

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

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

Plaintiffs,

GEORGIA STATE CONFERENCE OF  
THE NAACP, and GEORGIA  
COALITION FOR THE PEOPLE'S  
AGENDA, INC.,

Intervenor-Plaintiffs,

v.

Civil Action File No. 24CV011558

STATE OF GEORGIA,

Defendant,

GEORGIA REPUBLICAN PARTY, INC.,  
REPUBLICAN NATIONAL  
COMMITTEE,

Intervenor-Defendants,

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**BRIEF OF INTERVENOR PLAINTIFFS  
GEORGIA STATE CONFERENCE OF THE NAACP and  
GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.**

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## INTRODUCTION

In an act of blatant and illegal agency overreach just weeks before a presidential election, the Georgia State Election Board (“SEB”) passed a flurry of rules outside its statutory grant of authority. These rules are scheduled to go into effect a mere 22 days before the election and after early voting has already begun. Key here, the SEB’s unlawful amendment to Rule 183-1-12-.12(a)(5) (the “Hand Counting Rule”) will throw the mechanics of running the election and the counting of votes into disarray.

The Hand Counting Rule requires, upon the close of the polls, “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.” Amendment to Rule 183-1-12-.12(a)(5). Then, only “[w]hen 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.” *Id.* If the number of ballots “do not reconcile with the hand count ballot totals, 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.” *Id.* There is no basis in law for the Hand Counting Rule.

Georgia’s election process is well-established, well-vetted, and enacted by the legislature in clear statutory text. The Hand Counting Rule contravenes that plain statutory language and unnecessarily complicates and undermines the 2024 General

Election in Georgia. The unlawful Hand Counting Rule will disrupt the orderly counting of ballots by requiring multiple poll officers to repeatedly handle ballots prior to their tabulation, risking spoliation and prevention of timely tabulation of election results. The late-issued Hand Counting Rule further threatens orderly election administration because it contravenes the training that many poll officers already have received ahead of the upcoming election and leaves insufficient time to re-train them. The Hand Counting Rule is untethered from the Election Code and constitutes an unlawful exercise of the SEB's authority.

This Court should declare the Hand Counting Rule invalid and enjoin its enforcement.

### **FACTUAL BACKGROUND**

The Hand Counting Rule originated via a June 6, 2024, petition, from Fayette County Board of Elections member Sharlene Alexander, seeking a rule change to mandate the hand counting of ballots at polling locations by three poll workers before tabulation by the election superintendent. Ex. A (Petition for Amendment to Election Rules (June 6, 2024)). The petition asserted that “it was a long-standing tradition in Fayette County” to hand count ballots at polling places—before the Georgia Secretary of State issued contrary guidance on the related statutory requirements. *Id.* at 4. In her petition, Ms. Alexander asserted that hand counting is good policy, *id.* at 4-6, but she did not provide any supporting legal authority for hand counting. Indeed, even the statutes referenced by Ms. Alexander as supporting her position actually undermine it. Section 21-2-483(a) does not even provide for the hand counting of ballots at the precinct level

but at the tabulation center, and by her own admission, under Section 21-2-420(a), “there isn’t a reconciliation of the ballots themselves at the polling place currently.” *Id.* at 8.

When the petition was first taken up at the SEB’s July 9 meeting, SEB Member Janice Johnston described the proposed rule as “a Christmas present,” and clarified that its dictates would apply to early in-person voting and election-day voting.<sup>1</sup> The SEB continued its discussion of the petition at the August 19, 2024, meeting, where Ms. Alexander again acknowledged that the proposed rule would change the status quo. She asserted that the proposed rule “advances election integrity by providing a checkpoint outside of the electronic system, which, today, that’s all we have.” Ms. Alexander emphasized her belief that, “to me, this is just common sense, to have something outside of that electronic system.”<sup>2</sup> However, one person’s view of “common sense” is not statutory authority. SEB Member Sara Tindall Ghazal spoke against the Rule, expressing concern over its close proximity to the election.<sup>3</sup> And SEB Chair John Fervier also spoke against the rule, noting that “the overwhelming number of officials that I’ve heard from on this rule oppose it,” and emphasizing that “this is a legislative issue and ought to go through the legislature not through this board.”<sup>4</sup>

Two days later, on August 21, 2024, the SEB advanced the petition in two Notices of Proposed Rulemaking: one rewriting Rule 183-1-12-.12(a)(5) to require hand counting

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<sup>1</sup> Transcript, State Election Board Meeting at 235:6-7 (July 9, 2024), *available at* [https://sos.ga.gov/sites/default/files/2024-08/seb-transcript\\_7\\_9\\_24.pdf](https://sos.ga.gov/sites/default/files/2024-08/seb-transcript_7_9_24.pdf).

<sup>2</sup> Video: State Election Board Meeting at 4:07 (Aug. 19, 2024), <https://gasos.wistia.com/medias/cta38wtjkj>.

<sup>3</sup> *See id.* at 37:43.

<sup>4</sup> *Id.* at 54:15.

of all ballots cast on Election Day, and one rewriting Rule 183-1-14-.02 to require daily hand counting of ballots during early in-person voting once a ballot box reaches 1,500 ballots cast.

Bearing out the Chair’s comments, election officials across the state and poll officers denounced the hand counting proposal. Secretary of State Brad Raffensperger, the State’s chief election officer, called the proposed Hand Counting Rule “misguided” and “activist,” stating it would “impose last-minute changes in election procedures outside of the legislative process” and “delay election results and undermine chain of custody safeguards.” Secretary Raffensperger also stated that the Hand Counting Rule would cause “11th hour chaos.” Ex. B (Press Release, Ga. Sec’y of State, Raffensperger Defends Georgia’s Election Integrity Act from Last Minute Changes Delaying Election Results (Aug. 15, 2024)).

The Georgia Association of Voter Registration and Election Officials (GAVREO), which comprises hundreds of election workers across the state, urged the SEB to reject the proposed Hand Counting Rule, warning that “dramatic changes at this stage will disrupt the preparation and training processes already in motion for poll workers, absentee voting, advance voting and Election Day preparation.” Ex. C (Release, Georgia Association of Voter Registration and Election Officials, GAVREO Calls on State Elections Board to Pause Future Rule Changes Ahead of Presidential Election (Aug. 21, 2024)).

And, prior to the September 20, 2024 SEB meeting at which the Hand Counting Rule was taken up, the Office of the Attorney General (“OAG”), chief legal officer of the



State, O.G.C.A. § 45-15-12, sent the SEB expedited comments on the legality of the rules and opined that each rule change contemplated by the SEB was outside of the SEB’s delegated rulemaking authority. The OAG emphasized that “the Board’s authority to promulgate rules and regulations is limited to the administration or effectuation of the statutes in the Georgia Election Code,” and that “no provisions in the statutes cited in support of these proposed rules . . . permit counting the number of ballots by hand at the precinct level prior to delivery to the election superintendent for tabulation.” Ex. D at 3, 6 (Mem. re Request for Comments on Proposed Rules in Advance of September 20, 2024 State Election Board Meeting from Ga. Dep’t of Law to the SEB (Sept. 19, 2024)). The OAG further declared that “these proposed rules are not tethered to any statute—and are, therefore, likely the precise type of impermissible legislation that agencies cannot do.” *Id.*

The Georgia Secretary of State, Georgia OAG, and GAVREO were right.

During the September 20, 2024 meeting, the Chair warned that the proposed Hand Counting Rule exceeded the SEB’s delegated rulemaking powers. Before passing the new Hand Counting Rule, all members of the SEB were aware and on notice that the SEB was engaging in unlawful rulemaking unauthorized by and in conflict with Georgia statutes. Nevertheless, notwithstanding the OAG’s legal advice and in defiance of the practical implementation concerns, given Georgia’s 2,500+ precincts, raised by hundreds of election administrators, the SEB exceeded its delegated rulemaking authority and passed the unlawful Hand Counting rule anyway.

## ARGUMENT

### I. Intervenor-Plaintiffs Georgia NAACP and GCPA Have Standing.

Intervenor-Plaintiffs the Georgia State Conference of the NAACP (“Georgia NAACP”) and the Georgia Coalition for the People’s Agenda (“GCPA”) satisfy the requirements for organizational standing and associational standing.

#### A. The Georgia NAACP and the GCPA Have Organizational Standing.

As the Supreme Court of Georgia has held, “[t]here is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy[.]”

*Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 381 (2022) (quoting *Sawnee Elec. Membership Corp. v. Ga. Dep’t of Revenue*, 279 Ga. 22, 22 (2005)). The Georgia NAACP and the GCPA satisfy the requirements for organizational standing because each has been and will be injured directly by the Hand Counting Rule. *See id.* at 382.

