hand Count Rule. These last-minute changes impose significant burdens on local election officials who are in the midst of running a Presidential election, among other state and federal races.

The SEB adopted the September 20 rules over strong objections from the Attorney General, Secretary of State, the Georgia Association of Voter Registration and Election Officials (“GAVREO”), election officials and workers

² Respondents challenge other rules that the SEB adopted prior to September 20. However, this brief only addresses the SEB’s September 20 rules, which are the focus of the County Boards’ own litigation.

across the state, voters, and many other stakeholders.³ The Attorney General informed the SEB that the Hand Count Rule is “not tethered to any statute” and thus is “likely the precise type of impermissible legislation that agencies cannot do,” and similarly advised the SEB that the Poll Watcher Rule and the Daily Reporting Rule exceeded its authority.⁴

The Secretary of State warned that the Hand Counting Rule “would require tremendous personnel resources and time,” “could lead to significant delays in reporting,” and “would disrupt existing chain of custody protocols under the law and needlessly introduce the risk of error, lost ballots, or fraud.”⁵ The Secretary also expressed concern that there “is insufficient time to implement and train elections workers on” the Poll Watcher Rule and the Daily Reporting Rule. Despite these and many other objections, the SEB adopted the Hand Count Rule at its September 20 meeting.

As the Attorney General and the Secretary of State have opined, the three September 20 rules at issue here are both unlawful and, particularly given their last-minute adoption, infeasible to effectively implement. Georgia’s

³ GAVREO Comment to the SEB, dated Sept. 17, 2024, available at <https://www.democracydocket.com/wp-content/uploads/2024/09/GAVREO-Comments-on-Posted-SEB-Rules-9-17-24.pdf>.

⁴ Attorney General’s Memorandum, dated Sept. 19, 2024 (“AG Memo”), at 6, available at <https://atlantaciviccircle.org/wp-content/uploads/2024/09/StateElectionBoard.pdf>.

⁵ Letter of Charlene McGowan, dated Sept. 16, 2024 (“McGowan Letter”), at 2, attached as Exhibit B.

Election Code provides a detailed scheme for counting ballots but does not provide for hand counting at the precinct level on election night. Similarly, Georgia law clearly defines the areas in which poll watchers should be permitted and the information that counties must report during advance voting, but the SEB's new rules make impermissible additions. Where a statute speaks plainly and comprehensively on a matter, the SEB cannot add extra requirements or procedures. *E.g.*, *Dep't of Hum. Res. v. Anderson*, 218 Ga. App. 528, 529 (1995); *Pope v. Cokinos*, 231 Ga. 79, 80–82 (1973).

The challenged rules also do nothing to advance the SEB's stated objectives, and their last-minute timing is inconsistent with the SEB's limited authority to adopt rules that are “conducive to ... fair, legal, ... orderly,” and “uniform[]” election administration. O.C.G.A. § 21-2-31(1)–(2). The existing rules governing the counting of ballots, the placement of poll watchers, and the reporting of advance voting information have been implemented effectively in past elections and the SEB has not identified, nor do there exist, any unforeseen or emergency circumstances that justify these last-minute rules.⁶ Instead, Petitioners' insistence on these hasty rules has already eroded their

⁶ Petitioners' argument for a *per se* finding of harm is inapt, and in fact counsels against a stay of injunction. The issue before the Court challenges rulemaking, not the statutes governing elections; indeed, the Respondents argue that the rules exceed the authority and conflict with the relevant statutes and a ruling in their favor affirms the significance of the statutes in question.

alleged purpose “to ensure greater public confidence in the fairness of the upcoming election.” Brief of Appellant RNC at 6.

The Superior Court’s decision to enjoin these rules does not harm the Petitioners, but a decision to stay the injunction would irreparably harm the County Boards in numerous ways. The last-minute implementation of these rules will require the County Boards to divert significant resources away from vital election activities to develop new protocols, retrain poll workers, obtain adequate security for ballots and personnel, and secure the necessary facilities in which to conduct hand counts. *See, e.g.*, Affidavit of Nancy Boren (“Boren Aff.”) ¶¶ 25-28, 34-42, 43-49, attached as Exhibit C; Affidavit of Toronda M. Silas (“Silas Aff.”) ¶¶ 5–38, attached as Exhibit D. Many of these tasks will be difficult, if not impossible, because of the Secretary of State’s decision to delay providing guidance and the required form that would be needed to effectively implement these rules. Silas Aff. ¶¶ 18–19. The lack of statewide guidance will lead to non-uniformity across the State’s 159 counties. Silas Aff. ¶ 36. And the Hand Count Rule will require County Boards to make additional expenditures beyond what they had budgeted for conducting this election. Boren Aff. ¶¶ 12, 27, 49; Silas Aff. ¶¶ 22–23. The Hand Count Rule will inflict further harm on both the Boards and the public by delaying election results and needlessly

introducing human error into the ballot-counting process. Silas Aff. ¶¶ 8, 28–34.

Accordingly, the County Boards urge this Court to deny Petitioners’ request for a stay, preserve the status quo, and prevent the irreparable harm that the County Boards and other election administrators will face if the Hand Count Rule and other SEB rules take effect on October 22.

ARGUMENT

When considering a stay of injunction or supersedeas pending appeal, this Court weighs “[1] the likelihood that [Petitioners] will prevail on the merits of [their] appeal, [2] the extent to which [Petitioners] will suffer irreparable harm in the absence of a stay or injunction, [3] the extent to which a stay or injunction would harm the other parties with an interest in the proceedings, and [4] the public interest.” *Green Bull Georgia Partners, LLC v. Register*, 301 Ga. 472, 473-474 (2017). None of the factors cuts in favor of Petitioners with respect to the SEB rules adopted on September 20.

I. PETITIONERS ARE UNLIKELY TO PREVAIL ON THE MERITS WITH REGARD TO THE HAND COUNT RULE, THE POLL WATCHER RULE, AND THE DAILY REPORTING RULE

Petitioners are unlikely to succeed on the merits of their appeal regarding the Hand Count Rule, the Poll Watcher Rule, and the Daily

Reporting Rule.⁷ None of these rules is authorized by law and some directly conflict with the Georgia Election Code. This Court need not engage with the Superior Court’s broader constitutional analysis to conclude that these three rules are invalid.⁸ It is enough that the SEB violated the clear bounds of the statutes which created it and cabin its rulemaking authority.

A. The Three Rules Are Not Authorized By Law

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

⁷ In their own suits, the County Boards challenge the SEB’s September 20 rules as procedurally invalid and unreasonable under the APA.

⁸ Indeed, “[i]t is well established that this court will never decide a constitutional question if the decision of the case presented can be made upon other grounds.” *Bd. of Tax Assessors of Columbus, Ga. v. Tom’s Foods, Inc.*, 264 Ga. 309, 310 (1994); *see also Deal v. Coleman*, 294 Ga. 170, 171 n.7 (2013); *State v. Randall*, 318 Ga. 79, 82 (2024).

comprehensively on a matter. Each of these rules reach beyond statutory authority and they are therefore unlawful.

1. The Hand Count Rule

The Attorney General warned the SEB prior to its passage of the Hand Count Rule that the Rule is “not tethered to any statute” and thus is “likely the precise type of impermissible legislation that agencies cannot do.” AG Memo at 6. That is correct. No statute comes close to authorizing the type of hand counting required by the Hand Count Rule, including the statutes cited as “[a]uthority” for the Rule. Notice of Proposed Rulemaking, Revisions to Subject 183-1-12-.12 *Tabulating Results* (August 21, 2024), https://sos.ga.gov/sites/default/files/2024-08/seb-notice_of_proposed_rulemaking_183_1_12_.12a5_hand_count.pdf (“Notice of Proposed Rulemaking, Hand Count”) (citing O.C.G.A. §§ 21-2-483(a), 21-2-436, 21-2-420(a)); *see also EVA v. SEB*, Order Granting Declaratory and Injunctive Relief at 7 (“This hand counting exercise is nowhere authorized by the General Assembly in the Election Code.”).

As Petitioners acknowledge, O.C.G.A. § 21-2-483 mostly governs procedures at the tabulation center and is, therefore, largely irrelevant to the Hand Count Rule, which mandates hand counting at the precinct level prior to tabulation. The SEB likely cited § 21-2-483(a) because the first sentence reads:

“In primaries and elections in which optical scanners are used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent.” O.C.G.A. § 21-2-483(a). But this provision refers to the counting of ballots using optical scanners, not by hand. *See* O.C.G.A. § 21-2-483(g)(1), (h); *see also* O.C.G.A. § 21-2-300(a).⁹

Petitioners recognize that O.C.G.A. § 21-2-436 is likewise inapplicable because it governs “[p]recincts [u]sing [p]aper [b]allots,” not those using optical scanners. (Muscogee and Cobb Counties only use optical scanners.) This section also only provides for procedures “before the ballot box is opened,” such as announcing “the number of ballots issued to electors” based on paper ballot stubs. O.C.G.A. § 21-2-436. In contrast, the Hand Count Rule mandates new procedures after the poll manager and two witnesses “unseal and open each scanner ballot box.” Ga. Comp. R. & Regs. 183-1-12-.12(a)(5).

