

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

COBB COUNTY BOARD OF ELECTIONS
AND REGISTRATION,

Petitioner,

v.

STATE ELECTION BOARD,

Respondent.

CIVIL ACTION FILE NO. _____

VERIFIED PETITION FOR DECLARATORY RELIEF

Petitioner Cobb County Board of Elections and Registration hereby files this Verified Petition for Declaratory Relief against the State Election Board (“SEB”) under the Georgia Administrative Procedure Act (“APA”), O.C.G.A. § 50-13-10.

INTRODUCTION

1.

On September 20, 2024, the SEB adopted six rules that would, if implemented, substantially alter Georgia’s election procedures on the eve of the November 5, 2024 General Election. The SEB adopted the rules despite strong objections to their legality and belated timing by the Attorney General, the Secretary of State, election workers and officials across the State, voters, and many others.

2.

Petitioner is the “election superintendent” for Cobb County, the State’s third most populous county with more than half a million active voters. Petitioner seeks a declaratory judgment to clarify whether the six rules adopted at the SEB’s September 20, 2024 meeting are invalid for any of the following reasons: (i) that they exceed the SEB’s statutory authority; (ii) that they are

procedurally defective because the SEB did not adopt them in “exact compliance” with the APA; or (iii) that they are unreasonable. Given the fast-approaching election, the requested relief is urgently needed to “guide and protect the *petitioner* from uncertainty and insecurity with respect to” the interaction between the September 20 rules and Petitioner’s legal duties under the Election Code. *Cobb County v. Floam*, 319 Ga. 89, 97 (2024) (emphasis in original).

3.

At issue are the following six SEB rules, which purport to amend existing rules or promulgate new rules concerning the conduct of elections in Georgia:

- **Rule 183-1-12-.12(a)(5):** amended to require hand counting of ballots at the precinct level at the close of polls on Election Day (the “Hand Count Rule”), *see* Ex. 1;
- **Rule 183-1-13-.05:** amended to expand poll watcher access in tabulating centers (the “Poll Watcher Rule”), *see* Ex. 2;
- **Rule 183-1-12-.21:** promulgated to require a daily reporting system for counties to publicize details of which voters have cast early and absentee ballots (the “Daily Reporting Rule”), *see* Ex. 3;
- **Rule 183-1-12-.12(e):** amended to require public posting of reconciliation reports outlining any discrepancies between the total ballots cast and the total number of voters credited with voting in each precinct (the “Reconciliation Reports Rule”), *see* Ex. 4;
- **Rule 183-1-14-.02(15):** amended to require reconciling ballot counts with tabulator tapes (the “Reconciliation Rule”), *see* Ex. 5; and
- **Rule 183-1-12-.12(a)(1):** amended to require a poll manager and two witnesses to record the ballot count from tabulation tapes on recap forms (the “Recorded Count Rule”), *see* Ex. 6; *see also* Ex. 7 (summary of Sept. 20, 2024 SEB meeting).

4.

The Attorney General—the State’s chief legal officer—warned the SEB before it adopted the rules that at least three of them “very likely exceed the Board’s statutory authority” and were “the precise type of impermissible legislation that agencies cannot do.” Ex. 8 (Memorandum from

the Office of the Attorney General to the SEB) at 2, 6. Even for the rules that the Attorney General did not expressly state likely violate Georgia law, the Attorney General noted that changing the rules this close to an election is “disfavored” and could ““result in voter confusion and consequent incentive to remain away from the polls.”” *Id.* at 2 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)). And the Attorney General cautioned that, if the SEB proceeded to consider these rules at its September 20 meeting, the Board “risk[ed] passing rules that may easily be challenged and determined to be invalid.” *Id.* The contents of the Attorney General’s memorandum have been made public,¹ and reported by multiple news organizations.²

5.

Similarly, the Secretary of State—the State’s chief election authority—sent the SEB a letter before the September 20 meeting, raising alarm at the “absurdity” of considering these rules merely 50 days before a presidential election. Ex. 9 (Letter from General Counsel to the Secretary of State to Chairman of the State Election Board) at 1. “It is far too late in the election process for counties to implement new rules and procedures,” the Secretary explained, because “many poll workers have already completed their required training,” and the proposed rules would become effective, at the earliest, merely three weeks before the election, and just a day before advance voting begins. *Id.* More fundamentally, the Secretary pointed out, “the Board lack[ed] the legal authority to pass” most of these rules because they intruded on the Secretary of State’s exclusive

¹ See <https://www.documentcloud.org/documents/25169004-20240919-memo-to-state-election-board-re-proposed-rules-920-meeting> (last visited September 30, 2024).

² *E.g.*, Kate Brumback – Associated Press, *Georgia State Election Board approves rule requiring hand count of ballots*, Atlanta Journal-Constitution (Sept. 20, 2024), <https://www.ajc.com/news/nation-world/georgia-state-election-board-approves-rule-requiring-hand-count-of-ballots/FIZFA2QGPBFNJOCUSO5QVXNS7Y/>.

authority, conflicted with the Election Code, or both. *Id.* at 1–2. The Secretary of State’s letter to the SEB has also been made public,³ and has been widely reported.⁴

6.

The Georgia Association of Voter Registration and Election Officials (“GAVREO”), comprised of election officials who will bear the brunt of the SEB’s rules, similarly warned that the rules would disrupt election preparation and training, create voter confusion, and “could ultimately lead to errors or delays in voting, which is the last thing anyone wants.”⁵ Ex. 10 (August 21, 2024 Press Release from GAVREO).

7.

The SEB adopted the rules anyway—over the objections of the State’s chief legal officer, the State’s chief election official, and “an overwhelming number” of county election officials from across the State. Ex. 9.

8.

The SEB’s September 20 rules have put Petitioner and other county superintendents in an untenable position. Petitioner must administer the fast-approaching election amid substantial uncertainty created by conflicting interpretations of their legal duties by two heads of state government (on the one hand) and the SEB (on the other). All the while, election worker training

³ https://www.citizensforethics.org/wp-content/uploads/2024/09/Ltr_to_SEB_Chair_9.16.24.pdf (last visited Sept. 30, 2024).

⁴ Nick Corasaniti, *In Georgia, a New Showdown Is Brewing Over Election Rules*, *The New York Times* (Sept. 18, 2024), <https://www.nytimes.com/2024/09/18/us/elections/georgia-elections-board-rules.html>.

⁵ Press Release, GAVREO Calls on State Elections Board to Pause Future Rule Changes Ahead of Presidential Election (Aug. 21, 2024), <https://www.democracymocket.com/wp-content/uploads/2024/08/Press-Release.pdf>.

is well underway in counties across the State, and the November 5, 2024 General Election is in just 34 days.

9.

Petitioner asks this Court to resolve this uncertainty by declaring whether the September 20 rules are invalid because they exceed the SEB’s statutory authority, are procedurally defective, or are unreasonable.

PARTIES

10.

The General Assembly has, through the Georgia Election Code, provided for a comprehensive system of election administration. *See* O.C.G.A. § 21-2-1, *et seq.*

11.

At the county level, elections are administered by each county’s “superintendent.” O.C.G.A. § 21-2-70. The Election Code defines an election “superintendent” to include “the county board of elections and registration . . . if a county has such.” O.C.G.A. § 21-2-2(35). The Election Code details at length the “[p]owers and duties of superintendents.” *E.g.*, O.C.G.A. § 21-2-70.

12.

Petitioner Cobb County Board of Elections and Registration (“BOER”) is the election “superintendent” for Cobb County, Georgia, and thus is responsible for overseeing elections in Cobb County. *See* Ga. Laws 1985, p. 4653, § 1(a)-(b). As a superintendent, the Cobb County BOER is subject to and responsible for implementing the SEB’s September 20 rules.

13.

Respondent SEB is a Georgia state board. The SEB is an agency within the meaning of the Georgia Administrative Procedure Act. *See* O.C.G.A. §§ 21-2-30 to 21-2-36. The SEB is authorized “[t]o formulate, adopt, and promulgate [only] such rules and regulations” to “obtain uniformity in the practices and proceedings of superintendents . . . and other officials” and that are “consistent with law[and] will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(1)–(2). The SEB regularly conducts business in Fulton County at its principal office, 2 Martin Luther King, Jr. Drive, Suite 802, Floyd West Tower, Atlanta, Georgia 30334.

STANDING

14.

Petitioner has standing because the requested declaratory relief is necessary to “guide and protect the *petitioner* from uncertainty and insecurity with respect to” the interaction between the September 20 rules and the Cobb County BOER’s legal duties under the Election Code. *Floam*, 319 Ga. at 97 (emphasis in original). Petitioner faces substantial uncertainty and insecurity because the Attorney General, the chief legal officer of the State, *see* O.C.G.A. § 45-15-12, has indicated that the rules fall outside the SEB’s authority and are thus invalid. The Attorney General has further opined that the rules conflict with the Election Code, which Petitioner has a statutory duty to follow. *See* O.C.G.A. § 21-2-70; Ga. Laws 1985, p. 4653, § 9(b).

15.

In addition, O.C.G.A. § 21-2-33.2(c)(1) permits the SEB to suspend a county board of elections and appoint a temporary replacement if the SEB determines by a preponderance of the

evidence that the county board committed three violations of the Georgia Election Code *or* the SEB's rules and regulations in the preceding two election cycles.

16.

Petitioner requires immediate guidance from the Court on the interaction between the September 20 rules and Petitioner's duties under the Georgia Election Code to ensure that they do not run afoul of O.C.G.A. § 21-2-33.2 and face suspension by the SEB. The risk of SEB's takeover authority under O.C.G.A. § 21-2-33.2 provides an additional reason that "the relief sought by" Petitioner has "some immediate legal effect on the parties' conduct." *Perdue v. Barron*, 367 Ga. App. 157, 163 (2023) (cleaned up).

JURISDICTION AND VENUE

17.

The SEB is subject to the jurisdiction of this Court pursuant to Georgia Constitution Article VI, Section IV, Paragraph I, and O.C.G.A. §§ 9-4-2, 9-4-3, and 50-13-10(b).

18.

"The State's sovereign immunity has been specifically waived by the General Assembly pursuant to O.C.G.A. § 50-13-10" of the APA, *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 669-60 (2015), and Georgia Constitution Article I, Section II, Paragraph IX. This longstanding waiver of sovereign immunity remains intact following the subsequent amendment set forth in Article I, Section II, Paragraph V of the Georgia Constitution ("Paragraph V"). Petitioners do *not* invoke Paragraph V's waiver of immunity here. Because this is not an "action[] filed pursuant to" Paragraph V, but rather is an APA action filed pursuant to the separate waiver of immunity set forth in Article I, Section II, Paragraph IX of the Georgia Constitution, Paragraph V does not apply here.

19.

Venue is proper in this Court under O.C.G.A. § 21-2-30(j) and O.C.G.A. § 50-13-10(b) because the primary office of the SEB (where the SEB members regularly conduct business) is located in Fulton County. Venue is also proper in Fulton County because a substantial part of the events or omissions giving rise to the claims asserted in this Action occurred in Fulton County at the SEB's principal office address (2 Martin Luther King, Jr. Drive, Suite 802 Floyd West Tower, Atlanta, Georgia 30334, in Fulton County).