First, the Georgia NAACP and GCPA have suffered “an injury in fact for purposes of standing” because the Hand Counting Rule “impair[s] the organization[s]’ ability to provide [their] services or to perform [their] activities and, as a consequence of that injury, require[s] a diversion of [the organizations]’ resources to combat that impairment.” *Black Voters Matter Fund*, 313 Ga. at 386. The Hand Counting Rule “threatens to undo much of the hard work” that the organizations have done “in terms of registering voters and mobilizing them to the polls in the first place by increasing the risk that their ballots are thrown out.” Compl. in Intervention ¶¶ 13, 20 (Oct. 1, 2024) (“Compl.”); Ex. E (Declaration of Gerald Griggs ¶ 16 (Oct. 1, 2024) (“Griggs Decl.”));

Ex. F (Declaration of Helen Butler ¶¶ 9-19 (Oct. 1, 2024) (“Butler Decl.”)). And responding to the Hand Counting Rule has and will require the Georgia NAACP and the GCPA to divert resources from “registering, educating, and activating voters to show up at the polls” and “helping voters [cure] provisional ballots,” and other non-voting activities, Compl. ¶¶ 11, 12, 18, 19; Griggs Decl. ¶¶ 20-21; Butler Decl. ¶¶ 17-19, by redirecting their limited “staff and volunteer time away from planned activities and campaigns to troubleshoot any issues that arise from the application and administration of the Hand Counting Rule on Election Day.” Compl. ¶¶ 12, 18-19; Griggs Decl. ¶¶ 20-21; Butler Decl. ¶¶ 17-19. Second, there is a clear causal connection between the Hand Counting rule and the organizations’ injuries because the Georgia NAACP and GCPA would not be forced to divert resources but for the implementation of the Hand Counting Rule. Third, if the Court enjoins the Hand Counting Rule as requested, the Georgia NAACP and GCPA’s injuries will be redressed. Thus, the Georgia NAACP and the GCPA have organizational standing.

Furthermore, the Georgia NAACP and the GCPA also satisfy the lower threshold for standing applicable in cases vindicating a public right that does not challenge the constitutionality of a state statute. Where, as here, “a local government owes a legal duty to its citizens, residents, taxpayers, or voters (i.e., community stakeholders), the violation of that legal duty constitutes an injury that our case law has recognized as conferring standing to those community stakeholders, even if the plaintiff at issue suffered no individualized injury.” *Sons of Confederate Veterans v. Henry Cnty. Bd. of Comm’rs.*, 315 Ga. 39, 53 (2022). The Georgia NAACP and the GCPA have alleged that they are

community stakeholders in the State of Georgia. Accordingly, they have standing to challenge the Hand Counting Rule.

B. The Georgia NAACP and the GCPA Have Associational Standing.

The Georgia NAACP and the GCPA also meet the requirements for associational standing on behalf of their members. “Associational standing permits an association that has suffered no injury to sue on behalf of its members when the members would otherwise have standing to sue in their own right; the interests the association seeks to protect are germane to the association’s purpose; and neither the claim asserted nor the relief requested requires the participation in the lawsuit of the individual members.” *Sawnee Elec. Membership Corp.*, 279 Ga. at 24 (2005) (quoting *Aldridge v. Ga. Hosp. & Travel Ass’n*, 251 Ga. 234, 236 (1983) (applying the federal test for associational standing)). The Georgia NAACP and the GCPA satisfy each of these requirements.

- i. Association members have standing to sue to vindicate their own right to vote.*

“[V]oting is a personal right” and infringement upon that right is a cognizable injury in Georgia. *Black Voters Matter Fund*, 313 Ga. at 388 (finding that members of an association challenging the creation of new judicial districts “would have standing to sue in their own right” had the association shown that it had members eligible to vote in the relevant judicial district). Georgia NAACP and GCPA members are eligible Georgia voters who face imminent disenfranchisement because of the Hand Counting Rule.

The Hand Counting Rule undermines the lawful administration of elections across Georgia, contravening existing statutory law and upending established processes for

election administration in the eleventh hour, risking disenfranchisement of Georgia NAACP and GCPA members. *See infra* Sections II-IV. Under established Georgia law, Georgia NAACP and GCPA’s members thus face a cognizable actual and imminent injury in fact. *See Sons of Confederate Veterans*, 315 Ga. at 60 (“Voters may be injured when elections are not administered according to the law[.]”); *Barrow v. Raffensperger*, 308 Ga. 660, 667 (2020) (plaintiff had a “right as a Georgia voter” to pursue a claim to conduct an election pursuant to legal mandates). The November 2024 election is well underway; in Georgia, absentee ballot applications are currently being accepted, Compl. ¶ 57, and advance voting begins on October 15, 2024. Prompt declaratory and injunctive relief enjoining the Hand Counting Rule would redress the disenfranchisement of the Georgia NAACP and GCPA’s members. Accordingly, the Georgia NAACP and GCPA have associational standing.

*ii. Association members have standing to sue to prevent the unlawful expenditure of public funds.*

Georgia NAACP and GCPA members are Georgia residents, voters, and taxpayers with standing to prevent the unlawful expenditure of public funds. Compl. ¶¶ 8, 14, 17; *see generally* Griggs Decl.; Butler Decl. *See also Williams v. DeKalb Cnty.*, 308 Ga. 265, 272 (2020) (plaintiff’s “status as a taxpayer generally affords him standing to seek to enjoin the unlawful expenditure of public funds”); *League of Women Voters of Atlanta-Fulton Cnty., Inc. v. City of Atlanta*, 245 Ga. 301, 303-04 (1980) (taxpayer standing); *Keen v. Mayor and Council of Waycross*, 101 Ga. 588, 592-93 (1897) (same). The Hand Counting Rule will cause local election officials to unlawfully divert vital public

resources from tabulating properly cast ballots to illegitimately hand counting individual ballots and attempting to resolve any purported “discrepancies” they may find. Compl. ¶¶ 11, 34-52. On behalf of their Georgia resident, voter, and taxpayer members, the Georgia NAACP and GCPA have associational standing to challenge the Hand Counting Rule. *See* Griggs Decl. ¶¶ 6-9; Butler Decl. ¶¶ 3-7; *see also League of Women Voters of Atlanta-Fulton Cnty.*, 245 Ga. at 302-03.

*iii. The Georgia NAACP and GCPA seek to protect interests germane to their organizational purposes.*

The Georgia NAACP and GCPA easily satisfy the germaneness requirement for associational standing. *See, e.g., Greater Birmingham Ministries v. Sec’y of State for Ala.*, 992 F.3d 1299, 1315-17 (11th Cir. 2021) (holding that a lawsuit challenging state voter identification law was germane to the purposes of the Alabama NAACP). The Georgia NAACP seeks to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular Black Americans. Compl. ¶ 8; Griggs Decl. ¶¶ 4-5. Protecting the equal right to suffrage has been a central tenet of Georgia NAACP’s mission since its founding, and it continues that work in earnest today. *See* Compl. ¶¶ 9-10; Griggs Decl. ¶¶ 3-5. Similarly, GCPA works to encourage and support voter registration and participation on behalf of its coalition of membership organizations, particularly among Black and other underrepresented communities in Georgia. Compl. ¶¶ 14, 16; Butler Decl. ¶¶ 3-8. The Hand Counting Rule undermines important interests “germane” (and indeed key) to the Georgia NAACP and GCPA’s purpose to ensure that voters in underserved and

marginalized communities can cast ballots that count. *See* Compl. ¶¶ 13, 20; Griggs Decl. ¶ 5; Butler Decl. ¶¶ 3-7.

*iv. Neither the claim asserted nor the relief requested requires the participation in the lawsuit by the individual members.*

The Georgia NAACP and GCPA’s challenge to the Hand Counting Rule does not require the participation of their individual members. *Black Voters Matter Fund*, 313 Ga. at 387. Where, like here, an organization seeks declaratory and injunctive relief, “individual participation of the organization’s members is ‘not normally necessary.’” *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008) (quoting *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 546 (1996)). The Georgia NAACP and GCPA respectfully seek declaratory and injunctive relief that “if granted, will inure to the benefit of those members of the association actually injured.” *Warth v. Seldin*, 422 U.S. 490, 515 (1975). Accordingly, this is a “proper case” for associational standing. *Id.*

## **II. The SEB Lacks Authority to Promulgate the Hand Counting Rule.**

The Official Code of Georgia, enacted by the duly elected legislature, establishes a comprehensive, integrated system of election administration. The Code ensures that qualified voters cast proper votes and that such votes are counted and reported. *See generally* O.C.G.A. §§ 21-2-1 through 21-2-604. The Hand Counting Rule contravenes that statutory text and constitutes an unlawful exercise of authority by the SEB.

A. State Administrative Rulemaking Is Cabined by the Legislative Grant of Authority.

As a state agency, the SEB only has the authority to issue rules to the extent the Rules are authorized by statute. *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995). The SEB has been authorized to promulgate certain rules, but a statutory grant of rulemaking authority is not an unlimited grant of authority. *See Ga. Real Est. Comm'n v. Accelerated Courses in Real Est., Inc.*, 234 Ga. 30, 32-33 (1975) (administrative rules must be both authorized by statute and reasonable). “The test of the validity of an administrative rule is twofold: whether it is authorized by statute and whether it is reasonable.” *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 662 (2015). Even when authorized, a rule is invalid if it “exceed[s] the scope of or [is] inconsistent with the authority of the statute upon which it is predicated.” *Id.* at 663. Any “agency rule” that is “unauthorized by statute” is not consistent with law and thus “[can]not stand.” *Ga. Real Est. Comm'n*, 234 Ga. at 32.

Only the General Assembly can legislate. The SEB’s limited authority extends only to “adopt rules and regulations to carry into effect a law already passed” or otherwise “merely administer and effectuate an existing enactment of the General Assembly.” *HCA Health Servs. of Ga.*, 265 Ga. at 502. The General Assembly has authorized the SEB to promulgate only those “rules and regulations, *consistent with law*, as will be conducive to the fair, *legal*, and *orderly* conduct of primaries and elections,” O.C.G.A. § 21-2-31(2) (emphases added), and to promulgate rules and regulations to “obtain *uniformity* in the practices and proceedings of superintendents, registrars, deputy



registrars, poll officers, and other officials, as well as the *legality* and purity in all primaries and elections,” O.C.G.A. § 21-2-31(1) (emphases added). The SEB’s authority to promulgate rules and regulations is limited to the administration or effectuation of the Georgia Election Code. While the SEB may promulgate rules necessary to carry out the Election Code, the SEB is not authorized to promulgate rules that substantially deviate from the Election Code. A rule or regulation that “attempts to add” requirements or procedure inconsistent with the statutes is invalid. *Dep’t of Hum. Res. v. Anderson*, 218 Ga. App. 528, 529 (1995).