Nor is the Hand Count Rule authorized by O.C.G.A. § 21-2-420, which provides that “the poll officials in each precinct shall complete the required accounting and related documentation for the precinct.” O.C.G.A. § 21-2-420. Petitioners argue that the Hand Count Rule “clarifies” the phrase “required

⁹ Since the adoption and implementation of state-wide vote equipment in 2020, as required by O.C.G.A. § 21-2-300, this reference to the counting of ballots at the precinct has been understood to reference the counting of the ballots by the optical scanners, which create a record of the number of ballots cast. This ballot count is verified and reconciled during the canvassing process prescribed by O.C.G.A. § 21-2-493.

accounting and related documentation,” but this argument pushes the definition of the word “clarify” to the point of absurdity. The Hand Count Rule does not so much “clarify” the statutory requirement as it invents an entirely *new* requirement not contemplated by the statute. The term “required accounting” refers to the accounting expressly required by statute. *E.g.*, O.C.G.A. § 21-2-485. It cannot plausibly be read to implicitly authorize hand counting ballots at the precinct level, especially where the Legislature’s comprehensive scheme for ballot counting and tabulation contains not even a hint of any such requirement. *See, e.g., Dep’t of Hum. Res.*, 218 Ga. App. at 529 (declaring regulation invalid because it added a requirement beyond that mandated by statute).

2. The Poll Watcher Rule

The Attorney General opined that the Poll Watcher Rule “seeks to expand the enumerated locations where poll watchers may be designated” in tabulating centers “beyond those places identified in the statute.” AG Memo at 4. O.C.G.A. § 21-2-408(c) provides that poll watchers may be designated by the superintendent to serve in “the check-in area, the computer room, the duplication area, and such other areas as the superintendent may deem necessary to the assurance of fair and honest procedures in the tabulating center.” The Poll Watcher Rule appears to add to that statutory list by

requiring poll watcher access in any areas “that tabulation processes are taking place including but not limited to provisional ballot adjudication of ballots, closing of advanced voting equipment, verification and processing of mail in ballots, memory card transferring, regional or satellite check in centers and any election reconciliation processes.” Ga. Comp. R. & Regs. 183-1-13-.05. The Attorney General concluded that the rule “goes beyond the statutorily designated list of places a superintendent may decide to place poll watchers” and “does not carry into effect a law already passed by the General Assembly but rather expands upon the statute.” AG Memo at 3.

Insofar as the Court accepts the Attorney General’s position that the Poll Watcher Rule expands the areas in tabulating centers where the superintendent must allow poll watchers, it should be declared unlawful and inconsistent with O.C.G.A. § 21-2-408(c). If, however, the Court reads the Rule to merely advise superintendents on additional areas where they may allow poll watchers, then the rule is not invalid, but it should be given an appropriate limiting construction to protect the County Boards from uncertainty and insecurity on Election Day.

3. The Daily Reporting Rule

The Daily Reporting Rule also exceeds the SEB’s authority by expanding the counties’ reporting requirements beyond those set forth in O.C.G.A. § 21-

2-385(e). The General Assembly specified detailed requirements for what information the county boards of registrars or absentee ballot clerks must report regarding the ballots issued, received, or rejected during the advance-voting period, but it did not include certain information the SEB now seeks to require, including the number of political party or nonpartisan ballots cast. *See also EVA v. SEB*, Order Granting Declaratory and Injunctive Relief at 7 (“This rule impermissibly expands upon and contradicts what is outlined in the Election Code.”). Because the SEB cannot add extra requirements or procedures where the statute speaks plainly and comprehensively on a matter, *Dep’t of Hum. Res.*, 218 Ga. App. at 529, the Daily Reporting Rule exceeds the SEB’s authority.

* * *

In short, the SEB can only adopt rules “to carry into effect a law already passed” or otherwise “administer and effectuate an existing enactment of the General Assembly.” *HCA Health Servs.*, 265 Ga. at 502. It cannot write new laws from scratch. These rules run afoul of that principle and are, therefore, invalid.

B. The Three Rules Are Inconsistent With The SEB’s Limited Rulemaking Authority

The SEB only has statutory authority to adopt rules that will promote “uniformity” in election administration across the state and that are

“conducive to the fair, legal, and orderly conduct of ... elections.” O.C.G.A. § 21-2-31(1)–(2). Adopting election rules that go into effect on October 22—a week after early voting has started and just 14 days from Election Day—cannot promote “orderly,” “fair,” and “uniform[]” election administration. It will do the opposite. *See, e.g.*, Silas Aff. ¶¶ 5–36; Boren Aff. ¶¶ 33, 53–58.

In opposing the September 20 rules’ last-minute timing, both the Attorney General and Secretary of State correctly invoked the U.S. Supreme Court’s *Purcell* principle, *see* AG Memo at 2; McGowan Ltr. at 2—the “bedrock tenet of election law” that “[w]hen an election is close at hand, the rules of the road must be clear and settled” to avoid “unfair consequences.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). “Running elections state-wide is extraordinarily complicated and difficult”; it “require[s] enormous advance preparations by state and local officials, and pose[s] significant logistical challenges.” *Id.* at 880. Implementing the SEB’s last-minute rules would “require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion.” *Id.*; *see also Grace, Inc. v. City of Miami*, No. 23-12472, 2023 WL 5286232, at *1 (11th Cir. Aug. 4, 2023). While *Purcell* only binds federal courts, its rationale readily applies here.

Petitioners suggest that the U.S. Supreme Court’s *Purcell* line of cases counsel in favor of a stay, but they miss the core insight of *Purcell v. Gonzalez*, 549 U.S. 1 (2006). Accepting Petitioners’ position would mean that even flagrantly illegal state election board rules would be immune from judicial review so long as they were adopted close to an election. Nothing in *Purcell* supports such an absurd result. To the contrary, federal judges who have advocated for expanding *Purcell* beyond federal courts have insisted that the doctrine should apply to “last-minute interference” by “state ... agencies” such as the SEB. *Wise v. Circosta*, 978 F.3d 93, 116 (4th Cir. 2020) (Wilkinson, J., Agee, J., Niemeyer, J., dissenting). Because the SEB’s last-minute rule changes will cause disorder, unfairness, and non-uniformity, they are inconsistent with the SEB’s rulemaking authority.¹⁰

II. NEITHER PETITIONERS NOR THE SEB WILL FACE IRREPARABLE HARM IF THE HAND COUNT RULE AND OTHER RULES DO NOT TAKE EFFECT

The Superior Court’s injunction against the three September 20 rules will harm neither Petitioners nor the SEB. In the first instance, no party has

¹⁰ Even if the *Purcell* doctrine were to apply here to restrain Georgia courts, the four-part test for overcoming *Purcell* proposed by Justice Kavanaugh is likely met: “(i) the underlying merits are entirely clearcut in favor of [the County Boards]; (ii) [the County Boards] would suffer irreparable harm absent the injunction; (iii) [the County Boards] ha[ve] not unduly delayed bringing the complaint to court; and (iv) the [relief is] at least feasible before the election without significant cost, confusion, or hardship.” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring).

any legitimate interest in seeing unlawful rules implemented. Nor has any party identified any urgent need to rush these rules into place for the November 5 election, or any explanation for why (if they were so important) the SEB failed to adopt the rules much earlier. *See also Cobb BOER v. SEB*, Order, dated Oct. 15, 2024, at 6 (“The SEB has articulated no injury to itself should implementation of its Hand Count Rule be delayed[.]”). The SEB notably did not invoke its emergency rulemaking authority in adopting the last-minute rules. For good reason: there is no “imminent peril to the public health, safety, or welfare” to warrant rushing the new rules into place for the November election. O.C.G.A. § 50-13-4(b).

Nor does the Hand Count Rule advance the SEB’s stated goals; if anything, it is likely to undermine them. The SEB’s stated purpose for the Hand Count Rule is “to ensure the secure, transparent, and accurate counting of ballots.” Notice of Proposed Rulemaking, Hand Count at 2. The rule does not advance this goal because there are already safeguards in place to ensure that the number of ballots counted matches the number of ballots cast. In fact, the Hand Count Rule will likely undermine and disrupt existing safeguards given its late-hour passage and ambiguous language.

Similarly, no party would be harmed if the Poll Watcher Rule and Daily Reporting Rule do not take effect before Election Day. The Poll Watcher Rule

is an amendment to a rule that has been in effect since 1970 and has been in its current form since 2003. The existing rule has been effectively implemented for decades, and the SEB has not identified any urgent need to rush its amendment into place for the November 5 election. No exigency demands that it be changed at the eleventh hour for this election. The SEB's only stated purpose in enacting the rule was to "clarify the existing election code and to ensure poll watchers may fairly observe all processes of the tabulation center," but, given the Attorney General's opinion that the rule is unauthorized by statute, allowing it to go into effect on October 22 will serve only to create confusion—not clarity—about where poll watchers are permitted in tabulating centers.

The Daily Reporting Rule provides an expansion of a statutory requirement that has been in effect since 2021 and has been effectively implemented absent the SEB's rule. Indeed, counties are already conducting advance in-person voting, which began last week, using the existing rules. No party would be harmed by allowing counties to continue using the same reporting requirements throughout the early voting period. Little, aside from confusion, is likely to be accomplished by changing the reporting requirements in the middle of the advance voting period.