GENERAL ALLEGATIONS

The SEB's Limited Authority under Georgia Law

20. 19.

The SEB is a Board of the State of Georgia created by O.C.G.A. § 21-2-30(a).

21.

The General Assembly has authorized the SEB to “formulate, adopt, and promulgate such rules and regulations, ***consistent with law***, as will be conducive to the fair, ***legal***, and ***orderly*** conduct of primaries and elections,” O.C.G.A. § 21-2-31(2) (emphasis added), and to “promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections,” *id.* § 21-2-31(1).

22.

The SEB's authority to promulgate rules and regulations is thus limited to the administration or effectuation of the Georgia Election Code. This means that, while the SEB may adopt such rules as may be necessary to *carry out* the Election Code, the SEB is not authorized to promulgate rules that substantially *deviate* from the Election Code (by, for example, expanding

upon the Code in ways not intended by the General Assembly, adopting rules that conflict with a statute enacted by the General Assembly, or usurping authority that the General Assembly reserved for other bodies such as the Secretary of State and county superintendents). Nor is the SEB authorized to pass any rule that would not be conducive to the fair, legal, and orderly conduct of primaries and elections. Any such rule would be invalid.

23.

Because the SEB's rulemaking authority is limited, the Attorney General has explained that it should "take all precaution to ensure that any rule adopted and promulgated by the Board neither conflicts with nor expands any statute." Ex. 8 at 3. Otherwise, the SEB "runs substantial risk of intruding upon the General Assembly's constitutional right to legislate." *Id.*

24.

Before adopting the rules at issue on September 20, the SEB sought comments on the proposed rules from both the Secretary of State and Attorney General. The Secretary of State responded to the SEB's request for comment by letter dated September 16, 2024, a true and correct copy of which is attached hereto as Exhibit 9. The Attorney General responded to the SEB's request for comment by memorandum dated September 19, 2024, a true and correct copy of which is attached hereto as Exhibit 8.

25.

These communications show that the SEB disregarded clear warnings from both the Attorney General and the Secretary of State that the SEB did not have the authority to promulgate the rules that it ultimately adopted on September 20.

26.

The Secretary of State's September 16, 2024 Letter to the SEB

In its response letter to the SEB, the Secretary of State lamented “the absurdity of the timing of the Board’s actions” and opined that several of the proposed rules were unlawful. *See* Ex. 9.

27.

As to the timing of the SEB’s contemplated actions, the Secretary of State noted it had “received an overwhelming number of comments from county election officials expressing concern about the [SEB] changing Georgia’s election rules and procedures with the General Election only 50 days away.” *Id.* The Secretary of State pointed to several imminently impending deadlines—including the September 21 deadline to mail ballots to military servicemembers and overseas citizens, which was just a day after the SEB’s anticipated September 20 meeting—and specifically cautioned that “the earliest possible date new rules could take effect if passed [on September 20] is October 14, which is **22** days before the General Election when *Georgia voters will already be voting.*” *Id.* (emphasis in original).

28.

The Secretary of State further admonished that “[i]t is far too late in the election process for counties to implement new rules and procedures,” “many poll workers have already completed their required training,” and “[i]f the [SEB] 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.” *Id.*

29.

The Secretary of State noted further that the “*Purcell* principle” articulated by the U.S. Supreme Court reflects 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.”” *Id.* at 2 (quoting *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring)). The Secretary indicated that the SEB’s adoption of the rules so close in time to the upcoming election would violate this “bedrock” principle, and otherwise not be conducive to the fair, legal, and orderly conduct of elections.

30.

Turning to the proposed rules themselves, the Secretary of State identified the Hand Count Rule, which “would require hand-counting of ballots ... on Election Day,” as “[t]he most concerning” of the proposed rules. *Id.* at 2.

31.

The Secretary noted a host of problems with the Hand Count Rule. “As election officials have repeatedly told the Board,” the Secretary explained, “these new procedures would require tremendous personnel resources and time,” “could lead to significant delays in reporting,” and “would disrupt existing chain of custody protocols under the law and needlessly introduce the risk of error, lost ballots, or fraud.” *Id.*

32.

The Secretary of State also stated that in general, “[o]ther rules such as expanded poll watcher access” (i.e., the Poll Watcher Rule) and the rule requiring “posting of certain reports on county websites” (i.e., the Reconciliation Reports Rule) “are not objectionable” in the abstract. *Id.* at 2. But the Secretary of State still “share[d] 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.”

Id. Moreover, the Secretary of State noted that the General Assembly had already “recently expanded poll watcher access” with recent legislation. *Id.* In other words, the Poll Watcher Rule and Reconciliation Reports Rule also exceeded the SEB’s authority because adopting them just weeks before the election would be neither “conducive to the fair, legal, and orderly conduct of [those] elections,” O.C.G.A. § 21-2-31(2), nor “obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials,” *id.* § 21-2-31(1).

33.

The SEB adopted the rules despite the Secretary of State’s warnings.

The Attorney General’s September 19, 2024 Memorandum to the SEB

34.

The SEB also disregarded the Attorney General’s opinion that its proposed rules were very likely invalid.

35.

Under Georgia law, the Attorney General is the State’s chief legal officer. *See* Ga. Const. Art. V, § III, ¶ IV; O.C.G.A. §§ 45-15-10, 45-15-12, 45-15-14.

36.

On September 19, 2024, the Attorney General issued a memorandum to the SEB (at the SEB’s request) regarding the proposed rules set for consideration at the SEB’s September 20 meeting. Ex. 8.

37.

In that memorandum, the Attorney General noted that it was not the office’s general practice to “engage in a broad review of an agency’s proposed rules,” and the SEB had not followed the proper procedures for seeking legal advice from the Attorney General. *Id.* at 1. The

Attorney General nonetheless made an “exception” in this instance—on an “expedited” basis—because of the Attorney General’s serious concerns with the SEB’s contemplated course of conduct.

38.

Specifically, the Attorney General stated: “[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.” *Id.* at 2. The Attorney General further observed that “the Board risks passing rules that may easily be challenged and determined to be invalid,” if it ultimately adopted the rules under consideration. *Id.*

39.

The Attorney General warned the SEB against acting outside the scope of its authority. For example, the Attorney General noted that the SEB’s “power to adopt rules is *solely* derived from statutes passed by the General Assembly” (*id.* at 2) and that this “grant of statutory authority to promulgate rules *is not* an unlimited grant of authority.” *Id.* at 3 (citing *Ga. Real Estate Comm’n v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 32–33 (1975)) (emphasis added).

40.

The Attorney General further stated that “[o]nly the General Assembly has the constitutional authority to legislate.” *Id.* (citing *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995)). The Attorney General therefore cautioned “[t]he Board should . . . 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” and “[w]hen such intrusion occurs, the Board rule is highly likely to be ruled invalid should it be challenged.” *Id.* at 3.

41.

Moreover, the Attorney General noted that “the passage of any rules concerning the conduct of elections are disfavored when implemented as close to an election as the rules on the [SEB’s] September 20 agenda.” *Id.* at 2 (citing, among other authorities, *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006)).

42.

In addition to these overarching concerns, the Attorney General individually analyzed several of the proposed rules under consideration by the SEB, concluding as follows.

43.

The Hand Count Rule

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

The Attorney General explained that the Hand Count Rule “refer[s] to the process of hand-counting ballots on Election Day . . . to produce a vote total to compare to the ballot count produced by the ballot scanners” and further “purport[s] 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.” *Id.* at 5 (discussing Ga. Comp. R. & Regs. 183-1-12-.12(a), Ga. Comp. R. & Regs. 183-1-14-.02(8), and Ga. Comp. R. & Regs. 183-1-14-.02(13)).

44.

The Attorney General cautioned that “the statutes upon which” the SEB purported to rely for the Hand Count Rule—namely, O.C.G.A. §§ 21-2-483, 21-2-436, and 21-2-420(a)⁶— “do not reflect any provision enacted by the General Assembly for the hand-counting of ballots prior to tabulation.” *Id.* at 5.

45.

The Attorney General concluded that “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.’” *Id.* at 5–6.

46.

The Attorney General concluded that “[t]here 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.” *Id.* at 6. And because “*these proposed rules are not tethered to any statute,*” the Attorney General opined that the Hand Count Rule is “likely the precise type of *impermissible legislation that agencies cannot do.*” *Id.* (emphasis added).

⁶ *See* Ex. 1 (identifying these provisions as purported statutory “[a]uthority” for the Hand Count Rule).

47.

The Poll Watcher Rule

(Rule 183-1-13-.05)

The Attorney General observed that the Poll Watcher Rule “seeks to expand the enumerated locations where poll watchers may be designated beyond those places identified in the statute.” *Id.* at 4.

48.

The Attorney General first explained that the existing rule, Ga. Comp. R. & Regs. 183-1-13-.05, “tracks” the relevant statute, O.C.G.A. § 21-2-408(c), “almost exactly.” *Id.* The Attorney General then noted that, together, Rule 183-1-13-.05 and § 21-2-408(c) “specifically provide[] 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.’” *Id.*

49.

The Attorney General explained that, “[u]nder the canon of statutory construction ‘expressio[] 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.” *Id.* (citing *Barnes v. State Farm Fire & Cas. Co.*, No. A24A0852, 2024 WL 3933619 (Ga. App. Aug. 26, 2024)).

50.

The Attorney General thus concluded that the Poll Watcher 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 [discretion].” *Id.* The Attorney General explained that, as a result of these infirmities, the amendment “does not carry into effect a law already passed by the General Assembly but rather expands upon the statute.” *Id.* Thus, the Attorney General opined, “the rule, if adopted, would . . . very likely be subject to legal challenge as invalid.” *Id.*

51.

The Daily Reporting Rule

(Rule 183-1-12-.21)

Similarly, the Attorney General observed that the Daily Reporting Rule “seeks to *expand* on the reporting requirements set forth in O.C.G.A. § 21-2-385(e).” *Id.* at 5 (emphasis added).

52.

The Attorney General explained that O.C.G.A. § 21-2-385(e) “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,” yet the Daily Reporting 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).” *Id.* (emphasis added); *see also id.* (cautioning that “the General Assembly did not include that information as information that must be reported pursuant to O.C.G.A. § 21-2-385(e)”).

53.

The Attorney General explained to the SEB that because it could not expand the statute in this way, the Daily Reporting Rule, “if promulgated, would similarly likely go beyond the scope of the statute and the Board’s authority.” *Id.*⁷

54.

Despite these clear admonitions, the SEB pressed forward with adopting these rules the very next day at its September 20 meeting.

County Election Officials’ Opposition to the SEB Rules

55.

On August 21, 2024, GAVREO issued a press release urging the SEB to pause future rule changes because they could disrupt election preparation and training, create voter confusion, and “ultimately lead to errors or delays in voting, which is the last thing anyone wants.” A true and correct copy of GAVREO’s August 21 press release is attached hereto as Exhibit 10.

56.