B. The Statutes Invoked by the SEB Do Not Authorize the Hand Counting Rule.

On its face, the Hand Counting Rule is inconsistent with statute. No factual development is necessary to make that assessment. None of the statutes cited by the SEB provide it with a legitimate basis for promulgating the Hand Counting Rule. In its notice of proposed rulemaking for the Hand Counting Rule, the SEB cited O.G.C.A. § 21-2-483(a), O.C.G.A. § 21-2-436, and O.C.G.A. § 21-2-420(a) as the authority for passing the Rule, Ex. G at 3 (State Election Bd., Notice of Proposed Rulemaking, Revisions to Subject 183-1-12-.12 (Aug. 21, 2024)), but those statutes do not provide such authority.

Section 21-2-483(a) concerns “Procedures at the tabulation center” for elections using an optical scanner. In its entirety, O.G.C.A. § 21-2-483(a) 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. All persons who perform any duties at the tabulating center shall be deputized by the superintendent, and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be inside the area designated for officers deputized to conduct the count.

O.G.C.A. § 21-2-483(a). This makes no allowance for the Hand Counting Rule. First, Section 21-2-483(a) governs the procedures for counting at the tabulating center and so provides no basis for the Hand Counting Rule. On this ground alone, the Rule is not supported by the statute cited by the SEB. Moreover, this section provides that counting occur “under the direction of the superintendent.” O.G.C.A. § 21-2-483(a). The Hand Counting Rule would require counting merely under the direction of the poll manager; that is not good enough under Georgia statutory law. *See, e.g., Anderson*, 218 Ga. App. at 529.

The next Section cited by the SEB, O.C.G.A. § 21-2-436, plainly states that it applies only to precincts using paper ballots marked by hand. Given that the Hand Counting Rule applies to voting “conducted via ballots marked by electronic ballot markers and tabulated by ballot scanners” and “through the use of an optical scanning voting system,” the statutory provision addressing paper ballots marked by hand is inapposite. *See* Rule 183-1-12-.01. That said, the enacted laws that govern handling paper ballots illustrate just how far afield from Georgia statutory election law the Hand Counting Rule is.

Section 21-2-436 provides that “[a]fter the polls are closed and the last elector has voted,” the poll officers announce “the number of ballots issued to electors, as shown by the stubs, and the number of ballots, if any, spoiled and returned by electors and canceled.” O.G.C.A. § 21-2-436. The poll officers then compare the number of voters as “shown by the stubs” with the “number of names shown as voting by the electors list,

voter's certificates, and the numbered list of voters." *Id.* All of these materials must be packaged and sealed *before* the ballot box is opened. *Id.* Only after the number of ballots cast is recorded and the related materials sealed, *id.*, are the votes cast by paper ballot counted, with the results marked upon tally papers. O.G.C.A. § 21-2-437.<sup>5</sup> The Hand Counting Rule is flatly inconsistent with this statute. Section 21-2-436 provides that poll workers count the number of ballots cast based on the stubs and seal all related materials prior to the opening of the ballot box, making it impossible to comply with both Section 21-2-436 and the Hand Counting Rule.

Finally, the SEB cites Section 21-2-420(a), which provides a general directive for poll officers in each precinct to "complete the required accounting and related documentation for the precinct" and to "advise the election superintendent of the total number of ballots cast at such precinct and the total number of provisional ballots cast." O.C.G.A. § 21-2-420(a). It also calls for the public posting of those totals. O.C.G.A. § 21-2-420(b). The "required accounting" is that which is set out in the subsequent statutory provisions, depending on the type of voting system used in the precinct in question. *See, e.g.*, O.G.C.A. §§ 21-2-436; 21-2-454; 21-2-485. None of the accounting required by these provisions provides a basis to allow for hand counting as set out by the Hand Counting Rule.

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<sup>5</sup> The vote tally described in Section 21-2-437 is not the same hand counting that would be required in all precincts under the Hand Counting Rule, but rather is an actual count of the votes cast for each candidate, conducted after the number of votes cast in total is already affirmed by comparison of the stubs against the list of voters as required under Section 21-2-436.

Accordingly, none of the statutes cited by the SEB provides a basis for the Hand Counting Rule; on the contrary, the cited statutes are either inapposite or directly contradict the Hand Counting Rule. The Hand Counting Rule does not “carry into effect a law already passed” or otherwise “merely administer and effectuate an existing enactment of the General Assembly.” *HCA Health Servs. of Ga.*, 265 Ga. at 502. The Hand Counting Rule is invalid and should be enjoined.

C. The Hand Counting Rule Conflicts with the Georgia Election Code.

The Hand Counting Rule contravenes a central and repeated tenet of Georgia election law: after voting, poll officers are to promptly lock it down and seal it up. They are not supposed to come in the next day and fiddle around with the ballots.

*i. The Hand Counting Rule conflicts with the statutory provisions that govern procedures at the close of the polls.*

The current system of election administration clearly sets forth statutory duties to be carried out by poll officers upon the closing of the polls. *See, e.g.*, O.G.C.A. §§ 21-2-436; 21-2-454; 21-2-485. The Hand Counting Rule conflicts with these statutes,<sup>6</sup> which mandate specific steps that poll officers must take at the closing of the polls.

In precincts using voting machines, “[a]s soon as the polls are closed and the last elector has voted,” poll officers must “immediately” lock and seal the machine. O.G.C.A. § 21-2-454. Poll officers then canvass the returns, by “read[ing] from the counters or from one of the proof sheets” the “result as shown by the counter numbers.” O.G.C.A.

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<sup>6</sup> The conflict with Section 21-2-436 is described *supra* in Section II.B, as that was one of the statutes cited by the SEB for its supposed authority for the issuance of the Hand Counting Rule.

§ 21-2-455(a). The Hand Counting Rule conflicts with these statutory provisions because the statute—contrary to the Hand Counting Rule—requires that the machines be “immediately” locked and the number of votes cast to be determined from the counter on the machine. O.G.C.A. § 21-2-454. Further, the statute—unlike the Hand Counting Rule—clearly specifies how the number of votes cast is to be determined. Finally, as Section 21-2-454 directs that the machines be locked immediately, *id.*, in sharp contrast, the Hand Counting Rule contemplates repeatedly handling the ballots and not even starting that textual exercise until the next day, Amendment to Rule 183-1-12-.12(a)(5)(a).

In precincts using optical scanning voting equipment, “[a]s soon as the polls are closed and the last elector has voted,” poll officers are required to, if tabulation occurs at a central count location, “[s]eal the ballot box and deliver the ballot box to the tabulating center,” and once delivered, examine the ballots and separate the write-in votes, O.G.C.A. § 21-2-485(1). The procedures for counting at the tabulation center occur “under the direction of the superintendent.” O.G.C.A. § 21-2-483(a). If tabulation occurs at the precinct, “[a]s soon as the polls are closed and the last elector has voted,” poll officers are to “[f]eed ballots from the auxiliary compartment of the ballot box, if any, through the tabulator” and after all ballots are put through the tabulator, “cause the tabulator to print out a tape with the total votes cast in each election.” O.G.C.A. § 21-2-485(2).

The use of “immediately” and “[a]s soon as” in Sections 21-2-454 and 21-2-485 underscores that the Hand Counting Rule is without basis in statute, as it introduces a lengthy process that need not even begin until the day after polls close, Amendment to

Rule 183-1-12-.12(a)(5)(a). In assessing the meaning of statutes, Georgia courts begin their analysis with “familiar and binding canons of construction,” *Traba v. Levett*, 369 Ga. App. 423, 426 (2023) (citation omitted), including “avoid[ing] a construction that makes some language mere surplusage.” *Id.* To find that the Hand Counting Rule does not conflict with the statutes governing the procedures at the close of polls impermissibly would require disregarding the language “immediately” and “[a]s soon as” in Sections 21-2-454 and 21-2-485.

*ii. The Hand Counting Rule conflicts with other portions of the Election Code.*

The Hand Counting Rule also conflicts with a number of other provisions of the Election Code, such that it is plain that the Rule is not effectuating the Election Code, *HCA Health Servs. of Ga.*, 265 Ga. at 502, and does not advance “orderly conduct of primaries and elections,” O.G.C.A. § 21-2-31(2) (emphasis added). These include, at least:

- O.C.G.A. § 21-2-50(a)(5), which gives the Secretary of State the authority to create “all blank forms” to be used in any election.
- O.C.G.A. § 21-2-493(b), which places the authority for investigating any discrepancy over the number of ballots cast with the superintendent, and not poll managers.
- O.C.G.A. § 21-2-421(a)(1), which requires the posting of the number of ballots cast by not later than 11:59 p.m. on Election Day.

The Hand Counting Rule provides that following the hand counting by three poll officers, the poll officers are to “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.” Amendment to Rule 183-1-12-.12(a)(5). No such form

otherwise exists for the conduct of Georgia elections, and the Code empowers the Secretary of State to provide to the superintendents “all blank forms . . . and such other supplies as the Secretary of State shall deem necessary and advisable.” O.C.G.A. § 21-2-50(a)(5). This does not include the “control document.” To the extent the Hand Counting Rule relies on someone other than the Secretary to create the “control document,” it directly conflicts with statute. And as the Secretary has already made clear in his statement regarding the Rules, *see* Ex. B, he does not consider the Hand Counting Rule (and thus its related materials) to be “necessary and advisable,” O.C.G.A. § 21-2-50(a)(5).