In addition, the SEB and the Secretary of State already have instructed local officials to “only follow the rules as they previously existed and without the most recent amendments by the SEB” and that “[a]ny guidance previously distributed by the SOS Elections Division regarding these rules & amendments should be disregarded.” Message from SEB Chairman John Fervier and SOS General Counsel Charlene McGowan, dated Oct. 17, 2024, attached as Exhibit E. Given this definitive communication, any fleeting interest the SEB might have had in implementing the September 20 rules has ceased.

III. THE COUNTY BOARDS FACE IRREPARABLE INJURY IF THE COURT ALLOWS THE HAND COUNT RULE AND OTHER RULES TO TAKE EFFECT

Muscogee and Cobb, like counties across the state, are committed to administering elections that are smoothly run, thoughtfully planned, and secure. The SEB’s passage of these rules mere weeks before this November’s election creates enormous legal, logistical, and budgetary challenges that jeopardize these efforts. *See* Silas Aff. ¶¶ 5–38. Given the limited time remaining before Election Day, the complex processes involving staff, security, and ballot integrity that counties must develop, and the Secretary of State’s decision not to provide guidance and mandatory forms pending litigation, it may well be impossible for the County Boards and other jurisdictions to

adequately prepare for these last-minute rule changes. These very real logistical barriers and administrative burdens create irreparable harm.

A. Administrative Burden On Election Staff

To comply with the Hand Count Rule, the County Boards' dedicated staff must divert resources from regular Election Day preparation to complete an extensive list of time-consuming tasks. *See* Boren Aff. ¶¶ 13–42. In Muscogee, for example, the Election Director must create guidance and instructions for poll managers to decide when, whether, and how to conduct hand counts on the evening of Election Day or the following day(s). Boren Aff. ¶ 13(b). The office must incorporate new, uniform documentation associated with security and reporting required in the process. This may well be made nearly impossible by the Secretary of State's decision not to provide guidance or mandatory forms for the Hand Count Rule pending litigation. *See also* Silas Aff. ¶¶ 17–19. The Election Director would also need to create further guidance to implement the Poll Watcher Rule and the Daily Reporting Rule.

Board staff must also secure the necessary facilities for conducting hand counts after Election Day. Boren Aff. ¶¶ 13, 48. The Hand Count Rule allows the Poll Manager to choose to start the count the following day based on factors such as fatigue of the poll workers, meaning that election administrators will not know which precincts will perform their count on election night until *after*

the polls close. Boren Aff. ¶ 43. This will lead to widespread non-uniformity across the State’s 159 counties, with poll officers in each precinct free to start the count at different times and for different reasons. Silas Aff. ¶ 36. Moreover, if the hand count cannot be completed on election night (which is likely), “the Hand Count Rule requires moving the ballots to the county election office” where the counting must continue, which “needlessly introduce[s] the risk of error, lost ballots, or fraud.” Silas Aff. ¶ 30. And Cobb County’s election office “has insufficient space to accommodate this new phase of the ballot counting process.” Silas Aff. ¶ 31. The Muscogee Board and other similarly situated boards will likewise need to find space for an unknown number of precincts to conduct hand counts after Election Day. Performing all these tasks will divert time, energy, and resources away from other critical election responsibilities. Boren Aff. ¶¶ 14, 40.

B. Training And Retention Of Poll Officials

Most training of poll workers is already complete. To comply with the Hand Count Rule, the County Boards must identify, potentially hire, and train three poll workers for each precinct to hand count all ballots cast in that precinct on Election Day. Additional training may also be required to comply with the Poll Watcher Rule given the unanticipated presence of poll watchers in certain spaces. At this late stage in the election cycle, the majority of poll

workers have already been trained on the existing rules. Boren Aff. ¶¶ 35-36. Thus, the identified poll workers must be retrained with new Hand Count Rule procedures, thereby diverting time, energy, and effort away from other critical election day preparation. The Hand Count Rule will also cause the County Boards to lose critical personnel: “[p]oll managers and workers have warned they may quit their jobs if required to implement the Rule and manage its fallout.” Silas Aff. ¶ 35; *see also id.* ¶ 16.

One of the essential elements of poll worker training involves explaining and demonstrating the many forms that poll workers will need to use in their work. Silas Aff. ¶¶ 17-20. As noted above, none of the mandated forms for the hand count yet exist, thus impeding county boards’ ability to even begin training at this eleventh hour. For example, the Hand Count Rule requires that the three poll officers performing the count produce a “control document” with specified information about the ballots. It is difficult, if not impossible, to train poll workers to use such a form when the Secretary of State has yet to create it. Boren Aff. ¶ 19.

C. New Financial Burdens

For most County Boards, financial planning for this year’s November election started in late 2023 or early 2024. This planning did not anticipate the burdens of a hand count by three poll workers per precinct. Boren Aff. ¶ 12.

Implementing the Hand Count Rule could require hiring several additional staff because the elections office must identify three poll workers who are available to conduct the hand count either late in the evening after a long shift or the following day. Even if they are available, County Boards would need to pay for an additional day for this same poll worker—funds that are not in the original budget for the November 2024 election. *See also* Silas Aff. ¶¶ 24-26.

Furthermore, County Boards need to pay to hire security for additional hours during the hand count to ensure that election staff and ballots are safe and secure. Silas Aff. ¶ 21. If the hand count is permitted to be conducted outside of the county election office, the Boards may also have to pay to rent a location where all the remaining precincts will fit for the hand count following election night. This is not merely a minor inconvenience. These non-budgeted expenses will force the County Boards “to cut funding for other approved budget items,” disrupting the County Boards’ “budgetary planning.” Silas Aff. ¶¶ 22–23.

D. Toll On Election Workers

The County Boards have teams of seasoned, dedicated, hardworking, and reliable poll workers, many of whom have served in the role for several election cycles. Nonetheless, the Hand Count Rule is likely to stress and fatigue even these dedicated poll workers. On Election Day, poll managers and

supervisory staff arrive at 5:30 A.M. and poll workers arrive at 6:00 A.M. They stay on site until after the last person in line at 7:00 P.M. has completed voting. *See* Silas Aff. ¶ 26. This is already an exhausting day of work, but the Hand Count Rule will add at least several additional hours, particularly in precincts with many ballots to hand count. Boren Aff. ¶¶ 13(b), 61. The Hand Count Rule requires the poll workers to conduct the count either the evening of Election Day or the following day, which could extend many workers' schedules late into the evening. Given the lengthy set of responsibilities for closing precincts, the County Boards anticipate that at least some of the hand counts will occur after Election Day.

Poll workers are accustomed to the orderly and careful enactment of new procedures, so the chaos and uncertainty around the Hand Count Rule is already causing strife and concern. The Hand Count Rule also requires that the count be made public, but it provides insufficient guidance on the parameters of that public observation, which could generate confusion and security risks during the hand counting process. Silas Aff. ¶ 21. Allowing poll watchers into spaces that were not designed to accommodate them may exacerbate these risks. Many poll workers are willing to perform a hand count if required, but in several training sessions so far, many have expressed anxiety about how the logistics of such a count will occur. *See* Silas Aff. ¶ 35.

It is therefore unsurprising that “several poll managers have said they will resign if the Hand Count Rule is in effect on election day.” Silas Aff. ¶ 16.

* * *

Each of the above harms will be beyond remedy if the Court grants the requested stay. If the Court allows the rules to go into effect on October 22 and declares them invalid *after* the election, the County Boards will have no recourse against Petitioners, the SEB, or the State to remediate the immense physical, financial, legal, and practical burdens created by the last-minute rule changes. Thus, the rules will “seriously disrupt election administration” throughout the State and cause county superintendents irreparable harm if allowed to go into effect. Silas Aff. ¶ 38.

IV. DENYING THE STAY REQUEST FURTHERS THE PUBLIC INTEREST

The Superior Court’s injunction blocking the SEB’s eleventh-hour rules from taking effect advances the public interest—one that counties bring decades of experience ensuring: to have safe, secure, smoothly-run elections in Georgia. The injunction prevents election night confusion while advancing election security. *See also Cobb BOER v. SEB*, Order dated Oct. 15, 2024, at 7 (“Anything that adds uncertainty and disorder to the electoral process disserves the public.”).

As described above, existing rules already ensure the accuracy and security of Georgia's vote counting, and the Hand Count Rule—especially implemented this late in the process—does not contribute to those goals.¹¹ Moreover, implementation of the Hand Count Rule midstream of an election will undermine the very purpose that the SEB purports to attempt to further. It exposes the election processes to unnecessary security risks and inconsistent practices. Lack of time to plan, anticipate potential scenarios, hire sufficient staff, and create vital processes to ensure security could also threaten the trust voters have in the election systems that the County Boards and other administrators have so painstakingly worked to build.