On September 17, 2024, GAVREO submitted written comments to the SEB again requesting that all proposed rules “be tabled until 2025,” and noting the proposed rules up for consideration on September 20 were “poorly written, inefficient, would not accomplish their stated goals, or go directly against state law.” A true and correct copy of GAVREO’s September 17 written comments is attached hereto as Exhibit 11.

⁷ The Attorney General’s memorandum did not expressly opine on the validity of the proposed Reconciliation Rule, the Reconciliation Reports Rule, or the Recorded Count Rule.

57.

Petitioner echoed GAVREO’s opposition to the SEB’s rules. At Petitioner’s September 16, 2024 meeting, it adopted a resolution declaring that the “Cobb BOER stands with GAVREO and urges the SEB to halt the implementation and adoption of additional election rules that would go into effect for the November 2024 General Election,” and further “call[ed] for a 90-day quiet period to precede future federal elections during which the SEB would refrain from adopting or implementing election-related rules and policies.” A true and correct copy of Petitioner’s September 16 Resolution is attached hereto as Exhibit 12.

58.

Election officials and workers from across the State continued voicing these concerns in written comments on the proposed rules and in oral comments at the SEB’s September 20 meeting. The SEB adopted the rules anyway.

The Effect of the Rules on Petitioner and Election Workers and Officials

59.

As a result of the SEB’s actions, boards of election and registration across the State—including Petitioner—now face conflicting interpretations of their legal duties from the Attorney General, the Secretary of State, and the SEB.

60.

Meanwhile, election worker training is already underway, and advance voting for the November General Election starts in less than two weeks—on October 15, 2024.

61.

Petitioner thus seeks a declaratory judgment to resolve uncertainty about its legal duties ahead of the looming election.

COUNT I

**DECLARATORY JUDGMENT UNDER O.C.G.A. § 50-13-10 THAT THE SEB'S
SEPTEMBER 20, 2024 RULES ARE INVALID**

62.

Petitioner hereby incorporates the allegations in paragraphs 1–61 as if fully stated herein.

63.

The Georgia APA applies to SEB rulemaking. O.C.G.A. §§ 50-13-1 *et seq.*

64.

O.C.G.A. § 50-13-10(a) provides that “[t]he validity of any rule, waiver, or variance may be determined in an action for declaratory judgment when it is alleged that the rule, waiver, or variance or its threatened application interferes with or impairs the legal rights of the petitioner.”

65.

O.C.G.A. § 50-13-10(c) provides that “[a]ctions for declaratory judgment provided for in this Code section shall be in accordance with Chapter 4 of Title 9, relating to declaratory judgments.”

66.

Chapter 4 of Title 9 of the O.C.G.A. gives this Court authority “to declare rights and other legal relations of any interested party petitioning for such declaration,” O.C.G.A. § 9-4-2(a), or to issue a declaratory judgment “in any civil case in which it appears to the court that the ends of justice require that the declaration should be made,” O.C.G.A. § 9-4-2(b). “Further plenary relief, legal or equitable, including but not limited to . . . injunction . . . may be sought in a petition seeking declaratory judgment.” O.C.G.A. § 9-4-3(a).

67.

“The test of the validity of an administrative rule is twofold: whether it is authorized by statute and whether it is reasonable.” *Dep’t of Hum. Res. v. Anderson*, 218 Ga. App. 528, 529 (1995).

68.

Even where a statute gives an agency rulemaking authority, an agency rule is invalid if it “exceeds the scope of or is inconsistent with the authority of the statute upon which it is predicated.” *Id.* Such rules are an “unconstitutional usurpation of the General Assembly’s power.” *N. Fulton Med. Ctr. v. Stephenson*, 269 Ga. 540, 543 (1998); *accord Ga. Real Estate Comm’n v. Accelerated Courses in Real Estate, Inc.*, 234 Ga. 30, 32–33 (1975).

69.

Although the General Assembly may grant “administrative authority to promulgate rules for the enforcement of the General Assembly’s enactments” to state agencies like the SEB, the agency’s authority extends only to “adopt[ing] rules and regulations to carry into effect a law already passed” or otherwise “administer[ing] and effectuat[ing] an existing enactment of the General Assembly.” *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995).

70.

A regulation that adds extra requirements or procedure where the statute speaks plainly on a matter is inconsistent with the statute and thus invalid. *E.g.*, *Dep’t of Hum. Res.*, 218 Ga. App. at 529; *Pope v. Cokinos*, 231 Ga. 79, 80–82 (1973).

71.

Operating without a statute is similarly impermissible. “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); accord *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.”).

72.

The SEB’s authority to promulgate rules and regulations is limited to the administration or effectuation of the Georgia Election Code, and it may only promulgate rules that are “consistent with law,” promote “uniformity,” and are “conducive to the fair, legal, and orderly conduct of elections.” O.C.G.A. § 21-2-31(1)–(2).

73.

The SEB’s September 20 rules lack statutory authorization, conflict with and improperly expand provisions of the Election Code, impermissibly intrude on the exclusive authority of the Secretary of State and county superintendents, and neither promote uniformity nor are conducive to the fair, legal, and orderly conduct of elections.

74.

The rules therefore exceed the SEB’s statutory authority and should be declared invalid.

75.

Separately, the SEB’s September 20 rules are invalid because they are procedurally defective.

76.

The APA mandates that “[n]o rule . . . shall be valid unless adopted in *exact compliance* with” the procedures set out in “subsection[] (a)” of O.C.G.A. § 50-13-4. O.C.G.A. § 50-13-4(d) (emphasis added).

77.

Georgia courts have explained that “[f]ailure to comply with these procedures will invalidate an amended rule.” *Walker v. Dep’t of Transp.*, 279 Ga. App. 287, 293–94 (2006).

78.

The September 20 rules were not adopted in “exact compliance” with the procedural requirements of O.C.G.A. § 50-13-4(a).

79.

Specifically, O.C.G.A. § 50-13-4(a)(1) requires that a notice of proposed rulemaking “shall . . . include the exact date on which the agency shall consider the adoption of the rule.” O.C.G.A. § 50-13-4(a)(1).

80.

Here, none of the SEB’s six notices of proposed rulemaking specify “the exact date” on which the SEB “shall consider the adoption of the rule.” The notices only state the date on which the SEB would *hear comments* on the proposed rules. The notices do not mention adoption at all. *See* Exs. 1-6. This is not “exact compliance,” and each rule is therefore invalid.

81.

Moreover, O.C.G.A. § 50-13-4(a)(2) requires that an agency “shall consider fully all written and oral submissions respecting the proposed rule,” and further requires that, “[u]pon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption

or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.” O.C.G.A. § 50-13-4(a)(2).

82.

Here, the SEB failed to “consider fully” public comments opposing the rule. And even though numerous commenters requested the “concise statement of . . . reasons” referenced in § 50-13-4(a)(2) prior to the SEB’s adoption of the September 20 rules, the SEB has failed to issue such statements.

83.

The September 20 rules should also be declared invalid because they are not reasonable.

84.

“The test of a rule’s reasonableness is the nature of its impact on the public and the industry it regulates.” *Ga. Oilmen’s Ass’n v. Dep’t of Revenue*, 261 Ga. App. 393, 398 (2003).

85.

Here, the rulemaking record contains numerous public comments criticizing the belated timing of the rules adopted on September 20, 2024, including by the Attorney General, Secretary of State, election workers across the State, voters, and many others.

86.

Election officials explained, both at the September 20 meeting and in written comments, the immense—and likely insurmountable—burdens these last-minute rule changes would create for election workers.

87.

Based on the evidence of the rules' detrimental impact on election workers and the conduct of elections in the State, as well as the SEB's failure to offer any contrary evidence or to identify any emergency circumstances justifying adopting the rules so close to an election, they should be deemed unreasonable and invalid.

88.

Petitioner faces injury from the SEB's September 20 rules and requires relief to avoid the burdens, confusion, and disorder that have been caused and will be caused by the rules.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court:

- 1) Declare that the rules adopted by the State Election Board on September 20, 2024, are invalid because they exceed the Board's statutory authority;
- 2) Declare that the rules adopted by the State Election Board on September 20, 2024, are invalid because they were not adopted in exact compliance with the procedural requirements of the Administrative Procedure Act;
- 3) Declare that the rules adopted by the State Election Board on September 20, 2024, are invalid because they are unreasonable;
- 4) Insofar as the Court grants Petitioner's requested declaratory relief, permanently enjoin enforcement of any rules the Court declares invalid;
- 5) Set an expedited bench trial at the earliest available date not sooner than 20 days after service of the Petition, pursuant to O.C.G.A. § 9-4-5, and § 50-13-10(c); and
- 6) Grant Petitioner any such further relief as the Court deems just and appropriate.

[signature on following page]

Respectfully submitted this 2nd day of October, 2024.

/s/ Michael A. Caplan

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T. Brandon Waddell
Ga. Bar No. 252639
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nsus@citizensforethics.org

*Counsel for Petitioner Cobb County Board
of Elections and Registration*

** Pro hac vice application forthcoming*

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

COBB COUNTY BOARD OF ELECTIONS
AND REGISTRATION,

Petitioner,

v.

STATE ELECTION BOARD,

Respondent.

CIVIL ACTION FILE NO. _____

VERIFICATION OF PETITION FOR DECLARATORY RELIEF


I, Toronda M. Silas, Chair of the Cobb County Board of Elections and Registration, state under oath that I have reviewed the Petition for Declaratory Relief in the above-captioned matter and that the allegations in the Petition are true and correct based on my personal knowledge and based upon the information currently available to me. I am authorized to give this verification on behalf of the Cobb County Board of Elections and Registration.

Toronda M. Silas

Toronda M. Silas
Chair, Cobb County Board of Elections and
Registration

Sworn to and subscribed before me

This 1st day of October, 2024.



Notary Public

My Commission Expires: 2/16/2025

AKEEM EASON NOTARY PUBLIC Bibb County State of Georgia My Comm. Expires Feb. 16, 2025
--

VERIFIED PETITION FOR DECLARATORY RELIEF – EXHIBIT INDEX

<u>No.</u>	<u>Description</u>
1	Rule 183-1-12-.12(a)(5) (the “Hand Count Rule”)
2	Rule 183-1-13-.05 (the “Poll Watcher Rule”)
3	Rule 183-1-12-.21 (the “Daily Reporting Rule”)
4	Rule 183-1-12-.12(e) (the “Reconciliation Reports Rule”)
5	Rule 183-1-14-.02(15) (the “Reconciliation Rule”)
6	Rule 183-1-12-.12(a)(1) (the “Recorded Count Rule”)
7	Summary of September 20, 2024 State Election Board Meeting
8	September 19, 2024 Memorandum from the Office of the Attorney General to the State Election Board
9	September 16, 2024 Letter from the General Counsel to the Secretary of State to the Chairman of the State Election Board
10	August 21, 2024 Press Release from the Georgia Association of Voter Registration and Election Officials
11	September 17, 2024 Written Comments from the Georgia Association of Voter Registration and Election Officials to the State Election Board
12	September 16, 2024 Resolution of Cobb County Board of Elections and Registration

Exhibit 1

STATE ELECTION BOARD

NOTICE OF PROPOSED RULEMAKING

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

TO ALL INTERESTED PERSON AND PARTIES:

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

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

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

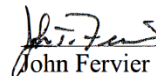
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board’s webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events> .