The Hand Counting Rule also requires that “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 . . . .” Amendment to Rule 183-1-12-.12(a)(5). But assigning this task of determining the reason for such a count inconsistency to the relevant poll manager reassigns the statutory responsibilities of the superintendent to any one of many poll managers, something an agency rule may not do. *See Anderson*, 218 Ga. App. at 529 (regulation invalid where it reassigned decisions that were left to the Department’s discretion by statute to another official). Section 21-2-493(b) authorizes county superintendents to “compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast” and if there is a discrepancy, to “investigate[]” the issue. O.C.G.A. § 12-2-493(b). The Hand Counting Rule makes it so

that instead of any such discrepancies being investigated by the superintendent, poll managers now have the first, and potentially the only, opportunity to address such numerical inconsistencies.

By its own terms, the Hand Counting Rule allows for the process described in the Rule to “to start the next day and finish during the week designated for county certification.” Amendment to Rule 183-1-12-.12(a)(5). But the Georgia Election Code requires that “[a]s soon as possible but not later than 11:59 P.M. following the close of the polls on the day of” the Election, the superintendent must publicly post and report to the Secretary of State the “number of ballots cast at the polls on the day of the . . . election,” among other things. O.C.G.A. § 21-2-421(a)(1). The Hand Counting Rule makes it impossible for the superintendent to comply with this statutory duty.

A review of the Election Code makes clear that the Hand Counting Rule is not authorized by statute and as such it cannot stand. *See Ga. Real Est. Comm’n*, 234 Ga. at 32. As the Hand Counting Rule is not tethered to any statute, it is impermissible legislation outside of SEB’s authority. *See HCA Health Servs. of Ga.*, 265 Ga. at 502.

D. Because the Hand Counting Rule Is Not Authorized by Statute, Its Promulgation Violates the Georgia Constitution.

The Georgia Constitution vests the “legislative power” in the General Assembly, Ga. Const. Art. III, Sec. I, Par. I, and commands that “the legislative, judicial, and executive powers shall forever remain separate and distinct.” Ga. Const. Art. I, Sec. II, Par. III. For this reason, the SEB, as a creature of statute, “has no inherent powers and no lawful right to act except as directed by the [enabling] statute.” *S. Co-op. Foundry Co. v. Drummond*,



76 Ga. App. 222, 224 (1947); *see also Milledgeville State Hosp. v. Clodfelter*, 99 Ga. App. 49, 50-51 (1959) (“[T]he Industrial Board was a mere creature of the statute, brought into being by the legislature as an administrative body. It herefore has no inherent powers, and consequently has no lawful right to act except as directed by law.”); *Cotton States Ins. Co. v. Bates*, 140 Ga. App. 428, 428 (1976) (“The Board of Workmen’s Compensation is an administrative body and it possesses only the jurisdiction, power, and authority granted to it by the legislature.”). “[T]he promulgation of rules not authorized by statute constitutes an unconstitutional usurpation of legislative power.” *Ga. Real Est. Comm’n*, 234 Ga. at 35.

Here, as explained above, the SEB has promulgated rules that not only exceed the authority granted by the purported enabling statutes cited by the SEB, but that directly conflict with existing election laws. *See supra* Section II.B-C. Such ultra vires rulemaking is an unconstitutional exercise of the legislative power.

### **III. The Timing of the Hand Counting Rule Is Not Conducive to the Orderly Conduct of Elections.**

Section 21-2-31(2) requires that any SEB rules or regulations “be conducive to the fair, legal, and orderly conduct” of elections. O.G.C.A. § 21-2-31(2). The SEB has failed to carry out this remit. The Hand Counting Rule is not only illegal, but also would significantly disrupt fair and orderly election administration just 22 days before election day.

The Hand Counting Rule requires thousands of Georgia poll officers to hand-count ballots, one-by-one, at over 2,500 locations on election night, or the next day, when poll

workers are already straining to comply with statutory deadlines for reporting and certification. Local election officials will have to carry this out without the benefit of training or guidance from the Secretary of State, who has made clear that the “SOS Elections Division does not intend to provide additional training on SEB Rules” because, among other reasons, “poll worker training in many counties has already started and there is limited time remaining for additional training . . . .” Ex. H (SOS Guidance on Recent SEB Rule Amendments to 183-1-12.12(a)(5) (Oct. 1, 2024)).

Indeed, election officials correctly have bemoaned that the Hand Counting Rule would result in confusion and pandemonium. The Secretary of State declared that “[i]t 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.” Ex. I at 1 (SOS Letter to Mr. John Fervier, Chairman, Georgia State Election Board (Sep. 16, 2024)). He went on that the Amendments “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.” *Id.* at 2. These concerns were echoed by the Georgia Association of Voter Registration and Election Officials (GAVREO), an organization composed of over 500 county election workers and officials across the State, who warned that:

GAVREO members are gravely concerned that dramatic changes at this stage will disrupt the preparation and training processes already in motion for poll workers, absentee voting, advance voting, and Election Day preparation . . . any last-minute changes to the rules risk undermining the public’s trust in the electoral process and place undue pressure on the individuals responsible for managing the polls and administering the election. This could ultimately lead to errors or delays in voting, which is the last thing anyone wants.

Ex. C. By promulgating these Rules so close to the election, the SEB has failed to carry out its duty to promote the orderly conduct of elections.<sup>7</sup>

#### **IV. Georgia NAACP and GCPA Are Entitled to a Declaratory Judgment.**

Intervenor-Plaintiffs Georgia NAACP and GCPA are entitled to a declaratory judgment invalidating the Hand Counting Rule. To obtain relief under the Declaratory Judgment Act, the plaintiff must “allege[] threatened future injury that a declaration would prevent them from suffering.” *Cobb Cnty. v. Floam*, 319 Ga. 89, 99 (2024); see O.C.G.A. § 9-4-2(a). They must also “allege that they are at risk of taking some undirected future action incident to their rights and that such action might jeopardize their interests.” *Floam*, 319 Ga. at 100 (emphasis omitted). Intervenor-Plaintiffs squarely satisfy both of these requirements.

First, the Georgia NAACP and the GCPA face an imminent threat of future injury because of the Hand Counting Rule, and a declaratory judgment invalidating the rule would prevent those injuries from occurring. Hand counting is unreliable, disrupts chain of custody procedures, introduces the potential for spoliation of ballots, jeopardizes ballot secrecy, and could result in accidental or deliberate counting delays that threaten the

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<sup>7</sup> Federal courts disfavor significant upheavals to election laws in close proximity to election day. See, e.g., *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006); *Grace, Inc. v. City of Miami*, No. 23-12472, 2023 WL 5286232, at \*1 (11th Cir. Aug. 4, 2023). The logic underpinning these decisions applies here too demonstrating that the Hand Counting Rule was promulgated too close to the election. Indeed, the OAG warned the SEB against “the passage of any rules well-within the period where courts have agreed that *Purcell* applies.” Ex. D at 2; see also Ex. I at 2 (similar warning from the Secretary of State).

timely certification of election returns. *See* Compl. ¶ 11, 17; Butler Decl. ¶¶ 12-14; Griggs Decl. ¶ 16; Ex. B; Ex. I at 2. Any of these outcomes would directly harm the Georgia NAACP, the GCPA, and their members, and the only way to avoid the risk of harm is to invalidate the rule.

Second, the Georgia NAACP and the GCPA face uncertainty about how they can act to avoid those potential injuries if the rule remains in place. Unlike in *Floam*, where the election already occurred and plaintiffs had “no decision to make about where to vote,” *Floam*, 319 Ga. at 100, Intervenor-Plaintiffs’ members have a crucial decision to make about how to protect their rights in the upcoming election: should they proceed with plans to vote on Election Day, when the Hand Counting Rule applies, or should they endeavor to vote during in-person Advanced Voting or apply to vote by mail? *See* Ex. J (Declaration of Helen Butler ¶¶ 3-4 (Oct. 11, 2024) (“10/11 Butler Decl.”)). Voting early may not be practicable for all voters, and voting by mail is not accessible for all voters, nor is it a panacea—for one, voters risk disenfranchisement if their signature does not appear to match the signature on file and Georgia law only allows voters three days to cure their ballots. *See* O.C.G.A. §§ 21-2-386(a)(1)(C); 21-2-419(c)(1). Consequently, Intervenor-Plaintiffs have demonstrated that their members are “insecure about some future action they plan to take” and a clear “need to declare rights upon which their future conduct depends.” *Floam*, 319 Ga. at 101.

The Georgia NAACP and the GCPA also face uncertainty as organizations about how best to advise their members and others they serve on these important questions to protect them from being disenfranchised. *See* Butler Decl. ¶ 12; 10/11 Butler Decl. ¶ 5.

Intervenor-Plaintiffs have a duty to protect their members and constituents from improper counting and tabulation procedures. Intervenor-Plaintiffs recognize that their members' voting rights are at stake if the Hand Counting Rule is allowed to go into effect and their members vote on Election Day. At the same time, Intervenor-Plaintiffs as organizations want to protect their members' fundamental rights to vote in person on Election Day, and to have those ballots properly counted. 10/11 Butler Decl. ¶ 5. They also have an interest in continuing to provide their members and others they serve with accurate information and to avoid the needless amplification of misinformation or fearmongering. Intervenor-Plaintiffs do not want to take any action or inaction that could threaten their members' or others' fundamental right to be counted. Consequently, Intervenor-Plaintiffs face uncertainty in how to carry out their mission to ensure their members and others they serve are able to participate in our democracy.