A. Security Risks

Without sufficient time to plan and implement, the Hand Count Rule creates risks to both the security of ballots and the security of election workers. The SEB has provided no guidance on how to address either. With regard to ballots, the Hand Count Rule creates risks because it significantly increases the amount of time outside of the securely sealed ballot boxes and the number of hands that touch them. Boren Aff. ¶ 56. Any time ballots are outside of the ballot boxes creates risk. As the Secretary of State has opined, the new hand

¹¹ Existing SEB rules already require that the poll manager reconcile the number of voters who check in at the polls with the number of ballots scanned and the number of ballots unable to be scanned. *See* Ga. Comp. R. & Regs. 183-1-12-.12(a)(1)-(2) (as effective until Oct. 22, 2024).

count procedures would “needlessly introduce the risk of error, lost ballots, and fraud.” McGowan Ltr. at 2; Silas Aff. ¶ 30. Ballots should be handled based on clear procedures for documenting who handled them and how they were handled. Boren Aff. ¶ 56.

The Hand Count Rule introduces an entirely new instance of opening the ballot boxes, with extended exposure outside of the boxes that would require new safeguards to ensure security during the hand count. For example, detailed procedures will be required to keep track of each batch of ballots, document who counted which batches, and ensure that all ballots are stored properly. These procedures do not yet exist. The Poll Watcher Rule may also jeopardize the security of both ballots and election workers by allowing poll watchers into spaces not designed for their presence. These spaces may not be sized and laid out appropriately to allow election workers to work effectively without interference from poll watchers.

Even if all these procedures could be executed uniformly by election day, the Hand Count Rule still increases the risk to ballot security by disrupting chain-of-custody protocols. The Hand Count Rule provides no restrictions on the number of people or credentials for who can observe the hand count, how far from the counting they must stay, and other necessary protocols to ensure that poll workers can conduct the counts in secure conditions without

disruption. All of these concerns are legitimate election integrity matters further counseling against implementation of the Hand Counting Rule at this late date.

B. Voter Trust

The County Boards and staff hold themselves to a high standard and strive for excellence in their work. Voters trust the Boards because of their track records of providing among the most secure, fair, and efficient elections in the country. The Hand Count Rule threatens both the quality of their work and the associated voter trust. Boren Aff. ¶ 56; Silas Aff. ¶ 32. This is true for many other election operations around Georgia.

Typically, when a new procedure is required, local officials ensure that all the steps of the procedure are carefully planned out. Boren Aff. ¶ 32. Protocols are practiced and tested—typically in non-Presidential election years—to ensure the process is streamlined, efficient, and accurate on Election Day. That level of rigor is impossible here given the amount of time remaining before Election Day, increasing the risk of mishaps that lead to confusion or call into question the security of the ballots.

Furthermore, as the Secretary of State has explained: “It is far too late in the election process for counties to implement new rules and procedures.” McGowan Letter at 2. Petitioners suggest that the U.S. Supreme Court’s

Purcell line of cases counsel in favor of a stay, but they miss the core insight of *Purcell*: In the lead up to an election, last-minute changes—regardless of who seeks to impose them—can “result in voter confusion,” and “[a]s an election draws closer, that risk will increase.” *Purcell*, 549 U.S. at 4-5. Here it is the SEB, not the courts, seeking to make unnecessary last-minute changes that will lead to confusion. The SEB has not identified any “new problem” or emergency requiring last-minute intervention, nor is there any such exigent circumstance. The method of counting ballots has been set since at least 2020, the rules for poll watchers have been in effect since 2003, and the statute governing advance voting reporting requirements has been in effect with no SEB rule since 2021. None of the SEB’s new rules respond to unforeseen circumstances that would require such last-minute changes.

In this context, allowing the Superior Court’s injunction to remain in effect at least through the end of this election cycle would serve the public interest by reducing the risk of chaos and confusion and ensuring that the election is administered consistent with the robust and effective existing rules.

CONCLUSION

For the foregoing reasons, this Court should not stay the Superior Court’s injunction and should deny Petitioners’ motion supersedeas.

CERTIFICATION OF WORD COUNT

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted,

/s/ Thomas F. Gristina

James C. Clark, Jr.
Georgia Bar No.: 127145
Thomas F. Gristina
Georgia Bar No.: 452454

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

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

Elaine Poon
Georgia Bar No.: 321308

PUBLIC RIGHTS PROJECT
490 43rd Street, Unit #115
Oakland, CA 94609
(510) 738-6788
elaine@publicrightsproject.org

*Counsel for Muscogee County Board
of Elections and Registration*

Michael A. Caplan
Ga. Bar No. 601039
T. Brandon Waddell
Ga. Bar No. 252639
Ashley C. Brown
Ga. Bar No. 287373

CAPLAN COBB LLC
75 Fourteenth Street, NE, Suite 2700
Atlanta, Georgia 30309
Tel: (404) 596-5600
mcaplan@caplancobb.com
bwaddell@caplancobb.com
abrown@caplancobb.com

Daniel W. White
Georgia Bar No. 153033
William A. Pinto, Jr.
Georgia Bar No. 405781
HAYNIE, LITCHFIELD &
WHITE, PC
222 Washington Avenue
Marietta, Georgia 30060
(770) 422-8900
dwhite@hlw-law.com
bpinto@hlw-law.com

Nikhel S. Sus*
Citizens for Responsibility and Ethics
in Washington
1331 F Street NW, Suite 900
Washington, DC 20004
Telephone: (202) 408-5565
nsus@citizensforethics.org

**pro hac vice forthcoming*

*Counsel for Cobb County Board
of Elections and Registration*

Dated: October 21, 2024

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a true and accurate copy of the foregoing document to all parties and counsel of record via United States mail. In view of the expedited nature of this appeal, I have also sent same by electronic mail to below-listed counsel:

Alex B. Kaufman, Esq.
Kevin T. Kucharz, Esq.
CHALMERS, ADAMS, BACKER &
KAUFMAN, LLC
100 N. Main Street, Suite 300
Alpharetta, GA 30009
kkucharz@chalmersadams.com
akaufman@chalmersadams.com

Christopher S. Anulewicz, Esq.
Jonathan R. DeLuca, Esq.
Wayne R. Beckermann, Esq.
BRADLEY ARANT BOULT
CUMMINGS LLP
Promenade Tower, 20th Floor
1230 Peachtree Street, NE
Atlanta, GA 30309
canulewicz@bradley.com
jdeluca@bradley.com
wbeckermann@bradley.com

Marc James Ayers, Esq.
BRADLEY ARANT BOULT
CUMMINGS LLP
1819 5th Avenue
North Birmingham, AL 35203
mayers@bradley.com

William C. Collins, Jr., Esq.
Robert D. Thomas, Esq.
Joseph H. Stuhrenberg, Esq.
BURR & FORMAN LLP
1075 Peachtree Street NE Suite
3000
Atlanta, GA 30309
wcollins@burr.com
rthomas@burr.com
jstuhrenberg@burr.com

Michael R. Burchstead, Esq.
BURR & FORMAN LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
mburchstead@burr.com

Raechel Kummer, Esq.
MORGAN, LEWIS & BOCKIUS
LLP
One Oxford Centre
Thirty-Second Floor
Pittsburgh, PA 15219
raechel.kummer@morganlewis.com

Katherine Vaky, Esq.
MORGAN, LEWIS & BOCKIUS
LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
katherine.vaky@morganlewis.com

Theresa J. Lee, Esq.
Sophia Lin Lakin, Esq.
Sara Worth, Esq.
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
tlee@aclu.org
slakin@aclu.org
sw_vrp@aclu.org

Cory Isaacson, Esq.
Caitlin May, Esq.
Akiva Freidlin, Esq.
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION OF
GEORGIA, INC.
P.O. Box 570738
Atlanta, GA 30357
cisaacson@acluga.org
cmay@acluga.org
afreidlin@acluga.org

Gerald Weber, Esq.
LAW OFFICES OF GERALD
WEBER
P.O. Box 5391
Atlanta, GA 31107
wgerryweber@gmail.com

Ezra D. Rosenberg, Esq.
Julie M. Houk, Esq.
Pooja Chaudhuri, Esq.
Alexander S. Davis, Esq.
Heather Szilagyi, Esq.
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, D.C. 20005
erosenberg@lawyerscommittee.org
jhouk@lawyerscommittee.org
pchaudhuri@lawyerscommittee.org
adavis@lawyerscommittee.org
hszilagyi@lawyerscommittee.org

This 21st day of October, 2024.

/s/ Thomas F. Gristina

Thomas F. Gristina

Georgia Bar No.: 452454

EXHIBIT A

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COBB COUNTY BOARD OF ELECTIONS
AND REGISTRATION *et al.*,
Petitioners

v.

STATE ELECTION BOARD *et al.*,
Respondents

CIVIL ACTION 24CV012491

ORDER ON VARIOUS PENDING MOTIONS

In this case, Petitioner Cobb County Board of Elections and Registration (CCBOER) seeks a declaratory judgment pursuant to O.C.G.A. § 50-13-10 that six rules governing the conduct of Georgia's elections promulgated by Respondent State Election Board (SEB) on 20 September 2024 are invalid. The rules are set to take effect on 22 October 2024, seven days after early voting starts and fourteen days before the general election. Petitioner also seeks immediate relief as to the rule it deems most disruptive -- the Hand Count Rule, Ga. Comp. R. & Regs. r. 183-1-12-.12(a)(5) -- via an emergency temporary restraining order or interlocutory injunction enjoining the Hand Count Rule from taking effect and being enforced. Petitioner-Intervenors Teresa Crawford, Loretta Mirandola, Anita Tucker, Democratic National Committee, and Democratic Party of Georgia Inc. also filed an emergency motion for interlocutory injunction seeking the same relief as to the Hand Count Rule. On 15 October 2024 the Court held an expedited bench trial on both the emergency motions as well as the merits of Petitioners' claims. This non-final order addresses several pending motions in the case, including the request for interlocutory relief.