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

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

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

This 21st day of August 2024.



John Fervier
Chair, State Election Board

Posted: August 21, 2024

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

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

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

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

NOTE: Underlined text is proposed to be added.

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

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

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

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

COPY OF THE PROPOSED NEW RULE

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

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

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

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- 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 2

STATE ELECTION BOARD
NOTICE OF PROPOSED RULEMAKING

Revisions to Subject 183-1-13-.05 Poll Watchers for Tabulating Center

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 183-1-13-.05 (Poll Watchers for Tabulating Center).

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

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

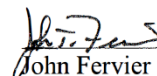
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board’s webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events>

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

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

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

This 21st day of August 2024.


John Fervier

Chair, State Election Board

Posted: August 21, 2024

**SYNOPSIS OF THE PROPOSED RULE
OF THE STATE ELECTION BOARD
RULE 183-1-13-.05 *Poll Watchers for Tabulating Center***

Purpose: The purpose of the rule is to clarify the existing election code and to ensure poll watchers may fairly observe all processes of the tabulation center.

Main Features: The main feature of the amendment is that designates additional areas within the tabulating centers in which poll watchers are permitted to view tabulation and reconciliation processes.

**DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED
AMENDMENTS OF THE STATE ELECTION BOARD,
RULE 183-1-13-.05 *Poll Watchers for Tabulating Center***

NOTE: Underlined text is proposed to be added.

Rule 183-1-13-.05 *Poll Watchers for Tabulating Center*

In counties and municipalities using central count optical scanning vote tabulation equipment, the election superintendent shall allow each political party to appoint two poll watchers for each primary or election, each political body to appoint two poll watchers for each election, and each independent candidate and each nonpartisan candidate to appoint one poll watcher for each election, to serve in each of the locations designated by the election superintendent within the tabulating center. Such designated places shall include the check-in area, the computer room, the duplication area, and such other areas that tabulation processes are taking place including but not limited to provisional ballot adjudication of ballots, closing of advanced voting equipment, verification and processing of mail in ballots, memory card transferring, regional or satellite check in centers and any election reconciliation processes as the election superintendent may deem necessary to the assurance of fair and honest procedures in the tabulating center. Poll watchers designated for the tabulating center shall be appointed and serve in the same manner as other poll watchers.

Authority: O.C.G.A. § 21-2-408 (c)

Rule 183-1-13-.05 *Poll Watchers for Tabulating Center*

In counties and municipalities using central count optical scanning vote tabulation equipment, the election superintendent shall allow each political party to appoint two poll watchers for each primary or election, each political body to appoint two poll watchers for each election, and each independent candidate and each nonpartisan candidate to appoint one poll watcher for each election, to serve in each of the locations designated by the election superintendent within the tabulating center. Such designated places shall include the check-in area, the computer room, the duplication area, and such other areas that tabulation processes are taking place including but not limited to provisional ballot adjudication of ballots, closing of advanced voting equipment, verification and processing of mail in ballots, memory card transferring, regional or satellite check in centers and any election reconciliation processes as the election superintendent may deem necessary to the assurance of fair and honest procedures in the tabulating center. Poll watchers designated for the tabulating center shall be appointed and serve in the same manner as other poll watchers.

Authority: O.C.G.A. § 21-2-408 (c)

Exhibit 3

STATE ELECTION BOARD
NOTICE OF PROPOSED RULEMAKING

Promulgation of Subject 183-1-12-.21 *County Participation and Totals Reporting*

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 promulgation of Subject 183-1-12-.21 (County Participation and Totals Reporting).

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

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

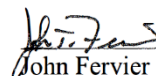
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board’s webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events>

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

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

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

This 21st day of August 2024.


John Fervier

Chair, State Election Board

Posted: August 21, 2024

**SYNOPSIS OF THE PROPOSED RULE
OF THE STATE ELECTION BOARD
RULE 183-1-12-.21 *County Participation and Totals Reporting***

Purpose: The purpose of the rule is to ensure ongoing transparency in elections during the advance and absentee voting period, and on Election Day. Further, it serves to continuously keep the public informed on the voting process and election information.

Main Features: This rule requires that, for each primary, general, and runoff election in Georgia, registrars must establish a daily reporting system to publicly share the total number of voters who have participated, beginning from the start of advance voting. The reports must include details on how voters participated (either through advance voting or absentee by mail), and for primary elections, they must also specify the number of party or nonpartisan ballots cast. After the canvass and computation of votes, excluding certain ballots like provisional or UOCAVA ballots, election superintendents must create and post precinct-level vote totals for all contests. Both the daily voter participation reports and the final vote totals must be posted on the registrar's or county election superintendent's website, or in a public place if no website is available. This ensures continuous transparency and public access to election information.

COPY OF THE PROPOSED NEW RULE

Rule 183-1-12-.21 *County Participation and Totals Reporting*

(1) For each primary election and general election and any associated runoffs, no later than the beginning of the advance voting period set by OCGA 21-2-385(d), each registrar shall establish a method of daily reporting to the public the total number of voters who have participated in the election or runoff.

(a) For each primary election and associated runoff, the registrar shall report (1) the total number of voters who have participated, (2) the method by which those voters participated (advance voting or absentee by mail), (3) the number of political party or nonpartisan ballots cast, and (4) the date on which the information was provided.

(b) For each general election and associated runoff, the registrar shall report (1) the total number of voters who have participated, (2) the method by which those voters participated (advance voting or absentee by mail), and (3) the date on which the information was provided.

(2) For each primary election and general election and any associated runoffs, at the conclusion of the canvass and computation of votes cast provided for in OCGA 21-2-493(a), with the exception of the processing of UOCAVA ballots, provisional ballots, and ballots requiring adjudication, the election superintendent shall create a report indicating the vote totals for all contests on the ballot by precinct.

(3) The registrar must post the daily reporting information required by paragraph (1) on the

internet website operated by the registrar or county election superintendent.

(4) The election superintendent must post the information required by paragraph (2) on the internet website operated by the county election superintendent.

(5) If a registrar and/or county election superintendent does not operate an internet website, the registrar must post the daily reporting information required by paragraph (1) and the report required by paragraph (2) in a public place in its office, accessible 24 hours a day to the public.

(6) The daily reporting information required by paragraph (1) must be updated each day on which advance voting occurs in the county prior to any primary election, general election, and/or associated runoffs.

Authority: O.C.G.A. § 21-2-385(d), O.C.G.A. § 21-2-493(a)

Exhibit 4

STATE ELECTION BOARD

NOTICE OF PROPOSED RULEMAKING

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

TO ALL INTERESTED PERSON AND PARTIES:

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

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

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

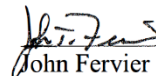
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board’s webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events> .

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

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

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

This 21st day of August 2024.



John Fervier
Chair, State Election Board

Posted: August 21, 2024

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

Purpose: The purpose of the rule is to ensure that the public is able to readily view the Reconciliation Report that is generated, which outlines discrepancies between the total ballots cast and the total number of voters credited with voting in each precinct within 30 days of certifying election results.

Main Features: The main feature of the amendment to this rule is that the Reconciliation Report will be visible to the public via the county election results website or in the county elections office.

**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(e)

(e) Reconciliation Report

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

Authority: O.C.G.A. §§ 21-2-31, 21-2-493(b)

COPY OF THE PROPOSED NEW RULE

Rule 183-1-12-.12(e)

(e) Reconciliation Report

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

Authority: O.C.G.A. §§ 21-2-31, 21-2-493(b)

Exhibit 5

STATE ELECTION BOARD
NOTICE OF PROPOSED RULEMAKING
Revisions to Subject 183-1-14-.02 Advanced Voting

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 revision of Subject 183-1-14-.02 (Advanced Voting).

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

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

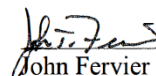
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Public comments given at the meeting will be limited to two minutes per person. Additional comments may be given using the following means and must be received by noon on September 19 to be considered by the State Election Board:

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

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

This 21st day of August 2024.


John Fervier

Chair, State Election Board

Posted: August 21, 2024

**SYNOPSIS OF THE PROPOSED RULE
OF THE STATE ELECTION BOARD
RULE 183-1-14-.02 *Advanced Voting***

Purpose: The purpose of the rule is to reconcile tabulator tape ballot counts with scanner ballot counts to ensure that the voting system is correctly counting ballots and detect potential errors.

Main Features: The main feature of this rule amendment is that it requires election officials to reconcile the ballot counts from the scanner tabulation tapes, the election counters on the ballot scanners, the numbered list of absentee electors, and the absentee ballot recap form. If any discrepancies are found, no further action shall be taken until the issue is resolved to the satisfaction of the election superintendent.

**DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED
AMENDMENTS OF THE STATE ELECTION BOARD,
RULE 183-1-14-.02 *Advanced Voting***

NOTE: Underlined text is proposed to be added.

RULE 183-1-14-.02(15).

After verifying the seal number and the integrity of the seal on each ballot scanner, the election superintendent or tabulating center personnel shall open each ballot scanner and turn on the power. The election superintendent or tabulating center personnel shall then compare the numbers shown on the election counters of the ballot scanners with the numbered list of absentee electors and the absentee ballot recap form to verify that there are no discrepancies. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. The election superintendent or tabulating center personnel shall cause each ballot scanner to print a minimum of three tapes showing the vote totals as cast on that ballot scanner. The election superintendent or tabulating center personnel shall then record the count of the ballots cast from the scanner tabulation tapes and reconcile 1) the count of the ballots cast on the scanner tabulation tapes, 2) the numbers shown on the election counters of the ballot scanners, 3) the numbered list of absentee electors, and 4) the absentee ballot recap form. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. Three witnesses shall sign each of the tapes or shall write on the tapes the reason why they will not sign the tapes. One copy of the results tape for each ballot scanner shall be made available for the information of the public. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purpose), provided by the election superintendent along with "poll worker" memory cards from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The envelope shall be initialed by the poll manager and the two witnesses indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for

that election. The third tape shall be placed into another envelope with the absentee ballot recap form.

Authority: O.C.G.A. §§ 21-2-368, 21-2-379.24.

COPY OF THE PROPOSED NEW RULE

RULE 183-1-14-.02(15).

After verifying the seal number and the integrity of the seal on each ballot scanner, the election superintendent or tabulating center personnel shall open each ballot scanner and turn on the power. The election superintendent or tabulating center personnel shall then compare the numbers shown on the election counters of the ballot scanners with the numbered list of absentee electors and the absentee ballot recap form to verify that there are no discrepancies. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. The election superintendent or tabulating center personnel shall cause each ballot scanner to print a minimum of three tapes showing the vote totals as cast on that ballot scanner. The election superintendent or tabulating center personnel shall then record the count of the ballots cast from the scanner tabulation tapes and reconcile 1) the count of the ballots cast on the scanner tabulation tapes, 2) the numbers shown on the election counters of the ballot scanners, 3) the numbered list of absentee electors, and 4) the absentee ballot recap form. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. Three witnesses shall sign each of the tapes or shall write on the tapes the reason why they will not sign the tapes. One copy of the results tape for each ballot scanner shall be made available for the information of the public. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purpose), provided by the election superintendent along with "poll worker" memory cards from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The envelope shall be initialed by the poll manager and the two witnesses indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the absentee ballot recap form.