### CONCLUSION

For the foregoing reasons, the Court should declare that the Hand Counting Rule is invalid, as it exceeds the statutory authority of the SEB, and issue an injunction preventing the Rule's enforcement.

Respectfully submitted this 11th day of October 2024,

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## CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2024, a true and correct copy of the foregoing BRIEF OF INTERVENOR PLAINTIFFS GEORGIA STATE CONFERENCE OF THE NAACP and GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC. was electronically filed with the Court using the Court's eFileGA electronic filing system, which will automatically send an email notification of such filing to all attorneys of record.

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# **Addendum**



Statutory Requirements in the Georgia Election Code	Amended Rule 183-1-12.12(a)(5) (the “Hand Counting Rule”)
<b>O.C.G.A. § 21-2-50(a)(5)</b>	
Gives <b>the Secretary of State</b> the authority to create <b>“all blank forms”</b> to be used in any election and to provide the superintendents such blank forms.	<b>Poll officers</b> are to “each <b>sign a [unidentified and nonexistent] control document</b> containing the polling place, ballot scanner serial number, election name, printed name with signature and date and time of the ballot hand count.”
<b>O.C.G.A. § 21-2-421(a)(1)</b>	
Requires the posting of the number of ballots cast <b>“[a]s soon as possible but not later than 11:59 P.M. following the close of the polls on the day of”</b> the Election.	Permits hand counting <b>“to start the next day and finish during the week designated for county certification.”</b>
<b>O.C.G.A. § 21-2-436</b>	
Applies to <b>“Precincts Using Paper Ballots”</b> marked by hand.	The Hand Counting Rule is not limited to precincts using paper ballots. <i>See</i> Rule 183-1-12-.01 (“Beginning with the 2020 Presidential Preference Primary, <b>all federal</b> , state, and county general primaries and elections, special primaries and elections, and referendums in the State of Georgia <b>shall be conducted via an Optical Scanning Voting System</b> as defined by O.C.G.A. 21-2-1(19.1)”).
“The electors list, the voter's certificates, the numbered list of voters, and the stubs of all ballots used, together with all unused ballots, all spoiled and canceled ballots, and all rejected voter's certificates, shall then be <b>placed in separate packages, containers, or envelopes and sealed before the ballot box is opened.</b> ”	Requires <b>opening ballot box and hand counting all ballots prior</b> to packaging and sealing of the related materials.
<b>O.G.C.A. § 21-2-454</b>	
“ <b>As soon as the polls are closed and the last elector has voted, the poll officers shall immediately lock and seal</b> the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation, and <b>they shall then</b>	Requires poll officers to <b>“unseal and open each scanner ballot box”</b> to hand count the ballots and repeatedly handle the ballots and reconcile any <b>“inconsistency.”</b>

<p>sign a certificate stating: (1) That the machine has been locked against voting and sealed; (2) The number, as shown on the public counter; (3) The number on the seal which they have placed upon the machine; (4) The number registered on the protective counter or device; and (5) The number or other designation of the voting machine, which certificate shall be returned by the chief manager to the superintendent with the other certificates, as provided in this part.”</p>	
<p><b>O.G.C.A. § 21-2-483(a)</b></p>	
<p>“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. All persons who perform any duties at the tabulating center shall be deputized by the superintendent, and only persons so deputized shall touch any ballot, container, paper, or machine utilized in the conduct of the count or be permitted to be inside the area designated for officers deputized to conduct the count.”</p>	<p>Requires hand counting by the “poll manager and two witnesses who have been sworn as poll officers.”</p>
<p><b>O.G.C.A. § 21-2-485(1)</b></p>	
<p>In precincts using optical scanning voting equipment, “[a]s soon as the polls are closed and the last elector has voted,” poll officers are required to, if tabulation occurs at a central count location, “[s]eal the ballot box and deliver the ballot box to the tabulating center,” and once delivered, examine the ballots and separate the write-in votes.</p>	<p>Permits hand counting by poll officers at the precinct.</p>
<p><b>O.C.G.A. § 21-2-493(b)</b></p>	
<p>“The superintendent, before computing the votes cast in any precinct, shall compare the registration figure with the certificates returned by the poll officers</p>	<p>“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</p>

showing the number of persons who voted in each precinct or the number of ballots cast. If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, **such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent...**”

**manager shall immediately determine the reason for the inconsistency;** correct the inconsistency, if possible...”

# **Exhibit A**

# SHARLENE ALEXANDER

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June 6, 2024

Georgia State Election Board  
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## **PETITION FOR AMENDMENT TO ELECTION RULES (Hand Count of Ballots at the Precinct)**

Mr. John Fervier, Chairman,

Mrs. Sara Tindall Ghazal,

Mrs. Janelle King,

Dr Janice W. Johnston,

Mr Rick Jeffares

This petition for amendment to an election rule enhances election integrity by providing a checkpoint outside of the electronic system, more accurate results, reducing the opportunity for collusion to sabotage election results and reducing Dominion and electronic voting system error complaints leading to 'stolen election' theories. As a Member of the Fayette County Board of Elections, and as a CPA and former Expert Trial Witness on Embezzlements, I believe this addition to the election process will greatly enhance the integrity of the outcome in each election.

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As such, I hereby submit this petition for your consideration according to SEB Rule 183-1-1-.01(3):

**1. The name and post office address of the Petitioner:**

**Sharlene Alexander**



**2. The full text of the rule requested to be amended:**

**Rule 183-1-12-.12(a)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, and place the paper ballots into a durable, portable, secure and sealable container to be provided for transport to the office of the election superintendent. A separate container shall be used for the paper ballots from each ballot box and the container shall be labelled with the polling place, ballot scanner serial number, the number assigned to the ballot scanner for that election, the count of the ballots from the tabulation tape, and the date and time that the ballot box was emptied. The container shall be sealed and signed by the poll manager and the same two witnesses such that it cannot be opened without breaking the seal. The poll manager and the two witnesses shall sign a label affixed to the container indicating that it contains all of the correct ballots from the indicated ballot box and no additional ballots.”

TO BE AMENDED IN BOLD AND UNDERLINED TEXT:

“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

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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** count 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 of the **hand counted ballots** from the indicated scanner box and no additional ballots.

### 3. The reason such rule should be amended:

Prior to October 6, 2022, it was a long-standing tradition in Fayette County and other polling places that the paper ballots were removed from scanners at the precinct, the ballots were then hand counted by three sworn poll officials for total number of ballots removed from the scanner, then this hand counted total was reconciled against the scanner count to ensure that all cast ballots were accounted for. By performing this precinct hand count of totals only, any discrepancies can be immediately investigated with all parties, ballots, electronic voting systems remaining in the same space and the difference usually explained. The urgency of a need to reconcile counts immediately at the polling place are substantiated in SEB Rule 183-1-12-.12(a)2, which states "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." With this amendment, SEB Rule 183-1-12-.12(a)2 would read "if the numbers recorded on the recap forms do not reconcile with each other **and the total of hand counted paper ballots**, 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. The hand counted ballots are then sealed and transported by two people via chain-of-custody to the tabulation center.

This practice of hand counting the ballots at each precinct was halted in most counties when Blake Evans, Director of Elections at the Office of the Secretary of State issued an email memorandum on October 6, 2022 (attached). As a result of halting this process, the total ballots hand count is never reconciled against the scanner total and if a ballot count or recount were to occur sometime after the ballots leave the precinct, it may be difficult or impossible to determine the cause



of any discrepancy. In addition, SEB Rule 183-1-12-.12(a)2 is subject to interpretation as to whether the poll manager is required to hand count the number of paper ballots removed from the scanner or simply report the number of printed ballots on the scanner screen or the totals tape.

The proposed amendment to rule Rule 183-1-12-.12(a)5 to require a hand count at each precinct to ensure that the number of ballots placed under seal for transport to the tabulation center matches the chain-of-custody results form, and if there is a discrepancy with the scanner total, then that discrepancy will be immediately investigated by elections officials.

**4. Any and all pertinent facts as to the Petitioner's interest in the matter.**

The following vote tabulation errors and reported results could have been found and corrected if the above checks-and-balances hand count of total paper ballots were performed in every county :

1] November 3, 2020 Presidential Election in Fayette County cited by the State Elections Board for criminal investigation [SEB 21-197 transcript]: One memory card containing 2,760 ballots was left in an early voting precinct scanner and overlooked by the Elections Office. The original memory card had recorded close to 10,000 votes so a Dominion rep was called to replace the full card with a new one to complete the election cycle. The Dominion rep took the full memory card to the Elections Office [also in violation of chain-of-custody requiring two sworn poll officials to accompany the card]. The Elections Director had not experienced an election cycle where one scanner had multiple memory cards due to voter turnout so he didn't remember the second memory card since he had one for each of the 4 early voting precincts in his County. Had the total ballots removed from the scanner box been hand counted at the precinct this misplaced memory card error could have been avoided.

2] In Fayette County at an AIP [Early Voting] precinct on the last day of early voting, ballots were removed from the AIP scanner and the poll manager had these ballots hand counted to ensure that all ballots were removed. This hand count was 1 less than the scanner total. Searching inside the scanner ballot box, one ballot was found sticking to the top of the ballot box [presumably due to static electricity.]