INTERVENTION

The aforementioned Petitioner-Intervenors and the Georgia Republican Party have all sought to intervene in this case (the latter as a Respondent-Intervenor). The CCBOER does not

oppose the intervention of any of these parties. The SEB did not oppose the concept of intervention but did lodge an objection to the timing of the intervention -- ironically that the SEB should have more time to prepare for responding to the positions espoused and relief sought by the intervenors. The Court finds that all intervenors qualify for intervention as a matter of right in that each “claims an interest relating to ... the subject matter of the action and ... is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest” (and that those interests are not adequately represented by existing parties). O.C.G.A. § 9-11-24(a)(2). Consequently, the Court GRANTS the two requests for intervention. Counsel for SEB proved more than prepared for the arguments raised by Petitioner-Intervenors, which were parallel to or natural extensions of Petitioner’s own arguments.

AMICI

The Muscogee County Board of Elections and Registration as well as a collection of concerned voters and non-profit organizations¹ seek to file amicus briefs in this case. Those motions are GRANTED and the two briefs are now deemed part of the record in this case.

CONSOLIDATION

The CCBOER filed an identical suit seeking the same declaratory judgments predicated on different jurisdictional authority (Paragraph V of Section Two of Article I of the Georgia Constitution). *See* Civil Action 24CV012560. When this case moved more quickly toward final hearing, the CCBOER filed a motion to consolidate the two cases pursuant to O.C.G.A. § 9-11-42(a), which authorizes a trial court to consolidate “actions involving a common question of law or fact” -- provided all parties consent. All parties did consent on the record at the final hearing and so the Court now ORDERS the consolidation of 24CV012560 with this case.

¹ Elbert Solomon, Porch’s Miller, Ava Bussey, Bryan Nguyen, Raynard Lanier Jr., The League of Women Voters of Georgia, New Georgia Project, Delta Sigma Theta Sorority Inc., and The Secure Families Initiative.

INTERLOCUTORY INJUNCTION

As mentioned, both Petitioner and Petitioner-Intervenors moved for a temporary restraining order or interlocutory injunction to halt implementation of the Hand Count Rule pending a final ruling on its validity and enforceability.² Petitioner's motion is supported by its verified petition, an affidavit of its Chairwoman, and exhibits admitted at the final hearing. Petitioner-Intervenors' motion is supported by their verified petition, four affidavits, and exhibits admitted at the hearing. The SEB presented oral argument and exhibits in opposition to the motions, as did Respondent-Intervenor.

The Hand Count Rule is an amendment of Ga. Comp. R. & Regs. r. 183-1-12-.12(a)(5). The amended language provides, among other things, that after the polls close, the poll manager and two poll officer witnesses at every precinct in every county shall unseal and open each scanner ballot box and remove the paper ballots. The ballots are then presented to three poll officers to "independently count the total number of ballots removed from the scanner, sorting into stacks of 50 ballots, continuing until all of the ballots have been counted separately by each of the three poll officers."³ The poll officers each need to reach the same count.⁴ When they are so aligned, they sign a "control document"⁵ containing certain identifying information (polling place, ballot scanner serial number, etc.). If the number at which the three poll workers all ultimately arrive does not match the figures "recorded on the precinct poll pads, ballot marking devices [BMDs]

² No Petitioner sought emergency injunctive relief as to any of the other five challenged SEB rules.

³ Importantly, the poll workers are *not* counting votes, as in tabulating how many votes for candidate X versus how many for candidate Y. They are merely counting the total number of ballots contained in the scanner ballot boxes.

⁴ The amended rule is silent as to what happens if the three counters persist in reaching different counts.

⁵ The amended rule does not specify the origin of this "control document." The Secretary of State is tasked statutorily to create and furnish "all blank forms ... for use in all elections and primaries." O.C.G.A. § 21-2-50(a)(5). The record before this Court is that the Secretary is not preparing such a form for this election cycle.

and scanner recap forms,” the poll manager must “immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken.”

The decision about when to start this hand count rests with the poll manager or assistant poll manager. If a scanner ballot box contains more than 750 ballots on Election Day, the poll manager is authorized to commence the hand count the next day and finish at any point during the week designated for county certification. If the hand counting does not occur on Election Day at the precinct, it must take place at the County election office.

Petitioner and Petitioner-Intervenors seek a declaration that the Hand Count Rule is invalid.⁶ Declaratory judgment actions brought pursuant to O.C.G.A. § 50-13-10 track the procedure established by the Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.* That Act empowers courts to grant injunctive and other interlocutory relief in substantially the manner as and under the same rules applicable to equity cases. O.C.G.A. § 9-4-3(b). Whether to grant an injunction is a matter within the Court’s discretion according to the circumstances of the case. O.C.G.A. § 9-5-8. “[T]he main purpose of an interlocutory injunction is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner.” *City of Waycross v. Pierce Cnty. Bd. of Commissioners*, 300 Ga. 109, 111 (2016). Put differently, an interlocutory injunction should “prevent one [party] from hurting the other whilst their respective rights are under adjudication.” *Grossi Consulting, LLC v. Sterling Currency Grp., LLC*, 290 Ga. 386, 388 (2012).!

⁶ Respondent and Respondent-Intervenor raised several jurisdictional arguments that, if successful, would require dismissal of this case. A more thorough ruling will follow, but the Court finds provisionally that among the various Petitioners there exists both standing and capacity to sue.

In determining whether to impose an interlocutory injunction, the Court must consider whether the following four factors exist:

- (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted;
- (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined;
- (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and
- (4) granting the interlocutory injunction will not disserve the public interest.

State v. Fed. Def. Program, Inc., 315 Ga. 319, 345 (2022). A movant need not prove all four factors since the test for temporary injunctive relief is a balancing one. *Id.* The first factor -- threat of irreparable injury to the moving party -- is the most important. *Id.*

Today, the status quo is that there is no Hand Count Rule; it does not go into effect until 22 October 2024. Today is also the first day of early voting and only three weeks away from the general election. Should the Hand Count Rule take effect as scheduled, it would do so on the very fortnight of the election. As of today, there are no guidelines or training tools for the implementation of the Hand Count Rule. Nor will there be any forthcoming: the Secretary of State cautioned the SEB before it passed the Hand Count Rule that passage would be too close in time to the election for his office to provide meaningful training or support (Petitioner's Ex. 10); after passage and the unsurprising efflorescence of suits such as this one, the Secretary reaffirmed his inability to provide last-minute logistical support for the last-minute rule (Petitioner's Ex. 16).

The Court finds that Petitioner and Petitioner-Intervenors have made a sufficient showing of a substantial threat of irreparable harm. Our Boards of Election and Superintendents are statutorily obligated to ensure that elections are "honestly, efficiently, and uniformly conducted." O.C.G.A. § 21-2-70(8). Failure to comply with statutory obligations such as these can result in

investigation by the SEB, suspension, and even criminal prosecution. (While the latter is far-fetched, it is not an impossibility in this charged political climate.) Petitioner and Petitioner-Intervenors have further demonstrated how the 11^{th-and-one-half} hour implementation of the Hand Count Rule will make this coming election inefficient and non-uniform by the introduction of an entirely new process -- the precinct-level hand count -- that involves thousands of poll workers handling, sorting, and counting actual ballots in a manner unknown and untested in the era of ballot scanning devices. No training has been administered (let alone developed), no protocols for handling write-in ballots (which are handled separately from regular ballots; *see* O.C.G.A. § 21-2-483(e)) have been issued, and no allowances have been made in any county's election budget for additional personnel and other expenses required to implement the Hand Count Rule.⁷ The administrative chaos that will -- not may -- ensue is entirely inconsistent with the obligations of our boards of elections (and the SEB) to ensure that our elections are fair, legal, and orderly.

The remainder of the factors similarly favor granting temporary injunctive relief. The SEB has articulated no injury to itself should implementation of its Hand Count Rule be delayed while the Court considers the merits of Petitioner's declaratory judgment action. Clearly the SEB believes that the Hand Count Rule is smart election policy -- and it may be right. But the timing of its passage make implementation now quite wrong. From the arguments made in court today, it also appears that Petitioner and Petitioner-Intervenors enjoy a substantial likelihood of success on the merits of their claim that the Hand Count Rule was adopted in violation of the Administrative Procedures Act, O.C.G.A. § 50-13-1 *et seq.*, that it was in derogation of the SEB's

⁷ Superintendents are required to prepare their budgets annually, based upon the prior two years' actual expenditures and a forecast for the coming year. O.C.G.A. § 21-2-70(12). No superintendent (or board of elections) could have properly budgeted for a rule that was not passed until several weeks before a presidential general election and which would require extra hours (or days) of personnel, along with extra security and extra transportation of materials to the tabulating center.

limited rule-making authority, and that, at least when adopted, it was unreasonable to implement it.