Authority: O.C.G.A. §§ 21-2-368, 21-2-379.24.

Exhibit 6

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 revision of Subject 183-1-12-.12 (Tabulating Results).

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

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

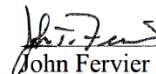
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- By mailing comments to:
State Election Board
C/O Alexandra Hardin
2 Martin Luther King Jr. Drive, S.E.
8th Floor West Tower Suite 802
Atlanta, Georgia 30334

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 reconcile tabulator tape ballot counts with scanner ballot counts to ensure that the voting system is correctly counting ballots and detect potential errors.

Main Features: The main feature of this rule amendment is that it requires the poll manager and two witnesses to record the ballot count from the tabulation tape on the recap form.

**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)(1).

Immediately after the polls close and the last voter has voted, the poll manager and two witnesses who have been previously sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall begin the closing procedure on each ballot scanner so that no further votes are cast and record the number of scanned ballots from every ballot scanner used in the polling place. The poll manager and the two witnesses shall record the number of scanned ballots from each scanner on a recap form to be developed by the Secretary of State. The poll manager and the two witnesses shall cause each ballot scanner to print three tapes of the tabulated results and shall sign each tape indicating that it is a true and correct copy of the tape produced by the ballot scanner. The poll manager and two witnesses shall record the count of ballots from the tabulation tape on the recap form. If the poll manager or the witnesses have reason to believe that printed tapes are not a true and correct tabulation of the ballots scanned by that ballot scanner, the poll manager or witness shall document the reasons and evidence for that belief and inform the election superintendent, who shall take appropriate action, in his or her discretion, so that the ballots in the ballot box associated with the ballot scanner are accurately tabulated.

Authority: O.C.G.A. §§ 21-2-368, 21-2-379.24.

COPY OF THE PROPOSED NEW RULE

RULE 183-1-12-.12(a)(1).

Immediately after the polls close and the last voter has voted, the poll manager and two witnesses who have been previously sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall begin the closing procedure on each ballot scanner so that no further votes are cast and record the number of scanned ballots from every ballot scanner used in the polling place. The poll manager and the two witnesses shall record the number of scanned ballots from each scanner on a recap form to be developed by the Secretary of State. The poll manager and the two witnesses shall cause each ballot scanner to print three tapes of the tabulated results and shall sign each tape indicating that it is a true and correct copy of the tape produced by the ballot scanner. The poll manager and two witnesses shall record the count of ballots from the tabulation tape on the recap form. If the poll manager or the witnesses have reason to believe that printed tapes are not a true and correct tabulation of the ballots scanned by that ballot scanner, the poll manager or witness shall document the reasons and evidence for that belief and inform the election superintendent, who shall take appropriate action, in his or her discretion, so that the ballots in the ballot box associated with the ballot scanner are accurately tabulated.

Authority: O.C.G.A. §§ 21-2-368, 21-2-379.24.

Exhibit 7



SUMMARY
STATE ELECTION BOARD MEETING
Friday, September 20, 2024
9:00 A.M.
Georgia State Capitol, Room 341
Atlanta, Georgia

As required by O.C.G.A. § 50-14-1(e)(2)(A), the following is a summary of the subjects acted on and the Board members present at the meeting.

Call to Order and Introductory Remarks

Mr. John Fervier, as Chairman, called the State Election Board (the “Board”) meeting to order at 9:09 A.M. A quorum was present for each Board action taken. The following Board members attended the meeting: Mr. John Fervier, Mrs. Sara Tindall Ghazal, Dr. Janice Johnston, Mr. Rick Jeffares, and Mrs. Janelle King.

Dr. Johnston requested to amend the agenda to add the discussion of a petition for rule amendment previously submitted by Salleigh Grubbs, Chairman Fervier denied the request, Dr. Johnston moved to appeal the decision of the Chair, Mrs. King seconded, Mr. Jeffares voted aye, Mrs. Tindall Ghazal voted nay, Chairman Fervier voted nay, motion passed 3-2.

Dr. Johnston requested that under new business, the item of “discussion of voter challenges complaints”, be addressed after the Board returns from lunch. After discussion, Dr. Johnston withdrew her request.

Approval of Board Meeting Minutes

The Board voted to approve the minutes of the Board meeting held on August 6 & 7, 2024, with the amendment of adding the rule citations to the rule proposals and petitions heard.

The Board voted to approve the minutes of the Board meeting held on August 19, 2024, with the amendment of adding the rule citations to the rule proposals and petitions heard.

Public Comment

The following individuals provided public comment: Mason Hill, Natalie Crawford, Brook Schreiner, Barbara Gooby, Larry LeSueur, Elizabeth Hendrickson, Tate Fall, Valerie Kennedy, Marisa Pyle, Ellen Apte, Jacqueline Isaacson, Marci McCarthy, Jane Branscomb, Sam Collier, Akiva Freidlin, Mary Belle Hodges, Michael Beach, Travis Doss, Tonnie Adams, Kevin Muldowney, Kathleen Hamil, Matt Rowenczak, Milton Kidd, Joseph Kirk, Julie Adams, Ethan Compton, Sandy Schoepke, Richard Schroeder, Kristin Nabers, Saira Draper, Salleigh Grubbs, Earl Ferguson, Tracy Moore, George Balbona, Joey McKimon, Michael Kincaid.

Procedure Matters

- A. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.12 (Tabulating Results). Subject of Rule: Hand Counting. Presentation from Sharlene Alexander and Janelle King.**
After presentation and discussion of the proposal, the Board voted to adopt the proposed rule.
- B. Discussion and voting on proposed rule amendment to SEB Rule 183-1-14-.02 (Advance Voting). Subject of Rule: Absentee Ballot Hand Counting. Presentation from Sharlene Alexander.**
After presentation and discussion of the proposal, the Board voted to table the rule for discussion after the November General Election.
- C. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.01 (Conduct of Elections). Subject of Rule: Absentee Ballot Distinction. Presentation from David Cross.**
After presentation and discussion of the proposal, the Board voted to table the rule for discussion after the November General Election.
- D. Discussion and voting on proposed rule amendment to SEB Rule 183-1-14-.11 (Mailing and Issuance of Ballots). Subject of Rule: Chain of Custody. Presentation from David Cross.**
After presentation and discussion of the proposal, the Board voted to table the rule for discussion after the November General Election.
- E. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.12 (Tabulating Results). Subject of Rule: Reconciliation Reports. Presentation from Gail Lee and Janelle King.**
After presentation and discussion of the proposal, the Board voted to adopt the proposed rule.
- F. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.19 (Preparation of the Electors List and Use of Electronic Poll Book). Subject of Rule: Voter Lists. Presentation from Lucia Frazier.**
After presentation and discussion of the proposal, the Board voted to reject the proposed rule.
- G. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.21 (County Participation and Totals Reporting). Subject of Rule: Daily Reporting. Presentation from Rick Jeffares.**
After presentation and discussion of the proposal, the Board voted to adopt the proposed rule.
- H. Discussion and voting on proposed rule amendment to SEB Rule 183-1-13-.05 (Poll Watchers for Tabulating Center). Subject of Rule: Poll Watchers in Tabulating Center. Presentation from Julie Adams.**
After presentation and discussion of the proposal, the Board voted to adopt the proposed rule.
- I. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.13 (Storage of Returns). Subject of Rule: Storage of Returns. Presentation from Garland Favorito.**
After presentation and discussion of the proposal, the Board voted to table the rule for discussion after the 2025 Legislative Session.

J. Discussion and voting on proposed rule amendment to SEB Rule 183-1-14-.02 (Advance Voting). Subject of Rule: Reconciliation. Presentation from Garland Favorito.

After presentation and discussion of the proposal, the Board voted to adopt the proposed rule.

K. Discussion and voting on proposed rule amendment to SEB Rule 183-1-12-.12 (Tabulating Results). Subject of Rule: Reconciliation. Presentation from Garland Favorito.

After presentation and discussion of the proposal, the Board voted to adopt the proposed rule.

The Board voted continue the Old Business and New Business items on the agenda to Monday.

The Board heard the remaining individuals who signed up for public comment.

Recess

The Board voted to enter recess at 4:50 P.M., and continue business at 9:30 A.M. on the following Monday.

Exhibit 8



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

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 9



Office of the Secretary of State

Brad Raffensperger

SECRETARY OF STATE

Charlene McGowan

GENERAL COUNSEL

September 16, 2024

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

Mr. Chairman,

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

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

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

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

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

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

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

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

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

Sincerely,

Charlene S. McGowan

General Counsel

Exhibit 10

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 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 11

GEORGIA ASSOCIATION OF VOTER REGISTRATION AND ELECTION OFFICIALS

September 17, 2024



Dear Members of the State Election Board,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GAVREO is neutral on this rule.

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

GAVREO Executive Board

Exhibit 12



**Cobb County
Board of
Elections &
Registration**

Tori M. Silas, Esq.
Chairwoman

Jennifer Mosbacher
Vice Chairwoman

Stacy Efrat
Secretary

Debbie Fisher
Assistant Secretary

Steve Bruning
Board Member

Tate Fall
Director

Mission Statement:

The mission of the Cobb County Elections Department is to register citizens of Cobb County to vote; to ensure that elections are free, impartial, fair, accurate, convenient and accessible to all voters; to encourage voter participation; to provide excellent customer service to voters, candidates and the media; and to help the public understand and follow all laws, rules and regulations.