3] In the Fayette County General Primary on May 21, 2024, one precinct had a discrepancy in ballots that was discovered during audit. Two technicians sent to the warehouse found that the ballots in the write-in bin had not been retrieved from the scanner on Election Night.

In all of the above cases, had there been an independent hand-count of paper ballots removed from the scanner AT THE PRECINCT, these errors would have been found and corrected. As a past supervisor of audits, I have long believed that cross-check control procedures are just as applicable to ballots as dollars. The best check-and-balance process is one that is separate from the all of the electronic count recaps found on the various electronic voting machines at the polling places. This suggested independent hand count of ballots process better ensures that all ballots are accounted for, guards against reported result errors and collusion and can better silence the claims that poll pads, ballot scanners or BMD totals can be accessed remotely, manipulated, duplicate ballot batches scanned or contain software glitches and manipulation.

5. **Any and all facts known to the Petitioner that might influence the decision of the Board to initiate or not initiate rulemaking, including identification of any parties who it is known will or may be affected by the amended rule.**

All election officials in the State of Georgia who conduct elections, as well as Blake Evans, Director of Elections, who advises election officials and oversees training on the conduct of elections, will be affected by this rule amendment.

In particular, Superintendants responsible for training Poll Workers according to O.C.G.A. §21-2-70, and Poll Workers themselves will be required to execute the new procedure.

6. **Citations of legal authorities which authorize, support, or require the action requested by the Petitioner.**

O.C.G.A. §21-2-483(a) requires that ballots be counted at the precinct or tabulating center where optical scanners are used..

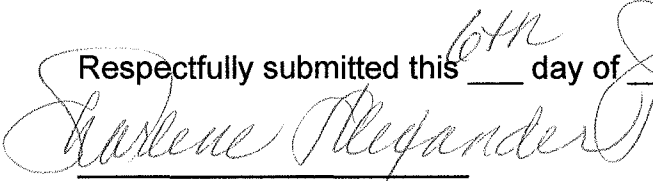
O.C.G.A. §21-2-436 requires, at the close of polls, that the number of votes be reconciled as shown on stubs and numbered list of voters, accounting for spoiled and returned ballots, rejected certificates and unused ballots, before these items are sealed; however, it fails to require that the actual number of paper ballots be reconciled prior to seal and transport. This hand count of total ballots is the only check-and-balance procedure separated from the current Dominion electronic voting system and direly needed to counter the many inconsistencies found across the state including missed memory cards, misplaced or lost paper ballots, duplicated ballot scans, errors in poll pad voter check-ins and BMD manipulation as shown by Professor Halderman in the recent Judge Tottenberg trial in Atlanta, GA.

O.C.G.A. §21-2-420(a) requires, at the close of polls, that the total number of ballots cast be reported to the election superintendant, but doesn't specify how that number is determined, *i.e.* whether it comes from the Poll Pads, the Scanners, or from counting the ballots themselves. While the Poll Pad and Scanner counts are required to be reconciled, there isn't a reconciliation of the ballots themselves at the polling place currently.

O.C.G.A. §21-2-420(a) further requires that the superintendant count the ballots at the tabulation center, where any discrepancies may be much more difficult to investigate.

I, Sharlene Alexander, personally appeared before the undersigned duly authorized to administer oaths, and on oath deposes that the facts stated in the Petition therein are true and accurate.

Respectfully submitted this <sup>6th</sup> day of June, 2024.

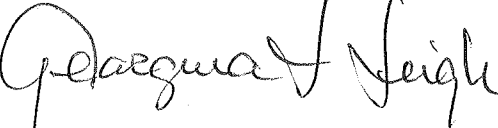


Sharlene Alexander

**SUBSCRIBED AND SWORN BEFORE ME**

this 6th day of June, 2024

Notary Public in and for Fayette County, Georgia



[Seal]



egale@darientel.net

---

**From:** DoNotReply@sos.ga.gov  
**Sent:** Thursday, October 6, 2022 5:21 PM  
**To:** DoNotReply@sos.ga.gov  
**Subject:** The Buzz Post - Ballot Security

A [new discussion](#) has been posted in The Buzz by Evans, Blake on 10/6/2022 5:10 PM

I know that many counties have received an email requesting that poll workers hand count ballots at polling places on election night. **Deciding to have poll workers hand count ballots at each polling location on election night is not something your poll workers should do.**

Please see O.C.G.A. § 21-2-420(a) which states :

“(a) After the time for the closing of the polls and the last elector voting, the poll officials in each precinct shall complete the required accounting and related documentation for the precinct and shall advise the election superintendent of the total number of ballots cast at such precinct and the total number of provisional ballots cast. The chief manager and at least one assistant manager shall post a copy of the tabulated results for the precinct on the door of the precinct and then immediately deliver all required documentation and election materials to the election superintendent. The election superintendent shall then ensure that such ballots are processed, counted, and tabulated as soon as possible and shall not cease such count and tabulation until all such ballots are counted and tabulated.”

Also, SEB Rule 183-1-12-.12 states: “The poll manager and two witnesses who have been sworn as poll officers as provided in O.C.G.A. 21-2-94 and 21-2-95 shall unseal and open each ballot box, remove the paper ballots from each ballot box, and place the paper ballots into a durable, portable, secure and sealable container to be provided for transport to the office of the election superintendent.”

In order to ensure maximum security for the voted ballots, poll workers should not prolong the process of removing ballots from ballot boxes and sealing them in transport containers. This process should be done efficiently, transparently, and immediately after the polls have closed and votes have been cast. Members of the public can observe the process.

If you have any further questions regarding the law on this matter, please consult with your county attorney with this guidance in mind.

Blake Evans, Elections Director

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

# **Exhibit B**



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

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

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Secretary Raffensperger Announces Cross-State Double Voting Indictment

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Secretary Hosts Law Enforcement Tabletop on Secure Elections

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

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Secretary Raffensperger Announces Real-Time Ballot Tracking Partnership with Ballot Scout

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Brad Raffensperger Sets the Record Straight: Abrams Lies Again About Georgia's Elections

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Georgia  
Secretary of State  
Brad Raffensperger



Office of Brad  
Raffensperger

News & Announcements

Privacy Policy

Security

214 State Capitol  
Atlanta, Georgia 30334

Contact Us

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Secretary of State

# **Exhibit C**

# GEORGIA ASSOCIATION OF VOTER REGISTRATION AND ELECTION OFFICIALS



## FOR IMMEDIATE RELEASE

### **GAVREO Calls on State Elections Board to Pause Future Rule Changes Ahead of Presidential Election**

**[Georgia, August 21, 2024]** – With less than 77 days until the Presidential Election, the Georgia Association of Voter Registration and Election Officials (GAVREO) is urging the State Election Board (SEB) to halt the implementation of additional SEB election rules that would go into effect for the upcoming election. GAVREO members are gravely concerned that dramatic changes at this stage will disrupt the preparation and training processes already in motion for poll workers, absentee voting, advance voting and Election Day preparation.

Given the proximity of the election, introducing new rules at this stage would create unnecessary confusion among both the public and the dedicated poll workers and election officials who are critical to ensuring a smooth and efficient voting process.

"We are already in the midst of extensive training preparation for our poll workers and preparing for one of the biggest and most scrutinized elections in years," said W. Travis Doss, Jr., President of GAVREO. "Any last-minute changes to the rules risk undermining the public's trust in the electoral process and place undue pressure on the individuals responsible for managing the polls and administering the election. This could ultimately lead to errors or delays in voting, which is the last thing anyone wants."

In a time when maintaining public confidence in elections is more important than ever, making changes so close to Election Day only serves to heighten concerns and fears among voters. GAVREO believes that maintaining stability in the rules governing the elections process is essential for ensuring a fair and orderly process.

"We urge the State Election Board to seriously consider the impact of further rule changes and to prioritize the integrity and smooth operation of the upcoming election. Our poll workers, election administrators and voters deserve clarity and consistency in the rules that will guide this critical process," added Mr. Doss.

For more information, please contact GAVREO, [tdoss@augustaga.gov](mailto:tdoss@augustaga.gov) or 706-821-2872.

### **About GAVREO**

\*\*\*\*The Georgia Association of Voter Registration and Election Officials (GAVREO) was established in 2019 and was constituted from the merging of the Voter Registrars Association of Georgia (VRAG) and the Georgia Election Officials Association (GEOA). Members consist of Active Election Superintendents, Election Supervisors/Directors, the County Board of Registrars, Deputy Registrars, County Election Board Members, Combined County Voter Registration and Election Board Members, and other full-time and part-time voter registration and elections staff and currently has over 500 members statewide. Many of our members have over 30 years of experience in elections administration. \*\*\*\*

# **Exhibit D**



## GEORGIA DEPARTMENT OF LAW

40 Capitol Square SW  
Atlanta, Georgia 30334-1300

CHRISTOPHER M. CARR  
ATTORNEY GENERAL

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

### **ATTORNEY-CLIENT PRIVILEGED INFORMATION**

September 19, 2024

#### **MEMORANDUM:**

TO: John Fervier  
Chairman  
State Election Board

FROM: Elizabeth Young  
Senior Assistant Attorney General

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

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

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

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

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

Please note the following:

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

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

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

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

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

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

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

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

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



## II. Proposed Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O.C.G.A. § 21-2-420(a) does provide that “the poll officials in each precinct shall complete the required accounting and related documentation for the precinct and shall advise the election superintendent of the total number of ballots cast at such precinct and the total number of provisional ballots cast.” However, neither the statutes that prescribe the duties of poll officers after the close of the polls for precincts using voting machines, *see* O.C.G.A. § 21-2-454, nor the precincts using optical scanners, *see* O.C.G.A. § 21-2-485, suggest that the General Assembly contemplated that a hand-count of the ballots would be part of the “required accounting.”