Finally, the public interest is not disserved by pressing pause here. This election season is fraught; memories of January 6 have not faded away, regardless of one's view of that date's fame or infamy. Anything that adds uncertainty and disorder to the electoral process disserves the public. On paper, the Hand Count Rule -- if properly promulgated -- appears consistent with the SEB's mission of ensuring fair, legal, and orderly elections. It is, at base, simply a check of ballot counts, a human eyeball confirmation that the machine counts match reality. But that is not what confronts Georgians today, given the timing of the Rule's passage. A rule that introduces a new and substantive role on the eve of election for more than 7,500 poll workers who will not have received any formal, cohesive, or consistent training and that allows for our paper ballots -- the only tangible proof of who voted for whom -- to be handled multiple times by multiple people following an exhausting Election Day all *before* they are securely transported to the official tabulation center does not contribute to lessening the tension or boosting the confidence of the public for *this* election. Perhaps for a subsequent election, after the Secretary of State's Office and the 150+ local election boards have time to prepare, budget, and train -- but not for this one:


[S]tate and local election officials need substantial time to plan for elections. Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials and pose significant logistical challenges. [Implementing the Hand Count Rule] would require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion

Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring)

* * *

Because the Hand Count Rule is too much, too late, its enforcement is hereby enjoined while the Court considers the merits of Petitioner and Petitioner-Intervenors' case. Ga. Comp. R. & Regs. r. 183-1-12-.12 as it is written today -- *i.e.*, the status quo -- shall remain in effect until the Court enters a final order in this case.

SO ORDERED this 15th day of October 2024.


Judge Robert C.I. McBurney
Superior Court of Fulton County

Filed and served electronically via eFileGA

EXHIBIT B



Office of the Secretary of State

Brad Raffensperger

SECRETARY OF STATE

Charlene McGowan

GENERAL COUNSEL

September 16, 2024

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

Mr. Chairman,

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

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

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

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

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

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

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

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

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

Sincerely,

Charlene S. McGowan

General Counsel

EXHIBIT C

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

MUSCOGEE COUNTY BOARD OF)	
ELECTIONS AND REGISTRATION,)	
)	
Petitioner,)	Civil Action No. SU2024CV002288
)	
v.)	
)	
STATE ELECTION BOARD,)	
)	
Respondent.)	
)	

AFFIDAVIT OF NANCY BOREN

1. My name is Nancy Boren. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. I am the Director of Elections and Voter Registration for Muscogee County. As of December 15, 2024, I will have served in this role for Muscogee County for 29 years.

3. In my position, I oversee all elections-related activities including but not limited to creating procedures for all aspects of voter registration, primary elections, and the general election. Supervision, training, and administration of all employees are part of my responsibilities as director. I oversee both the content and administration of training for temporary and permanent staff.

4. Alongside Secretary of State Brad Raffensperger, I serve as one of two members from Georgia on the Standards Board of the United States Election Assistance Commission. This is an independent, bipartisan commission which has a mission to support election officials

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

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

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

Background On Muscogee’s Elections

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

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

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

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

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

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

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

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

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

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

New Procedures and Guidance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Training

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

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

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

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

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

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

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

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

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

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

Logistics for the Hand Count

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

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

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

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

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

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

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

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

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

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

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

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

Impacts of Incorporating the Hand Count at This Late Hour

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

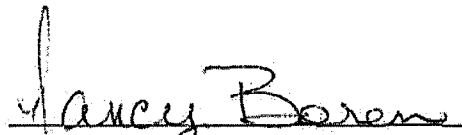
65. The rules offer no additional funding or added resources with which to implement them.

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

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

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

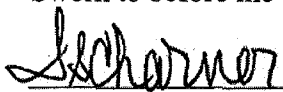
Signature on following page



NANCY BOREN

Director of Elections and Registration
Muscogee County, GA

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



Notary Public

My commission expires

9-19-25

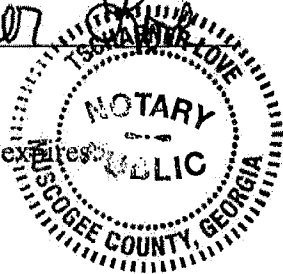
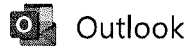


EXHIBIT 1

10/2/24, 10:20 AM



The Buzz Post - Guidance on Recent SEB Rule Amendments to 183-1-12-.12(a)(5)

From SharePoint-DoNotReply@sos.ga.gov <SharePoint-DoNotReply@sos.ga.gov>

Date Tue 10/1/2024 10:28 AM

To DoNotReply@sos.ga.gov <DoNotReply@sos.ga.gov>

A [new discussion](#) has been posted in The Buzz by Evans, Blake on 10/1/2024 10:15 AM

Our office is continuing to review recent rule amendments voted on by the State Election Board (SEB) at their meetings on September 20th and 23rd, which are not yet effective. One of those amendments would change SEB Rule 183-1-12-.12(a)(5) to require hand counting of paper ballots after polls close on election night.

As you may be aware, there are pending court challenges to the legality of these rules, and hearings have been scheduled in these cases for this week. The Attorney General's office wrote in a memo to the SEB that the proposed rule amendment was "not tethered to any statute—and [is], therefore, likely the precise type of impermissible legislation that agencies cannot do."

Because the SEB rules are tied up in litigation, and because poll worker training in many counties has already started and there is limited time remaining for additional training, the SOS Elections Division does not intend to provide additional training on SEB rules until after any court decisions are made.

If you would like to opt out of receiving email notifications for this discussion, click [here](#).

EXHIBIT D

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

COBB COUNTY BOARD OF ELECTIONS
AND REGISTRATION,

Petitioner,

v.

STATE ELECTION BOARD,

Respondent.

CIVIL ACTION FILE NO. 24CV012491

AFFIDAVIT OF TORONDA M. SILAS

1. My name is Toronda M. Silas. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. I have been a member and the Chairwoman of the Cobb County Board of Elections and Registration (the “BOER”) since 2021. I have served as a member of the BOER for more than 14 elections and primaries. I was appointed by the Cobb County Legislative Delegation as one of its two non-partisan appointees to the BOER. I am authorized to provide this affidavit on behalf of the BOER.
3. As the “election superintendent” for Cobb County, the BOER, comprised of five members, is responsible for overseeing Cobb County’s elections. The BOER’s powers and duties include: (1) ensuring elections are conducted honestly, fairly, uniformly, and in accordance with law; (2) providing guidance to poll officers on their duties under the Georgia Election Code and the rules of the State Election Board (“SEB”) promulgated pursuant to the Election Code; (3) hiring and overseeing the Elections Director; (4) preparing annual

budget estimates; and (5) canvassing, computing, tabulating, certifying, and transmitting to the Secretary of State the election returns from Cobb County's 148 precincts.

4. I have read and reviewed the State Election Board rule amending Rule 183-1-12-.12(a)(5) (the "Hand Count Rule" or the "Rule"). I have discussed the Hand Count Rule and its implications for the November 5 General Election with Cobb County's Elections Director, Tate Fall. My understanding is that the Hand Count Rule requires three sworn poll officers in each precinct in Cobb County to (1) independently count all ballots removed from the scanner, (2) sort these ballots into stacks of 50, and (3) independently arrive at the same total ballot count. The Hand Count Rule requires the three sworn poll officers to conduct the hand count of the ballots in the presence of either the precinct's poll manager or assistant poll manager and the public. The Hand Count Rule also creates an obligation to reconcile the count; however, it does not establish a procedure for how to reconcile the counts when they differ among the three poll workers or from the totals from the voting equipment. Finally, the Hand Count Rule contemplates that this hand-counting practice may take place on the day following election day depending on the number of ballots in the scanner. If the hand count will take place the following day, the Hand Count Rule requires the ballots be transported from the precincts to the county office for completion of the process.
5. I am concerned about the Rule's last-minute adoption. The Hand Count Rule significantly changes Georgia's ballot counting process by introducing a manual ballot counting requirement. According to a certified copy of the Rule that the SEB sent to the BOER on October 7, 2024, the Hand Count Rule becomes effective on October 22, a mere two (2) weeks prior to the November 5 election. Exhibit A. As of the date of this affidavit, the

Secretary of State has not provided guidance to county superintendents on the procedures required to implement the Rule. Given the Rule's late timing and the lack of guidance, I am also concerned it will be very difficult for Cobb County to prepare for and implement the Rule in time for the November 5 election, including training our election workers on the new Hand Count Rule. Moreover, the effort that our office would need to undertake to prepare and present training on the Rule at this belated date will require us to divert resources away from other important tasks.

6. I am concerned that the BOER will have difficulty identifying and deploying the requisite number of poll officers needed to implement the Rule at each precinct.
7. Given the number of precincts that are likely to have large ballot counts, I am concerned the Cobb County elections office lacks sufficient space to accommodate the post-election day hand counting contemplated under the Hand Count Rule.
8. I am concerned that the Hand Count Rule may lead to delays in ballot counting that will interfere with the BOER's ability to meet legally-mandated state deadlines for election night reporting and its ability to finalize other required tasks in advance of the BOER's pre-certification meeting (referenced in Paragraph 33 below), particularly when combined with last-minute rule changes recently imposed on county superintendents.
9. I am also concerned about potential intimidation and the safety of poll workers who are responsible for hand counting ballots; increased costs for training, security, and supplies; the potential for error due to poll worker fatigue; and compromising chain of custody protocols by requiring that ballots be moved from the precincts to the county office to continue the hand-counting process.