**Board of Elections & Registrations
Special Called Meeting**

**September 16, 2024; 5:00 PM
100 Cherokee Street | Marietta, GA 30090**

Call to Order - Presiding: Tori M. Silas, Chairwoman

Approval of Agenda

Public Comment*

Rescind Previous Vote of Polling Location Change for Roswell 01
(see attached [Exhibit A](#)) **(Vote Required)**

Approval of Meeting Minutes

- August 12, 2024, Regular Board Meeting

New Business

- Amendment to 2024 Board Meeting Schedule to add November 8, 2024 Pre-Certification Meeting **(Vote Required)**
- Probable Cause Determination re: challenges submitted August 26, 2024, and August 29, 2024 **(Vote Required)**
- Cobb BOER Resolution (see attached [Exhibit B](#)) **(Vote Required)**
- Cobb BOER Amended & Restated Bylaws (see attached [Exhibit C](#))

Election Office Reports & Updates

- Director Update
- Board Chair Update

Board Member Comments

Executive Session

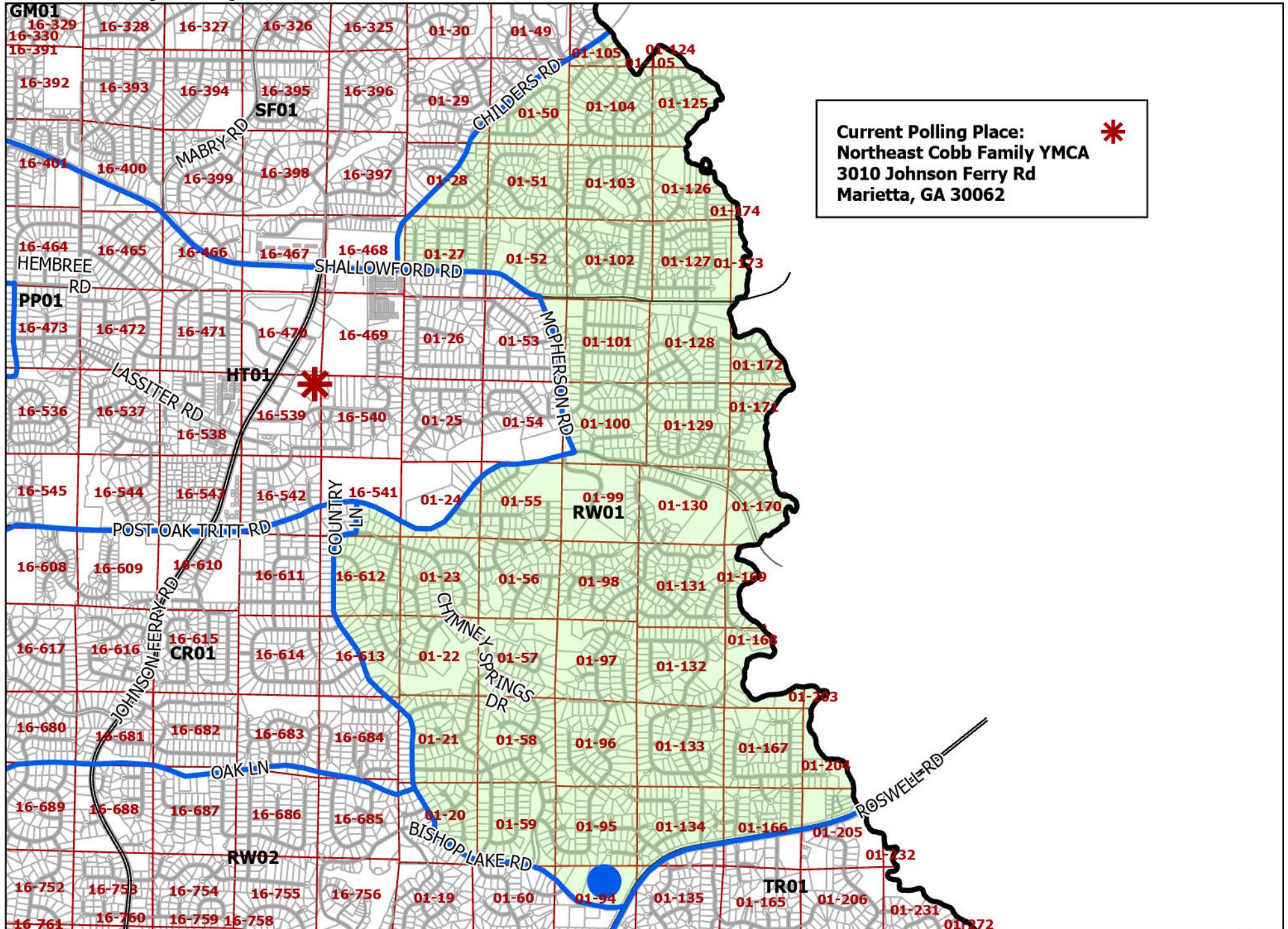
Next Meeting

- September 30, 2024 – 5:00 PM** Special Called Meeting to Consider Polling Place Changes (BOC Room – 100 Cherokee Street)
- October 14, 2024 - 3:00 PM** Regular Meeting (BOC Room - 100 Cherokee Street)

Adjournment

**Public comment will be limited to two speakers that were unable to provide comment due to the adjournment of the meeting on September 9, 2024*

Roswell 01 (RW01)



Current Polling Place: *
Northeast Cobb Family YMCA
 3010 Johnson Ferry Rd
 Marietta, GA 30062

● Proposed Temporary Location: Catholic Church of St. Ann, 4905 Roswell Rd NE, Marietta, GA 30062, .04 mile Inside, Page 495, B-8

COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION
August 12, 2024
BOARD MEETING MINUTES

100 Cherokee Street
3:00 p.m.

Board Members Present

Tori Silas - Chair
Jennifer Mosbacher – Vice Chair
Stacy Efrat - Secretary
Debbie Fisher - Assistant Secretary
Steve Bruning

Board Members Absent

Others Present:

Tate Fall- Director
Daniel White - Board Attorney
Michael Ditri – Prep Center Division Manger
Melissa Miller – Registration Manager
Kara Pringle - Election Division Manager
Marcques Spivey – Absentee Division Manager
Karlie Brooks – Administrative Supervisor

Chairwoman Silas called the meeting to order at 3:01 p.m.

Recited the Pledge of Allegiance

Motion to reduce the amount of time for each public speaker to 3 minutes due to the number of participants and agenda items by Ms. Mosbacher, 2nd Ms. Efrat. Passes 5-0

Approval of Agenda

Motion to approve the agenda as presented by Mr. Bruning, 2nd Ms. Mosbacher. Passed 5-0.

Public Comment

Laura Judge (Virtual) – candidate and school board candidate. Concerns around new SEB rules around certifying the election. GA election laws state that certification is mandatory and GA election laws provide process for discrepancies. Encouraging election board to certify elections in November.

Cat Story (In Person) – has been poll observer and concerned about new SEB rule. Existing process in place works. The change just adds chance of delays, uncertainty, and personal bias.

Vyanti Joseph (Virtual) – Voting is a right and one of the few ways to make a choice in the future. Please make sure everyone is given ample opportunity for this right. We want accessible and expansive early voting and on weekends. People have all different types of schedules. Expanding early voting hours will make it easy for everyone. Sunday voting is not a new concept. Cobb has never offered Sunday voting during a presidential election.

Salleigh Grubbs (In Person) – Did not receive Marc Elias’s email to coordinate talking points. If we had these new rules in place, there would not be chaos and we’d be able to certify without a doubt and wouldn’t break an oath to certify election that is not accurate. Don’t understand why we are talking about charging for voter challenges. It is board’s job to ensure we have clean voter

rolls. Just like Connie Taylor is charging passport fees and taking money from Cobb citizens. We have already paid taxes for the staff to do their jobs and we shouldn't charge people to do their job. Need to know what we are doing with cars with candidates' names are involved with running the election. Time to stand up and do the right thing with voter rolls.

Heather Tolly-Bauer (Virtual) – everyone should be able to vote but not everyone can take time off on election day to cast their ballots. Most people in Cobb voted early and most were women or older. Important to offer flexible voting options to accommodate needs. Expanding hours will increase voter participation.

Elizabeth Hendrickson (In Person) – got involved in poll watching in 2020. Was at SEB meeting and watched Cobb BOE meetings. Election officials want to do their jobs well and deserve our appreciation. This board does work for all citizens not just the loudest. Board's job is to decide issues fairly and according to the law. Elections office is not a business. Making as many early voting locations as possible is more important than investigating voter rolls. Thanks for denying challenges. Thank you for what you are doing to prevent confusion and for following the law and for keeping elections secure and accessible.

Debbie Wnukowski (Virtual) – Voter cancellation portal – worried about voters removed by bad actors or accidentally. Dark web is open to everyone and it's worrisome that someone could start canceling registrations. Urges elections staff to review cancellations and notify those voters.

Donna Court (In Person) – has worked as poll worker and monitor. SEB rule related to certification: SEB voted 3-2 to approve an undefined reasonable inquiry before certifying results. GA elections laws are clear. The county shall tabulate election returns no later than Monday 5 pm following election. Duty is mandatory and not an option. State laws already have a process for reporting discrepancies. Issues can be resolved in the courts. Ask that board comply with GA law and fulfil your duty to certify. AJC reported said GA has a record of fair and legal elections where challenges can be examined.

Susan Radulovacki (Virtual) – poll manager raising concerns about safety. Has seen rise in voter concerns and resentment. Anger is real – often they get loud and it's her job to diffuse the situation. One voter wanted to vote in a race not on his ballot; he was difficult and looking for a confrontation. He got louder and angrier. After several minutes, he realized he was wrong. He finally apologized. He was armed. Very thankful because it gave her practice and it's a warning to be prepared in November. How can we keep voting safe for all involved? How can poll workers be trained for these situations? Police officer was covering 11 polling places. These are not theoretical concerns and they are based on real experiences.

Pax Riddle (In Person) – Thanked the Board and Staff for their work. Talked about the cancellation portal; urges the board and the staff to look at canceled registrations and provide notice that goes beyond a bland postcard.

Valerie Habif (Virtual) – thank you for serving and rejecting mass voter challenges. Elections need to be free, fair, and easy. Unsubstantiated challenges put the burden on the voter and not challenge. It is a form of voter intimidation. There's a long and nasty history of voter intimidation in GA.

Christine Rozman (In Person) – the tone is that there are concerns about this election. We saw what happened in 2020. There was a lot of chaos. My shirt is a graph of what happened with reported results. We do have big questions. If you are paying attention to other countries... it's frightening what is happening in the UK. It could happen here when you have non-citizens voting. Was initially excited about Ms. Fall joining the team. The elections director is asking

additional money (\$2.4 M) in addition to her budget. We don't just sweat money and Cobb taxpayers don't want to pay for stupid stuff.

Jenny Peterson (Virtual) – counts on BOE to ensure that vote counts. Thanks to BOE, Fall, and election workers. Thanks for rejecting voter challenges. Challenges are voter intimidation. We need each other to ensure everyone's votes are welcome or counted, even if we don't like their choice.

Donna Wong (In Person) – speaking for the Asian Pac Islander community. Thank you for early voting. People are nervous that we can't rely on postal service. The board's plan to open 12 locations for early voting will facilitate large turnout. Weekend voting will help citizens of all lifestyles. Concerned and opposed to US citizens only poster; it is chilling and intimidating effect. Speaking for herself and naturalized immigrant. Previous audits have found no non-citizen voting. The posters create a hostile atmosphere. We can trust BOE to follow what is in place – decades long procedures that require citizenship. Let's not perpetuate the myth of non-citizen voting.

Farhana Hasan (Virtual) – thanks the board for rejecting mass voter challenge and protecting Cobb voter. It is clear that the challenges are not always based on data from legitimate sources. It is a form of voter suppression. Need to ensure that every Cobb citizen retains their right to vote.

Ken Sprague (In Person) – thank you for the ongoing efforts to oversee a fair election. Thank you for rejecting the mass voter challenges and recent attempt to cancel 2472 Cobb registrations. Concerned that a handful of disingenuous Cobb citizens have tried to follow a statewide effort to bypass protections of Cobb voters. There are 2 problems with challenges. First, they waste a lot of valuable time for the board and staff. Second, the challenges create a chilling effect to intimidate and confuse voters. Most challenged voters are already in inactive state or shifting to inactive status. Cobb staff are already following procedures and laws. Looks forward to adoptions of policies and procedures to handle these voter challenges. Supports costly measures to investigate challenges.