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

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

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

# **Exhibit E**

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

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

Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

Civil Action File No. 24CV01158

**DECLARATION OF GERALD GRIGGS**

Pursuant to O.C.G.A. § 9-10-110 and § 9-10-113, I, Gerald Griggs, declare:

1. I am over the age of 18 years, have personal knowledge of the matters stated herein, am competent to make this declaration, and would testify to the same if called as a witness in Court.
2. I am the President of the Georgia State Conference of the NAACP (“GA NAACP”), and I am authorized to speak for GA NAACP in this matter.
3. GA NAACP, a unit of the National NAACP founded in 1909, is the oldest and one of the largest, most significant organizations promoting and protecting the civil rights of African Americans and other racial and ethnic minorities in Georgia.
4. GA NAACP is a non-partisan, interracial, nonprofit membership organization with a mission to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans. Protecting and promoting the voting rights of Black voters, other voters of color, and underserved communities is essential to this mission.
5. In pursuit of its core mission, GA NAACP engages in robust voter registration, voter education, and get-out-the-vote activities, expending

considerable resources towards ensuring that eligible voters in Georgia, particularly voters in traditionally disenfranchised communities, can exercise their right to vote.

6. GA NAACP is headquartered in College Park, GA. It has over 180 branches and chapters throughout the State.
7. At this time, based upon GA NAACP's confidential membership information, GA NAACP has nearly 10,000 active members in Georgia.
8. At this time, based upon GA NAACP's confidential membership information, GA NAACP has members, including those that are registered voters, in at least 120 counties in Georgia, including in Fulton County.
9. GA NAACP's membership is comprised of predominately Black and other minority individuals and includes registered voters who reside throughout the state.
10. In advance of the November 2024 General Election, GA NAACP generally, and the Fulton County Branch specifically, have been holding get-out-the-vote events, registering prospective voters,

advising their members and their broader constituents to check their voter registration, and planning their Souls-to-the-Polls programs.

11. At this time, GA NAACP has members who are registered to vote, including in Fulton County. Many Georgia NAACP members plan to vote in the upcoming General Election on November 5, 2024.
12. I am aware that the Georgia State Board of Elections amended an existing rule that lays out the duties of poll officers during the tabulation of votes to now require three poll officers to independently count the total number of ballots removed from the scanner sorting into stacks of fifty ballots until all ballots have been hand counted. As I understand, next, each poll officer must sign a document verifying the total number of ballots they counted. If there are any discrepancies between the three poll officers' hand counts or between the hand counts and the numbers recorded on the precinct poll pads or the ballot marking devices, then 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.



13. This rule is extremely concerning to me and to the organization. In fact, I believe that it will be disastrous for our members who plan to vote in November.
14. We are so close to the General Election—less than fifty days away, in fact. The hand count requirement now changes the whole tabulation process. I worry that poll officers will face difficulty navigating this confusing process and will face uncertainty as to whether their votes will be part of the tabulation when so many poll officers are in charge of resolving any discrepancies in the different hand counts. On top of that, the new hand counting requirement throws a wrench into the mandatory trainings that poll officers must complete. Now, poll officers must follow an entirely new tabulation process, one especially prone to errors and discrepancies.
15. For example, how long would it take for three poll officers to hand count thousands of ballots? If three poll officers must independently count the ballots and place them in stacks of fifty ballots each, what order of counting must they follow? And if each precinct must follow this new process, then thousands of precincts in all 159 counties may all do it differently resulting in different outcomes. Moreover, the poll

manager must correct any inconsistencies and figure out the reasons for discrepancies.

16. GA NAACP's members will be harmed. This is because hand counting unreliable and leads to errors and mistakes. Furthermore, it also creates issues of ballot security, such as ballots getting spoiled, inadvertently or otherwise, if poll officials tamper with individual ballots or accidentally spoil individual ballots by spilling liquids for example. And the prospect that multiple poll officials will now be privy to the candidates chosen by voters on the printed ballots before all the votes are tabulated is by itself a security risk and also risks ballots of GA NAACP members being thrown out.
17. I view this new rule requiring three poll officers to handle each ballot and conduct independent hand counts of all ballots as a disaster in the making. And the risk of there being security issues such as the spoiling of ballots, inaccuracies, and/or discrepancies is much greater in hand counting than when relying on machine tabulation. Hand counting also has the potential to delay certification and thus makes it much harder to meet the certification deadline. GA NAACP members now face uncertainty as to whether their votes will count, and their confidence in

the stability of the election process and administration will be shaken especially if they do not know whether their votes will count. In fact, the Hand Counting Rule increases the likelihood that their votes will not be counted at all because of potential “discrepancies.”

18. I am also concerned that there may be an attempt by precincts or counties to deliberately slow down the ballot counting process and prevent it from being completed. This is because poll officials in every polling location across 159 counties would know from the printed ballots that show the voters’ selections for each contest, which candidates are leading the tally before the tabulation of the votes by the election superintendents. And poll officials may view this as an opportunity to delay the count and ultimately delay certification.
19. The new hand counting rule also frustrates GA NAACP’s mission. GA NAACP works hard to register prospective voters and to educate them and is now planning to mobilize these voters to the polls. These last-minute changes that have the potential to disenfranchise GA NAACP members and constituents will undo much of the hard work that GA NAACP has done.

20. GA NAACP also has limited staff and volunteer resources to troubleshoot any issues that arise if its members find out that their votes were not counted, or precincts do not tabulate the votes in a timely manner. Our staff time has so far been dedicated to registering, educating, and activating voters for the upcoming General Election. And after the Election, we plan to spend the bulk of our time helping voters who cast provisional ballots at the polls to cure those ballots. But now with the hand counting rule, we must divert these limited resources towards troubleshooting issues that will arise from the application and administration of this new rule.
21. These tasks will be challenging and resource-intensive, especially in our marginalized constituencies. Those vulnerable voters have less time and resources to fight against any uncertainty and confusion that will be caused by this change in the rules. To that end, GA NAACP's resources will be stretched thin. We spend a lot of our limited time, resources, and staff helping voters who cast provisional ballots at the polls cure those ballots within the three days after November 5. And we will not be able to do so at the same degree if we have to deal with the consequences of the hand counting rule.

22. GA NAACP's work relating to other initiatives in the criminal justice and economic justice spaces would also suffer if we were forced to spend considerable resources responding to last minute mass voter-challenges.

**VERIFICATION**

I, Gerald Griggs, personally appeared before the undersigned notary public and hereby state on oath that the facts set forth in the foregoing Declaration are true and correct to the best of my knowledge and belief.

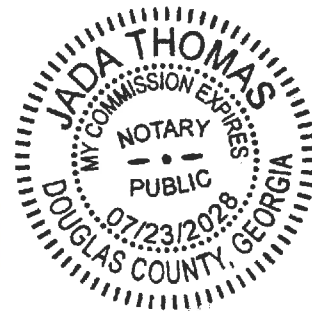


\_\_\_\_\_  
Signature of Declarant Gerald Griggs

Gerald Griggs  
Printed Name of Declarant Gerald Griggs

Sworn to and subscribed this 1<sup>st</sup> day of October, 2024 in Georgia.

NOTARY PUBLIC My Commission Expires:



# **Exhibit F**

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

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

Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

Civil Action File No. 24CV01158

**DECLARATION OF HELEN BUTLER**



Pursuant to O.C.G.A. § 9-10-110 and § 9-10-113, I, Helen Butler, declare as follows:

1. I am the Executive Director of the Georgia Coalition for the People's Agenda ("GCPA" or "People's Agenda"), over 18 years of age, and competent to make this declaration.
2. I have personal knowledge of the matters stated herein and would testify to the same if called as a witness in Court.
3. GCPA is a Georgia not-for-profit corporation with its principal place of business located in Atlanta, Georgia.
4. GCPA was founded in 1998 by the late Reverend Joseph Lowery. GCPA is comprised of a coalition of human rights, civil rights, labor, women's, youth, and peace and justice groups that advocate for issues including, but are not limited to, voting rights protection, elimination of barriers to the ballot box, criminal justice reform, quality education, affordable housing, economic development and equal participation in the political process for Georgians of color and underrepresented communities.
5. GCPA encourages voter registration and participation, particularly among Black Georgians and other underrepresented communities.

GCPA's support of voting rights and access is central to its mission. The organization has committed, and ahead of the 2024 General Election, continues to commit time and resources to conducting voter registration drives, voter education, voter ID assistance, election protection, census participation, fair redistricting maps, other get-out-the-vote efforts in Georgia, such as "Souls to the Polls," "Pews to the Polls" and other initiatives designed to encourage voter turnout, and impact litigation involving voting rights issues.

6. GCPA's coalition currently includes more than 30 organizations that collectively have more than 5,000 individual members across the state of Georgia.
7. GCPA operates seven offices across the State of Georgia: its main office is in Atlanta and additional offices are located in Athens, Augusta, Albany, Savannah, Macon, and LaGrange. We are expecting to open an office in Rome, Georgia later this year. Each office serves roughly 10 to 12 surrounding counties on a regular basis.
8. GCPA has limited resources to cover all this work, with seven paid full-time staff members working in the main Atlanta office, and six coordinators, each assigned to a particular area of Georgia. The

coordinators are responsible for organizing the organization's activities in the communities they serve, including civic engagement activities, voter registration drives, voter mobilization efforts, and the organization's educations and coalition work. The People's Agenda also has a couple hundred volunteers that work with its offices across the State of Georgia, including in Atlanta.