10. Further, I am concerned that confusion over the Rule's vague and undefined language, as well as the lack of statewide guidance on the Rule, will lead to a patchwork of practices across Georgia's 159 counties and at each precinct within those counties.
11. Finally, I am also concerned that deploying this Rule at the last minute—with no statewide guidance or opportunity to test the Rule before the upcoming presidential election—will undermine public confidence in the fairness and accuracy of Cobb County's elections.
12. I am aware that Georgia's Attorney General and Secretary of State have indicated that the SEB's Hand Count Rule is unlawful. The conflicting legal interpretations by our State's chief legal officer and election official (on the one hand) and the SEB (on the other) have created great uncertainty and insecurity for the BOER. The BOER's administration of elections for Cobb County is governed not only by the Election Code, but also by the SEB's rules. Multiple violations of SEB rules can trigger administrative enforcement action against superintendents. That is why the BOER voted 4-0 to seek this Court's guidance through this action for declaratory relief.

Preparation for Election Day

13. Cobb County began preparing for the November election in late 2023. Cobb's preparation has included completing a budget, securing necessary funds, undertaking voluntary security assessments, hiring and training poll officers, and preparing and presenting training materials to over 2,000 poll officers and workers.
14. Based upon my understanding, the Hand Count Rule requires the identification of three poll officers to hand count the ballots in each precinct on election day. These poll officers must be trained on this new process, which will require significant time and resources.

15. Cobb County has 148 precincts. Compliance with the Rule requires training at least 444 poll officers (three at each precinct) to conduct the Rule's required hand-counting process.
16. I am concerned that many poll workers will not want to perform the hand count, that it will deter individuals from serving as poll workers at all, and that it will cause long-serving poll workers to quit their jobs. Already, several poll managers have said they will resign if the Hand Count Rule is in effect on election day. For all of these reasons, I am also concerned that we will need to identify additional poll workers that are eligible to serve as alternate poll officers to perform a hand count of the ballots in the precincts.
17. Developing training materials for the Hand Count Rule is further complicated by the Rule's vague and undefined language. For instance, the Rule provides that "[i]f the numbers recorded on the precinct poll pads, ballot marking devices [BMDs] and scanner recap forms do not reconcile with the hand count ballot totals, the poll manager shall immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken." However, the Rule does not explain what "corrective measures" are permitted.
18. The Rule also requires that the three poll officers conducting the ballot count produce a "control document" with certain information about the ballots. My understanding of Georgia law is that only the Secretary of State has the authority to provide blank forms for elections. As of the date of this affidavit, the Secretary of State has not provided a form for this "control document."
19. In fact, the Secretary of State informed county election officials on October 1 that it "does not intend to provide additional training on SEB rules until after any court decisions are made" in cases challenging the rules' validity. Exhibit B. With no guidance from the

Secretary of State and with little time to develop our own training protocols, the counties are left in an untenable position.

20. In addition to developing training materials, Cobb County must actually train the poll officers who will carry out the requirements of this Rule. As of the date of this affidavit, 1,197 of the 2,032 poll workers that Cobb County has hired for election day have already completed their training. Complying with the Rule will require elections staff to divert time and resources away from other critical tasks to provide supplemental training on a new rule that has never been tested, that contains vague and undefined language, and for which we have received no guidance or funding from the State.
21. The Hand Count Rule requires that “[t]hese [hand count] procedures ... be conducted publicly to ensure transparency.” The Rule, however, stops shy of providing any parameters similar to those that are provided under Georgia law when describing the physical space that poll watchers and/or observers are permitted to occupy and the manner in which poll watchers and/or observers may engage with poll workers. Because of the absence of such guidance and parameters, I am concerned that poll workers hand-counting ballots at the precincts will potentially face intimidation and other safety risks. Based on prior experience, such conditions have caused numerous election workers throughout Georgia, including in Cobb County, to quit their jobs. To protect against these serious threats, the BOER must arrange and pay for extra security to be provided by the Cobb County Sheriff’s Office or other local law enforcement agencies.
22. The Rule will also cause the BOER to incur additional costs for supplies that poll officers will need to perform the tasks required to complete the ballot hand count.

23. These unexpected and unbudgeted costs will disrupt the BOER's budgetary planning. Due to its late timing, the new hand-counting requirement under the Rule was not factored into the BOER's fiscal year budget, nor in contingency funding the BOER secured in August of 2024. As a result, the Hand Count Rule will force the BOER to cut funding for other approved budget items.

Election Day and Post-Election Concerns

24. The Hand Count rule adds a new and unnecessary layer to the counting process that is highly likely to cause delays. It mandates that three poll officers conduct the hand count of ballots in each precinct, arrive at the same total ballot count independently and sign a control document. If the count recorded on the precinct poll pads, BMDs and the scanner recap forms (which reflect the total ballots scanned) cannot be reconciled with the hand count ballot totals, the poll manager must determine the reason for the inconsistency, correct the inconsistency to the extent possible, and fully document the inconsistency or problem along with any corrective measures taken. I believe it is very likely Cobb County poll workers, despite their best efforts, may not be able to timely complete these new processes, especially after a workday that will be at least 15 hours long.
25. In dry-run exercises, our election staff have found that it took approximately one hour for three people to independently count 2,000 ballots in stacks of 50 as required under the Hand Count Rule. If the number of ballots cast in Cobb County precincts on election day for the November 2022 General and the December 2022 Runoff Elections is indicative of the expected turnout on November 5, based on the dry-run exercise, the hand-counting of ballots and associated documentation will take between 45 minutes and 1.5 hours at each precinct. Additionally, our office estimates that as many as 85 of Cobb County's 148

precincts will have ballot totals in excess of 750, which may result in hand ballot counts being deferred to the day following election day at the Cobb County elections office, where we lack sufficient space to accommodate this process.

26. I worry that the Hand Count Rule's new mandates will also add to the burden of poll workers who will already be exhausted. Poll workers in Cobb County must arrive at the precincts by 6:00 am (with many arriving as early as 5:30 am) and may not leave the precinct until as late as 11:30 pm. Each poll worker in a Cobb County precinct has attended training and been assigned to perform legally-mandated and specific tasks associated with closing the poll. The additional duties imposed by the Hand Count Rule, as well as the fear, uncertainty, and exhaustion that flow from the new mandates, are time-consuming and will increase the risk of error.

27. I also share the concerns of the Secretary of State that "having poll workers handle ballots at polling locations after they have been voted introduces a new and significant risk to chain of custody procedures," increasing "the opportunity for error, lost or stolen ballots, and fraud." Exhibit C.

28. The Rule could also cause the BOER to miss deadlines under the Georgia Election Code. Specifically, Georgia law requires the county superintendent to report the number of ballots cast to the Secretary of State by 11:59 P.M. on election night. Yet, the Hand Count Rule provides for the possibility that the hand count process will continue beyond election day and need only be completed "during the week designated for county certification." I am concerned that Cobb County's compliance with the Hand Count Rule will delay the statutorily-mandated report to the Secretary of State.

29. Tabulation, canvassing, and county certification will be further disrupted if multiple polling locations cannot complete the hand count on election day.
30. If hand counting continues after election day, the Hand Count Rule requires moving the ballots to the county election office, which would add several steps that may compromise chain of custody protocols for handling ballots. I agree with the Secretary of State that these new procedures would “needlessly introduce the risk of error, lost ballots, or fraud.” Verified Pet. Ex. 9.
31. Moreover, Cobb County’s election office has insufficient space to accommodate this new phase of the ballot counting process. Multiple groups of poll workers counting ballots in tight spaces creates physical challenges and increases the risk of inadvertently mishandling ballots. Cobb County also lacks sufficient personnel to perform hand counting after election day, and it will likely have to reassign county canvassers to fulfill these new requirements.
32. I am concerned, based on prior experience, that delays caused by hand counting will fuel disinformation and distrust about election results in densely populated areas, including Cobb County, where it will take longer to complete the hand counting of ballots.
33. Delays caused by hand counting could also lead the BOER to violate other new SEB rules. For instance, Rule 183-1-12-.12(1)(1)—which went into effect in late August—requires that “[a]fter each election but not later than 3PM on the Friday following the date on which the election was held, the [county] Board shall meet to conduct a review of precinct returns.” Given the diversion of staffing required by the new Hand Count Rule, I am concerned it will not be possible to meet this new deadline.

34. I am concerned that the Hand Count Rule will undermine Cobb County voters' confidence in the November election. The General Assembly has decided that all elections in Georgia must be conducted using scanning ballots marked by electronic ballot markers and tabulated using ballot scanners. In my view, the SEB's new hand-counting requirement runs contrary to the Legislature's judgment. I worry that it will increase the risk of mistakes and errors and fuel skepticism about the integrity of our elections.
35. The Hand Count Rule also lacks specific guidance on its implementation. Poll managers have raised a host of legitimate questions about the Rule, such as whether the same team of three poll workers should count ballots from multiple scanners, what suffices as a written explanation of why the machine count does not match the hand count, and what is the "control document" on which they must record the hand count total. Poll managers and workers have warned they may quit their jobs if required to implement the Rule and manage its fallout.
36. Without clear and uniform statewide guidance, counties and precincts will implement the Rule differently, leading to a patchwork of different approaches across the State and within each county. For instance, the Hand Count Rule provides that the decision "when to start" the hand-counting process "is up to the Poll Manager or Assistant Poll Manager," meaning poll managers in every precinct in each of the State's 159 counties may decide to start at different times and for different reasons.
37. It is the BOER's duty to comply with Georgia law. The difficulty in implementing the new Hand Count Rule at this late stage, as well as the uncertainty of its legal status, has created substantial confusion throughout the State.