Essence Johnson (Virtual) – Thanks BOE for voting to reject mass challenges. Takes courage to apply the law in the face of pressure. Thanks elections staff for job well done. All but 106 voters were already in inactive status; election staff has been diligently doing their job according to the law. We can expect more challenges to be filed in the next months and years. Urges board to adopt policies that follow state and federal law. BOE and staff should focus time on ensuring everyone can access right to vote by having expanded early voting. We deserve democracy that reflects all of us. Not everyone can take time. SEB is providing cover for elections board not to certify. State law is clear that it is a legal duty and not an option to certify. Encourages board to comply with election law. Very concerned about new SOS portal to cancel voter registrations.

Tracy Stevenson (In Person) – has questions and doubts for filing declaratory judgment. Home rule map being unconstitutional. Judge Hill declared home rule map was not constitutional and to hold special election as quickly as possible. Why did you wait to file this when Judge Hill filed her orders? Your filing is moot. Is BOE going to withdraw the petition? What purpose does it serve now? You are attempting to continue to delay this further. How much taxpayer dollars will continue to be wasted?

Sharon Marshall (Virtual) – concerned about SEB rule about certification, which came 90 days ahead of presidential election. Election law is clear that certification should happen the Monday after election and issues should be resolved by a judicial process.

Arnell Pharr (In Person) – lives in a community where many don't have access to quality info about when and where to vote. Cobb County communications do not reach them. There are nonpartisan orgs that do try to work with voters. A lot of religious orgs can reach more citizens. Please reach out and build an alliance with these groups. They can expand the reach to these citizens. Many of these groups would be interested in working with you.

Todd Crowder (Virtual) – concern about SEB rule to allow county boards to withhold certification. Rule lacks definition and could delay certification. Historically boards are responsible for verifying accuracy, but new rule will undermine public confidence. Urges board to consider the consequence of this rule. This rule will create confusion. Cobb voters are counting on you to uphold democracy.

Audrey Allen (In Person) – Shift work for poll workers at election poll. There was going to be a pilot in May but couldn't be implemented. Please implement shift work in as many precincts as possible. Many friends are interested in poll workers but can't commit to 13 hour workday. Shift work should be an option and should be communicated in advance. You are here to serve citizens including those in the room and those not in the room. Job requires integrity. Thank you for this role during these trying times.

Hill Wright (In Person) – Talked about Judge Hill's decision and asked why the BOE doesn't accept it. Talked against Sunday voting and wants to keep the citizenship posters in the polling locations. We should not expand voting to Sunday because it is the Lord's day.

Approval of Meeting Minutes

Motion to approve the May 28th, July 8th, and August 3rd, meeting minutes by Mr. Bruning, 2nd by Ms. Fisher. Passed 5-0

Public Hearing

- Director Fall
 - Request polling location change for Roswell 01 to be effective August 15, 2024.
 - Ms. Fisher expressed concern over the polling location being out of the precinct boundaries and calling it permanent. Mr. White clarified that since there is no other location to come back to, we wouldn't usually label it as temporary.
 - Motion to approve as presented by Ms. Efrat, 2nd by Mr. Bruning. Passed 4-1 with Ms. Fisher in opposition.
 - Request polling location change for Dowell 01 to be effective August 15, 2024.
 - Motion to approve as presented by Ms. Efrat, 2nd by Mr. Bruning. Passed 5-0.
 - Request polling location change for Oregon 05 to be effective August 15, 2024.
 - Motion to approve as presented by Ms. Efrat, 2nd by Mr. Bruning. Passed 4-1 with Ms. Fisher in opposition.

Election Office Reports & Updates

- Division Manager presentations
 - Michael Ditri (Prep Center Division Manager)

- Update on vacancies in the division
- Inventory and resetting and maintaining election equipment update
- Integra Software conversion
- Logistics update
- Safety and Security update
- Kara Pringle (Elections Division Manager)
 - Talked about the training plan and poll worker recruitment
- Marcques Spivey (Absentee Division Manager)
 - ABM
 - UOCAVA update
 - New software to tracking application process
 - Call service and P.O Box/mailroom transition
 - New Staff Training
 - Updates to processes, procedures and paperwork
 - 3rd party vendor to mail out ballots transition
 - AIP
 - Site visits
 - Working with prep on final numbers
 - Increased security
 - Training
- Melissa Miller (Registration Division Manager)
 - Personnel vacancies – 5 elections tech and 3 seasonals
 - 19,860 registrations to process – projects 9/3 completion
 - 20,086 in auditing
 - 950 hard cards
 - Completed 3 weeks of petitions (1,000 pages)
 - Confirmation mail out 7,30 out of county, 6,949 in Cobb
 - Received instruction keying in the 6,949 by 8/25
 - Felon and vital processing up to date
- Tammy Thorpe (Communications Specialist)
 - Internal and External communication objectives
 - Voter outreach
- Director Update
 - Organization updates and reclasses
 - Security update for AIP

- Budget update
- Shift work with poll workers

Motion to recess for 5 minutes by Mr. Bruning and 2nd by Ms.Fisher. Passed 5-0.

Motion to return by Mr. Bruning and 2nd by Ms.Fisher. Passed 5-0.

New Business

- AIP schedule
 - Maximizing equipment at these sites – 209 minimum BMDs. This will be the greatest amount of equipment with most hours than ever.
 - There are no larger sites available
 - Planning to meet with Tim Lee constituents and in future moving to Mtn View Library
 - Motion to approve AIP plan by Bruning, second by Fisher 5-0
- Special Election schedule for Commission districts 2 and 4
 - Mr. White explained that the judge says special election must be held as quickly as possible
 - Can't redistrict until after certification and then qualifying can begin.
 - Motion to adopt June 17 election if there is a runoff (and keep April 7 election if there is no runoff) by Efrat, second by Mosbacher. Passes 5-0
 - Qualifying fees will be refunded to those who couldn't run under home rule map
- Voter Challenge Policies for 229 and 230
 - Motion by Ms. Mosbacher, second by Mr. Bruning
 - Offered amendment to Motion to strike section 1D2 by Fisher, no second
 - Ms. Fisher doesn't believe we should use the word "inactive"
 - Ms. Silas asked Mr. White about costs and provision within state law that is contrary to charging?
 - Mr. White says this is similar to filing a complaint in court – this is comparable to sending the notice to the challenged voters
 - Motion passes 4-1, Ms. Fisher opposed
- Motion by Mr. Bruning to table discussion of BOER amended by-laws, second by Fisher. Passes 5-0

Board Member Comments – N/A

Executive Session

Motion to move to Executive session for pending litigation by Mr. Bruning, second by Ms. Fisher at 7:11 pm

Motion to come out of Executive session by Mr. Bruning, second by Ms. Fisher at 8:00 pm

Next Meeting

September 9, 2024 -3:00 p.m. Regular Meeting

- BOC Room-100 Cherokee St, Marietta GA 30090

Adjournment

- Chairwoman Silas adjourned the meeting at 8:07 pm

UNOFFICIAL



August 12, 2024 minutes prepared by:

Karlie Brooks, Department Secretary

August 12, 2024 minutes reviewed by:

Stacy Efrat, Board Secretary

UNOFFICIAL

Proposed Resolution – 9/16/2024

Cobb County Board of Elections and Registration

Proposed resolution for the Cobb County Board of Elections and Registration regarding the implementation of new proposed state election board rules:

WHEREAS, the Georgia State Election Board (“SEB”) is responsible for, among other things, promulgating rules and regulations to ensure uniformity in the administration of primaries and elections in the State of Georgia, and in the training of registrars, deputy registrars, poll officers, and election other officials;

WHEREAS, the Cobb County Board of Elections and Registration (“Cobb BOER”), as the election superintendent for Cobb County, is responsible for the administration of elections and registration within Cobb County, including the implementation of the Georgia Election Code and rules and regulations adopted by the SEB;

WHEREAS, the members of the Georgia Association of Voter Registration and Election Officials (“GAVREO”) include active Election Superintendents Supervisors and Directors, County Boards of Registrars, Deputy Registrars, County Election Board Members, and other full-time and part-time voter registration and elections staff and, thus, GAVREO has a vested interest in the rules that are adopted by the SEB and are to be implemented in connection with the administration of the November 5, 2024 Election.

WHEREAS, GAVREO issued a statement on August 21, 2024 calling on the SEB to pause future rule changes ahead of the upcoming November General Election, to maintain stability and avoid confusion among voters and election officials;

NOW, THEREFORE, BE IT...

RESOLVED that Cobb BOER stands with GAVREO and urges the SEB to halt the implementation and adoption of additional election rules that would go into effect for the November 2024 General Election; and be it

RESOLVED that, given the proximity of the upcoming General 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. Cobb BOER agrees with GAVREO that maintaining stability in the rules governing the elections process is essential for ensuring a fair and orderly process; and be it

RESOLVED that Cobb BOER further calls for a 90-day quiet period to precede future federal elections during which the SEB would refrain from adopting or implementing election-related rules and policies, except as needed to address emergency circumstances.

Draft_July 31, 2024

**AMENDED AND RESTATED BYLAWS
COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION**

ARTICLE I

NAME AND AUTHORITY

The Cobb County Board of Elections and Registration (the “Board”) was created by the Georgia General Assembly, pursuant to Georgia Laws 1985, p. 4653 and O.C.G.A § 21-2-40.

ARTICLE II

PURPOSE, REPOSIBILITIES AND DUTIES

Section 1. Purpose. The Board shall have jurisdiction over the conduct of primaries and elections and the registration of electors in Cobb County, Georgia.

Section 2. Responsibilities and Duties. The Board’s duties and responsibilities include, but are not limited to:

- (a) Carrying out registration and elections-related responsibilities as specified by state and local law;
- (b) Ensuring that all elections and related activities in Cobb County are conducted in accordance with the spirit and the letter of applicable federal, state, and local laws such that they are free, impartial, fair, accurate, convenient, accessible, credible and trustworthy in the eyes of the public;
- (c) Educating the public and increasing public awareness of upcoming elections, where and how to cast votes, and voter registration; ensuring voters, candidates, and the media receive excellent customer service from the of Cobb County Department of Elections & Registration;
- (d) Appointing, overseeing, evaluating, and removing the Director of Cobb County Department of Elections & Registration (the “Elections Director”) as necessary or appropriate;
- (e) Determining and adopting procedural rules and regulations for the ~~Department~~Board; adopting bylaws; specifying policies for the functions and duties of ~~Department—employeeesthe Board, its agents,~~ custodians, independent contractors, and poll workers; and taking such actions as ~~is-are~~ necessary and appropriate to the management of the affairs committed to the ~~Department’s Board’s~~ supervision ~~as well as the affairs of the Board;~~

- (f) Providing budget and resource ~~oversight~~-review and advocacy for the Department to ensure that the Department has sufficient operating capacity; and
- (g) In partnership with the ~~Executive-Elections~~ Director, establishing high-level priorities and/or goals for areas and activities under the Board's purview.