9. I am aware that the Georgia State Board of Elections amended an existing rule that lays out the duties of poll officers during the tabulation of votes to now require three poll officers to independently count the total number of ballots removed from the scanner sorting into stacks of fifty ballots until all ballots have been hand counted. As I understand, next, each poll officer must sign a document verifying the total number of ballots they counted. If there are any discrepancies between the three poll officers' hand counts or between the hand counts and the numbers recorded on the precinct poll pads or the ballot marking devices, then 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.

10. At this time, GCPA has members who are registered to vote, including in Fulton County. Many GCPA members plan to vote in the upcoming General Election on November 5, 2024, including members of GCPA in Fulton County.
11. This rule is extremely concerning to me and to the organization. In fact, I believe that the hand counting rule will be disastrous for our members who plan to vote in November and for our organization.
12. We are so close to the General Election—less than fifty days away. The hand counting requirement changes the whole tabulation process. Poll officers will face difficulty navigating this confusing process. And as a result, GCPA's members will face uncertainty as to whether their votes will be part of the tabulation when there are so many cooks in the kitchen in charge of resolving any discrepancies in the different hand counts. On top of that, the new hand counting requirement throws a wrench into the mandatory trainings that poll officers must complete. Now, poll officers must follow an entirely new tabulation process, one especially prone to errors and discrepancies.
1. GCPA's members will be harmed. Hand counting is unreliable and leads to errors and mistakes. And this will expose GCPA's members to

potential disenfranchisement if their ballots are thrown out intentionally or simply not counted accidentally. Furthermore, hand count also creates issues of ballot security, such as ballots getting spoiled, inadvertently or otherwise, if poll officials tamper with individual ballots or accidentally spoil individual ballots by spilling liquids for example. The prospect that multiple poll officials will now be privy to the candidates chosen by voters on the printed ballots before all the votes are tabulated is not only a security risk, it also increases the risk that ballots of GCPA members will be thrown out.

13. I view this new rule requiring three poll officers to handle each ballot as having the potential to lead to disastrous consequences. With the new rule in place, I think that there will be massive disruptions in the tabulation process—poll officers may disagree with each other, discrepancies might not be resolved, and ultimately ballots may be thrown out. Trying to imagine this process play out smoothly in the thousands of precincts across 159 counties is difficult.
2. And the risk of there being security issues such as the spoiling of ballots, inaccuracies, and/or discrepancies is much greater in hand counting than when relying on machine tabulation. Hand counting also



has the potential to delay certification and thus makes it much harder to meet the certification deadline. GCPA's members now face uncertainty as to whether their votes will count, and their confidence in the stability of the election process and administration will be shaken especially if they do not know whether their votes will count. In fact, the Hand Counting Rule increases the likelihood that their votes will not be counted at all because of potential "discrepancies."

14. I am also concerned that there may be an attempt by precincts or counties to deliberately slow down the ballot counting process and prevent it from being completed. This is because poll officials in every polling location across 159 counties would know from the printed ballots that show the voters' selections for each contest, which candidates are leading the tally before the tabulation of the votes by the election superintendents. And poll officials, especially those officials who are unhappy with the way the votes are tallying up, may view this as an opportunity to delay the count and ultimately delay certification. This new process will destabilize the election process and also unnecessarily make voters question whether their votes will ultimately count.

15. The new hand counting rule also frustrates GCPA's mission. GCPA has worked, and continues to work, to prevent efforts to suppress the votes of, or disenfranchise, Black voters, other voters of color and other underrepresented communities' voters, and has been involved in voting rights litigation in Georgia to vindicate the rights of Black voters and other voters of color.
16. The new rule will also force GCPA to divert its limited staff and resources away from planned activities to respond to issues that will likely arise as result of the hand counting rule. GCPA has worked hard to register prospective voters and to educate them and is now planning to mobilize these voters to the polls These last-minute changes that have the potential to disenfranchise GCPA's members and constituents will undo much of the hard work that GCPA has done throughout the year.
17. GCPA has also limited staff and volunteer resources to troubleshoot any issues that arise *after* the election—for example, if its members find out that their votes were not counted, or precincts do not tabulate the votes in a timely manner. After the election, GCPA spends the bulk of its time helping voters who cast provisional ballots at the polls to cure those ballots. But now with the hand counting rule, the organization

must divert these limited resources away from helping provisional voters.

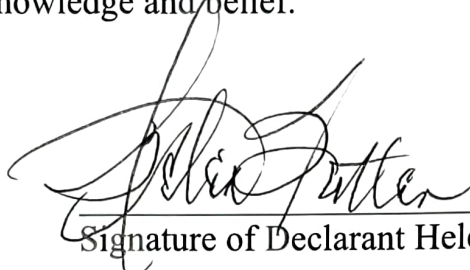
18. These tasks will be challenging and resource-intensive, especially in our marginalized constituencies. Those vulnerable voters have less time and resources to fight against any uncertainty and confusion that will be caused by this change in the rules. To that end, GCPA's resources will be stretched thin.
19. GCPA will also have to divert our precious staff time away from other activities the organization had planned. For instance, People's Agenda typically performs work on matters outside of the voting process—namely, criminal justice reform, equity in education, economic empowerment for Black-owned businesses, environmental justice, elder issues and other matters. And GCPA seeks to balance its limited time and resources between these areas. But these activities will suffer because the organization will be forced to deal with the aftermath of the hand counting process in 159 counties, including responding to endless questions from members and constituents and interfacing with various boards of elections about their individual processes. All of this will take an inordinate amount of time that GCPA cannot afford to lose.



20. GCPA, its coalition organizations, and members, have a strong interest in preventing the disenfranchisement of eligible voters in Georgia, including eligible Black voters and other voters of color from underrepresented communities across the State, including in Fulton County. For that reason, GCPA believes that the hand count rule should not be in effect in the upcoming General Election.

**VERIFICATION**

I, Helen Butler, personally appeared before the undersigned notary public and hereby state on oath that the facts set forth in the foregoing Declaration are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Signature of Declarant Helen Butler

*Helen Butler*  
\_\_\_\_\_  
Printed Name of Declarant Helen Butler

Sworn to and subscribed this 1 day of October, 2024 in Georgia.



NOTARY PUBLIC My Commission Expires: *March 8, 2027*



# **Exhibit G**

# **STATE ELECTION BOARD**

## **NOTICE OF PROPOSED RULEMAKING**

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

TO ALL INTERESTED PERSON AND PARTIES:

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

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

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

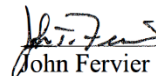
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board’s webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events> .

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

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

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

This 21st day of August 2024.



John Fervier  
Chair, State Election Board

Posted: August 21, 2024

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

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

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

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

NOTE: Underlined text is proposed to be added.

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

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

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

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

## **COPY OF THE PROPOSED NEW RULE**

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

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

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

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

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

# **Exhibit H**



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

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**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 20<sup>th</sup> and 23<sup>rd</sup>, 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 I**



## 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](mailto: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 J**

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

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

Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

Civil Action File No. 24CV01158

**DECLARATION OF HELEN BUTLER**

Pursuant to O.C.G.A. § 9-10-110 and § 9-10-113, I, Helen Butler, declare:

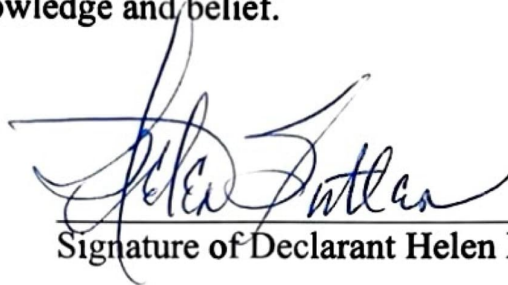
1. I am over the age of 18 years, have personal knowledge of the matters stated herein, am competent to make this declaration, and would testify to the same if called as a witness in Court.
2. I am the Executive Director of the Georgia Coalition for the People's Agenda, Inc, ("GCPA"), and I am authorized to speak for GCPA in this matter.
3. Because of the Hand Counting Rule passed by the State Election Board, we have members who are worried that their vote will not count if they vote on Election Day.
4. For that reason, some members are uncertain as to whether they should vote on Election Day or instead during Advance Voting, in person or by mail, when the Hand Counting Rule does not apply.
5. Because of the Hand Counting Rule, GCPA also does not know how to advise its membership on the important issue of whether members should vote on Election Day or during Advanced Voting. This is very concerning to GCPA, because GCPA firmly believes that voters should be able to cast their ballots pursuant to Georgia's Election Laws

whenever is most convenient to them, whether on Election Day or during Advanced Voting.



**VERIFICATION**

I, Helen Butler, personally appeared before the undersigned notary public and hereby state on oath that the facts set forth in the foregoing Declaration are true and correct to the best of my knowledge and belief.

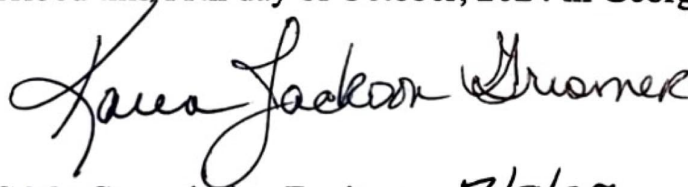


Signature of Declarant Helen Butler



Printed Name of Helen Butler

Sworn to and subscribed this 11th day of October, 2024 in Georgia.



NOTARY PUBLIC My Commission Expires: 3/8/27