38. For all these reasons, I believe the Hand Count Rule will seriously disrupt election administration in Cobb County and would cause the BOER, the County, its poll workers, and its voters irreparable harm if it goes into effect.

[Signature on following page]

Toronda M. Silas

Toronda M. Silas

Chair, Cobb County Board of Elections and
Registration

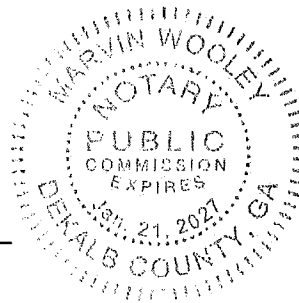
Sworn to and subscribed before me

This 8th day of OCT, 2024.

Marvin Wooley

Notary Public

My Commission Expires: 1/21/2024



Index of Exhibits to Affidavit of Toronda M. Silas

Exhibit	Title
A	Certified copy of Ga. Comp. R. & Regs. r. 183-1-12-.12 sent by the SEB to the Cobb County Elections Director on October 7, 2024
B	Email sent by the Georgia Secretary of State's office on October 1, 2024
C	Press Release by the Georgia Secretary of State's office on August 15, 2024

Exhibit A



The Office of Secretary of State

Brad Raffensperger
SECRETARY OF STATE

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

Brad Raffensperger

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



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

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

(a) After the Polls Close.

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

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

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

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

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

(b) Consolidation of Results.

1. All persons involved with the tabulation and consolidation of the election results and who will operate the computer programs or handle the memory cards shall be sworn in the same manner that custodians are sworn before entering into their duties.
2. Only persons who are permanent employees of the election superintendent or have been duly sworn as poll officers or custodians shall touch or be in contact with any ballot, container, returns, tapes, device, memory card, or any other such election materials. Only persons who are employed by the election superintendent or have been duly sworn shall be in the immediate area of the tabulating center designated by the superintendent for the officers to conduct the tabulation and consolidation of the election results.
3. The tabulation and consolidation shall be performed in public. However, the election superintendent may make reasonable rules and regulations for conduct at the tabulating center for the security of the results and the returns and to avoid interference with the tabulating center personnel.
4. The election superintendent shall ensure all properly cast ballots that are received by the deadline to receive ballots are processed, verified, and tabulated as soon as possible and shall not cease such count and tabulation until all such ballots are counted and tabulated. However, counting may cease prior to tabulating provisional ballots that are cured by the prescribed deadline and validated pursuant to O.C.G.A. § 21-2-419, so long as those ballots are processed, verified, and tabulated as soon as possible. Counting may also cease prior to tabulating ballots from qualified electors who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. Section 20301, et seq. ("UOCAVA"), that are received after the deadline to receive non-UOCAVA ballots but before the deadline for UOCAVA ballots set forth in O.C.G.A. § 21-2-386(a)(1)(G) so long as those ballots are processed, verified, and tabulated as soon as possible following their timely receipt.
 - a. For the purposes of this rule, "shall not cease" allows for reasonable or limited breaks so long as the processing, counting, and tabulating of ballots resumes as soon as possible. If the election superintendent, in its reasonable discretion, determines that due to mechanical or technological

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

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

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

1. For the purposes of publicly posting the number of ballots cast, including the total number of ballots scanned into the ballot scanner, the total number of provisional ballots issued at the precinct, and the total number of any cast but unscanned ballots in a scanner emergency bin, as soon as possible after the close of polls and the number of absentee ballots received as soon as possible following the deadline to receive such absentee ballots as required by O.C.G.A. § 21-2-421(a), posting information in a prominent public place means:
 - a. If the county or municipality maintains a publicly accessible website, publishing information on the homepage of the county's publicly accessible website associated with elections and/or registrations.
 - b. If the county or municipality does not maintain a publicly accessible website, affixing information on the door of the county or municipality's election office such that the information is viewable to the public.
 - c. At the same time that such information is publicly posted, it shall be transmitted to the Secretary of State in a manner determined by the Secretary of State.

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

(e) Reconciliation Report.

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

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

(f) Preparing for County Certification.

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

(g) Certification Meeting.

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

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

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

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

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

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

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

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

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

Exhibit B

10/2/24, 10:20 AM



Outlook

The Buzz Post - Guidance on Recent SEB Rule Amendments to 183-1-12-.12(a)(5)

From SharePoint-DoNotReply@sos.ga.gov <SharePoint-DoNotReply@sos.ga.gov>

Date Tue 10/1/2024 10:28 AM

To DoNotReply@sos.ga.gov <DoNotReply@sos.ga.gov>

A [new discussion](#) has been posted in The Buzz by Evans, Blake on 10/1/2024 10:15 AM

Our office is continuing to review recent rule amendments voted on by the State Election Board (SEB) at their meetings on September 20th and 23rd, which are not yet effective. One of those amendments would change SEB Rule 183-1-12-.12(a)(5) to require hand counting of paper ballots after polls close on election night.

As you may be aware, there are pending court challenges to the legality of these rules, and hearings have been scheduled in these cases for this week. The Attorney General's office wrote in a memo to the SEB that the proposed rule amendment was "not tethered to any statute—and [is], therefore, likely the precise type of impermissible legislation that agencies cannot do."

Because the SEB rules are tied up in litigation, and because poll worker training in many counties has already started and there is limited time remaining for additional training, the SOS Elections Division does not intend to provide additional training on SEB rules until after any court decisions are made.

If you would like to opt out of receiving email notifications for this discussion, click [here](#).

Exhibit C



Georgia
Secretary of State
Brad Raffensperger



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

August 15th, 2024

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

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

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



Georgia
Secretary of State
Brad Raffensperger



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

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

###

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



Georgia
Secretary of State
Brad Raffensperger



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

More News & Announcements

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

Georgia Voter Alert: Ballot Tracking Now Available on MVP

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

Secretary Raffensperger Announces Cross-State Double Voting Indictment

Secretary Hosts Law Enforcement Tabletop on Secure Elections

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



Georgia
Secretary of State
Brad Raffensperger



Office of Brad
Raffensperger

News &
Announcements

Privacy Policy

Security

214 State Capitol
Atlanta, Georgia 30334

Contact Us

© 2024 Georgia
Secretary of State

EXHIBIT E

10/20/24, 11:05 PM

Mail - Nancy Boren - Outlook



[EXTERNAL] The Buzz Post - Update on SEB Rules

From SharePoint-DoNotReply@sos.ga.gov <SharePoint-DoNotReply@sos.ga.gov>

Date Thu 10/17/2024 5:24 PM

To DoNotReply@sos.ga.gov <DoNotReply@sos.ga.gov>

A [new discussion](#) has been posted in The Buzz by Evans, Blake on 10/17/2024 5:10 PM

Below is a message from SEB Chairman John Fervier and SOS General Counsel Charlene McGowan:

On October 16, 2024, Fulton Superior Court Judge Thomas A. Cox, Jr., issued a Final Judgment and Injunction Order in the case of Eternal Vigilance Action, Inc. v. State of Georgia, et al., Civil Action No. 24CV011558, which declared unlawful 7 new rules or amendments to existing rules recently promulgated by the State Election Board (the "Challenged Rules"). The Court's Order enjoined the State Election Board from "enforcing, requiring compliance with, or otherwise utilizing" the Challenged Rules. The Challenged Rules include following rules and amendments:

- Rule 183-1-12-.02(c.2) (adding a definition of "certify the results of a primary, election, or runoff")
- Rule 183-1-12-.12(f)(6) (requiring elections documents be provided to board members)
- Rule 183-1-14-.02(18) (requiring a signature and photo ID at the time an absentee ballot is delivered in person to an absentee ballot drop location)
- Rule 183-1-14-.02(19) (requiring video surveillance and recording of absentee ballot drop boxes)
- Rule 183-1-13-.05 (poll watcher access for tabulating center)
- Rule 183-1-12-.21 (county participation and totals reporting)
- Rule 183-1-12-.12(a)(5) (requiring hand count of ballots at the precinct)

The Court's Order further requires that the SEB inform all state and local officials that these rules & amendments are void and are not to be followed. Accordingly, counties are not required to comply with the new rules & amendments for the 2024 General Election. Rather, counties should only follow the rules as they previously existed and without the most recent amendments by the SEB. The Secretary of State's office will be re-publishing the affected rules on its website in compliance with the Order to provide clarity.

Any guidance previously distributed by the SOS Elections Division regarding these rules & amendments should be disregarded.

A copy of the Order will be emailed to all county elections directors. Other litigation remains pending and we will provide additional updates when available.

If you would like to opt out of receiving email notifications for this discussion, click [here](#).