~~Section 3. Training. In order to effectively carry out its purpose, responsibilities and duties, Board members shall obtain relevant annual training provided by the Secretary of State or such other training as determined relevant by the Board for the purpose of carrying out its duties (including, but not limited to, the annual conference held by the Georgia Association of Voter Registration and Election Officials (GAVREO)). Minimally, the Elections Director and one member of the Board shall participate in such training at the GAVREO conference to ensure compliance with state law. Fees and travel costs for such training shall be paid by the Department in accordance with Cobb County policies.~~

ARTICLE III
MEMBERS

Section 1. Board Composition

- (a) The Board shall be composed of five (5) members, each of whom shall be a resident and an elector of Cobb County and shall be appointed as provided pursuant to Ga. Laws 1985, p. 4653, Act #437 (H.B. 623), as amended.
- (b) One member of the Board shall be appointed the Chairperson of the Cobb County Board

~~Section 3. Board Training. In order to effectively carry out its purpose, responsibilities and duties, Board members shall obtain relevant annual training provided by the Secretary of State or such other training as determined relevant by the Board for the purpose of carrying out its duties (including, but not limited to, the annual conference held by the Georgia Association of Voter Registration and Election Officials (GAVREO)). Minimally, the Elections Director and one member of the Board shall participate in such training at the GAVREO conference to ensure compliance with state law. Fees and travel costs of the Elections Director for such training shall be paid by the Department in accordance with Cobb County policies.~~

(b)

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ARTICLE IV
OFFICERS

Section 1. Officers.

(a) Names. The officers of the Board shall be the Chairperson (the “Chair”), Vice Chairperson (the “Vice Chair”), the Secretary (the “Secretary”) and the Assistant Secretary (the “Asst. Secretary”).

(b) Selection of Officers and Term.

(i) The Chair, Vice Chair, Secretary and Asst. Secretary shall be selected in the manner prescribed by law and shall serve for a term of two (2) years or until his/her successor is duly appointed and qualified.

(ii) The regular July meeting in the applicable year shall be the meeting at which officer selections are made, unless otherwise specified.

(iii) Selection of officers is solely within the discretion of a majority of the Board.

(iv) Each member of the Board shall be permitted to succeed himself or herself for one (1) term following the completion of a four (4) year term, not including any time served under an interim appointment as permitted under applicable law.

(v) Each member of the Board shall have the right to resign at any time by giving written notice of his or her resignation to the respective appointing authority and to Clerk of the Cobb County Superior Court. Each member of the Board shall be subject to removal from the Board at any time for cause after notice and hearing in the same manner and by the same authority as provided for removal of registrars.

(c) Officer Duties

(i) Chair. The Chair:

(A) Shall convene and preside over all Board meetings and shall call special meetings when necessary and advisable;

(B) Shall approve the agenda for Board meetings;

(C) Shall work in partnership with the Elections Director to ensure that Board directives and policies are carried out;

- (D) Shall serve as spokesperson for the Board in accordance with Board policies and directives and shall convey the Board's policies and directives to the Elections Director;
- (E) Shall coordinate the Elections Director's annual performance evaluation; and
- (F) May vote on any matter presented to Board members, but shall not be authorized to present a main motion at a meeting of the Board.

~~(ii)~~ Vice Chair. It shall be duty of the Vice Chair to preside over meetings of the Board in the absence of the Chair.

~~(ii)~~

(iii) Secretary. It shall be the duty of the Secretary to prepare, maintain and serve as official custodian of all minutes and records of the Board's proceedings. Such minutes and records shall be maintained at a location and in the manner and form as may be designated by the Board. The Secretary shall make proper notice of all special meetings. Actions of the Board, when necessary, shall be certified by the Secretary's signature accompanied by the seal of the Board.

(iv) Assistant Secretary. It shall be the duty of the Assistant Secretary to serve in the absence of the Secretary.

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ARTICLE V

COMMITTEES OF THE BOARD

In order to fulfill the Board duties and responsibilities, the Chair, with the concurrence of a majority of the Board, may establish one or more committees. The Board may also elect to designate one or more members of the Board to serve on outside committees as representatives of the Board.

ARTICLE VI

MEETINGS

Section 1. Regular Meetings. Except as set forth herein or otherwise agreed to by a majority of the Board evidence a by a vote taken at a duly called meeting, the Board shall hold a regular meeting monthly on the second Monday of each month at 3:00 PM. Additionally, on the days of elections conducted by the Cobb County Elections & Registration Department, the Board shall meet at 7:00 PM to oversee election returns. The

Board shall hold a meeting on a date and at a time following such election and prior to the Secretary of State election certification deadline to certify the election results. The Board shall hold such other meetings as may be necessary upon the call of the Chair with proper notice pursuant to O.C.G.A. §50-14-1. The Chair may change the date and the time of any single meeting prior electronic communication to members in compliance with O.C.G.A. §50-14-1.

Section 23. Special Meetings. Special meetings may be held and shall be called by the Chair or a minimum of three (3) members of the Board. Reasonable prior notice shall be given to each member of the Board.

Section 3. Board Meeting Agenda. The Elections Director shall solicit items for discussion from Board members, including matters the Executive Director deems necessary for consideration by the Board. The agenda shall be approved by the Chair and provided to Board members no less than three (3) business days prior to the Board meeting.

- (i) Form of Agenda. Each agenda item shall describe the nature of the action required by the Board or shall be designated as informational only. Any such material as is necessary to understanding an agenda item shall be provided to Board members with the agenda.
- (ii) Public Posting. Agendas for monthly meetings shall be made publicly available in accordance with applicable Georgia law but not less than forty-eight (48) hours prior to the meeting. Such posting shall include all supplemental materials not deemed privileged by the Board's legal counsel.
- (iii) Minutes. Minutes of all meetings shall be taken and made available for inspection in accordance with Georgia law. Minimally, the minutes shall include the substance of any motion, the names of those who made and seconded the motion, and a breakdown of the vote. The minutes shall additionally include the names of Public Comment speakers, a summary of key points discussed in each agenda item, and any follow-up or action items requested by Board members.

Section 4. Quorum. Three (3) members of the Board shall constitute a quorum.

Section 5. Board Action. Action and decision by the Board shall be permitted during a noticed Regular or Special Meeting by a majority vote of the members present and participating. The Board shall fix an establish by appropriate resolution entered on its minutes, directives governing the execution of matters within its jurisdiction. The Board shall maintain a written record of policy decisions which shall be amended to include additions or deletions. Such written record shall be made available to the public.

Section 6. Place of Meetings. All Regular or Special Meetings shall be held in a public building in Cobb County, Georgia, unless emergency circumstances exist of such a nature

and magnitude that a meeting must be held at a time when no public building is reasonably available.

Section 7. Public Meetings; Public Comment.

- (a) All meetings shall be open to the public. Public Comment shall immediately follow Approval of Minutes on the Board agenda, or prior to the commencement of any old business or new business.
- (b) Each speaker must sign up for public comment in the manner directed prior to the start of Public Comment and may speak for up to three (3) minutes. Individual speaking time may be extended or shortened with the concurrence of a majority of the Board, provided that it is extended uniformly for all speakers. If public comments are expected to exceed thirty (30) minutes, the Chair may limit the total number of speakers with the concurrence of a majority of the Board. Speakers shall not be required to read their addresses into the public record in order to participate.

ARTICLE VII

EMPLOYEES; PHYSICAL FACILITIES

Section 1. Employees.

- (a) Elections Director.
 - (ii) The employee of the Board shall be the Elections Director, who shall be appointed by and serve at the pleasure of the Board and shall be administer and supervise the conduct of elections and primaries and the registration of electors of Cobb County, pursuant to law and duly adopted resolutions of the Board.
 - (iii) The Elections Director shall perform such other functions and duties as may be prescribed by the Board.
 - (iv) Such Elections Director shall, upon hiring, serve for ~~such a period of four years and~~ until a successor is appointed ~~or and~~ qualified. The Elections Director shall be subject to removal at any time for cause, after notice and hearing, complying with due process requirements, in the manner and by the authority as provided for the removal of registrars.
 - (v) On an annual basis, the Board shall evaluate the Elections Director's performance in the areas under their purview. The Chair shall

coordinate the evaluation process, soliciting feedback from Board members and from other key stakeholders as appropriate. Evaluations shall be in writing and shall be administered and communicated to the Elections Director consistent with procedures and policies as adopted by the Cobb County Human Resources Department.

(vi) No individual member of the Board shall direct or discipline any employees under the direction of the Elections Director.

~~(vi)~~(vii) In the event of a continuing absence of the Elections Director that exceeds [thirty (30) days], the employee in the next level of position, selected by, first, by rank and then by position in descending order until one is identified that is present to fill any vacancy of the Elections Director, shall serve as interim director until the Elections Director's return. In the alternative to an interim director selected by tenure and rank of position, the Chair shall as soon as practicable convene a meeting at which the Board shall appoint an interim director to serve until the Election's Director's return; provided however, that an interim director shall serve according to tenure and rank of position as set forth above until the Board makes such appointment. Additionally, in the event of the resignation or termination of the Elections Director, the Board shall appoint an interim director to serve until the Election's Director's successor is qualified and appointed.

(b) Other Employees. The Board may employ such other employees as may be approved by and who shall receive such compensation as fixed by the Board of Commissioners of Cobb County. [Ga. Laws 1985, p. 4653, Sec. 8\(c\)-\(d\)](#)

(c) Physical Facilities. The Board of Commissioners of Cobb County shall provide proper and suitable offices, space, equipment and supplies as needed for the Board and the Elections Director [Ga Laws 1985, p. 4653, Sec. 8\(e\)](#)

ARTICLE VIII

PARLIAMENTARY AUTHORITY

To the extent they are not inconsistent or do not otherwise conflict with any provision of these Bylaws and any rules, policies or procedures duly adopted by the Board pursuant to its authority under applicable law and these Bylaws, the rules contained in Robert's Rules of Order, Newly Revised, shall govern the Board in all instances to which they are applicable and

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**ARTICLE IX
AMENDMENTS**

These Bylaws may be amended at anytime by an affirmative vote of the majority of the Board at any Regular or Special Meeting, provided notice of such proposed vote and the proposed amendment shall have first been presented in writing to each member at least five (5) days prior to the meeting at which the vote is to be taken. These Bylaws shall be amended at any time as may be necessary to conform with applicable law.

DRAFT

ARTICLE X

RESOLUTION OF CONFLICTING PROVISIONS

To the extent that any rule within these Bylaws conflict with any applicable provide of state or county law, the Boad acknowledges that such law shall supersede the conflicting provision herein.

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AMENDED AND ADOPTED BY THE COBB COUNTY BOARD OF ELECTIONS AND REGISTRATIONS AT ITS MEETING HELD _____, 2024.

By: _____
Toronda M. Silas, Esq., Chairwoman

Jennifer Mosbacher, Vice Chair

Stacy Efrat, Secretary

Debbie Fisher, Asst. Secretary

Steven F. Bruning