

destabilizing Georgia’s voting, vote counting, and vote certification process. Again, the General Assembly has carefully and purposefully set forth the parameters regarding elections in this State. The unelected SEB has no statutory or constitutional authority to inject confusion and disarray into this vital process with their extra-statutory requirements.

Plaintiffs incorporate by reference their Complaint for Declaratory and Injunctive Relief in its entirety. They amend their initial Complaint by adding the following Counts and paragraphs:

COUNT VII

**DECLARATION THAT SEB UNCONSTITUTIONALLY PROMULGATED
RULE 183-1-13-.05 AND THAT SUCH RULES ARE IN CONTRAVENTION OF THE
ELECTION CODE**

75.

Paragraphs 1-74 of the Complaint and Amended Complaint are incorporated herein by reference.

76.

The SEB has proposed and promulgated Rule 183-1-13-.05 (the “Poll Watcher Rule”) that expands the enumerated locations where poll watchers may be designated beyond those places specifically identified in O.C.G.A. § 21-2-408(c). A copy of the Poll Watcher Rule is attached hereto as **Exhibit B**.

77.

The SEB has no constitutional authority to designate places where poll watchers may be positioned that is not set forth in the Election Code and that differs from the Election Code. The Election Code sets out the rules for poll watchers in O.C.G.A. § 21-2-408, which was just amended by the General Assembly earlier this year in House Bill 1207.

78.

Additionally, the General Assembly's delegation of rulemaking authority to the SEB is broad and undefined—and thus unconstitutional. It does not contain “sufficient” and “realistic” parameters that would allow the SEB to impose the requirements in the Poll Watcher Rule. To the extent that any guidance is given, Plaintiffs contend it is insufficient. The Election Code merely advises that the SEB can promulgate rules that provide “consistency” and “uniformity” in the certification process. A regulatory rule for poll watchers that differs from the statutory scheme set out in O.C.G.A. § 21-2-408 will create confusion in a manner the General Assembly expressly did not permit.

79.

Finally, the General Assembly has no authority to delegate its legislative role to the SEB at all, as any such legislative delegation violates Ga. Const. Art. I, Sec. II, Par. III. This is particularly true where the General Assembly has set forth in over 500 pages of the Georgia Code Annotated the rules by which votes of our citizens must be counted. The conveyance of a gap-filling role to cover items the General Assembly did not specifically legislate is constitutionally impermissible.

80.

For the foregoing reasons, the Court should declare that the Poll Watcher Rule is contrary to the Election Code, and that the SEB lacks constitutional and statutory authority to promulgate this Rules.

COUNT VIII

**DECLARATION THAT SEB UNCONSTITUTIONALLY PROMULGATED
RULE 183-1-21.21 AND THAT SUCH RULE IS IN CONTRAVENTION OF THE
ELECTION CODE**

81.

Paragraphs 1-80 of the Complaint and Amended Complaint are incorporated herein by reference.

82.

The SEB has proposed and promulgated Rule 183-1-12-.21 (the “Daily Reporting” Rule) seeks to set forth additional requirements for reporting absentee ballot information by the county board of registrars beyond that contemplated in O.C.G.A. § 21-2-385(e), which already specifically sets forth the daily reporting requirements for absentee ballots. The Daily Reporting Rule is inconsistent with the specific requirements set forth by the General Assembly in the Election Code. A copy of the Daily Reporting Rule is attached hereto as **Exhibit C**.

83.

The SEB has no constitutional authority or statutory authority to alter these reporting requirements explicitly provided for by the General Assembly.

84.

Additionally, the General Assembly’s delegation of rulemaking authority to the SEB is broad and undefined—and thus unconstitutional. It does not contain “sufficient” and “realistic” parameters that would allow the SEB to impose the requirements of the Daily Reporting Rule. To the extent that any guidance is given, Plaintiffs contend it is insufficient. The Election Code merely advises that the SEB can promulgate rules that provide “consistency” and “uniformity” in the

certification process. The SEB's proposed Rule goes well beyond this requirement and it seeks to track substance of ballots in a manner that is not permissible.

85.

Finally, the General Assembly has no authority to delegate its legislative role to the SEB at all, as any such legislative delegation violates Ga. Const. Art. I, Sec. II, Par. III. This is particularly true where the General Assembly has set forth in over 500 pages of the Georgia Code Annotated the rules by which votes of our citizens must be counted. The conveyance of a gap-filling role to cover items the General Assembly did not specifically legislate is constitutionally impermissible.

86.

For the foregoing reasons, the Court should declare that Daily Reporting Rule is contrary to the Election Code, and that the SEB lacks constitutional and statutory authority to promulgate these Rules.

COUNT IX

DECLARATION THAT SEB UNCONSTITUTIONALLY PROMULGATED RULE 183-1-12-.12(a)(5) AND THAT SUCH RULE IS IN CONTRAVENTION OF THE ELECTION CODE

87.

Paragraphs 1-86 of the Complaint and Amended Complaint are incorporated herein by reference.

88.

The SEB has proposed and promulgated Rule 183-1-12-.12(a)(5) (the "Hand-Count" Rule) which requires hand-counting of ballots on Election Day (or shortly after Election Day in some limited circumstances). A copy of the Hand-Count Rule is attached hereto as **Exhibit D**. This regulation is not permitted by the Election Code, and is, in fact, directly contrary to statutes that

govern what poll officials must do in polling places following the close of polls. Those statutes, specifically O.C.G.A. § 21-2-420, require that “the poll manager and at least one assistant manager shall...immediately deliver all required documentation and election materials to the election superintendent.” O.C.G.A. § 21-2-420(a). Election materials, of course, includes ballots, as made explicitly clear in that same code section. *Id.* (“The election superintendent shall then ensure that *such ballots* are processed, counted, and tabulated as soon as possible...”) (emphasis added). The Hand-Count Rule is antithetical to the statutory requirement that election materials be immediately delivered to the superintendent.

89.

The SEB has no constitutional authority or statutory authority to contradict statutory requirements explicitly provided by the General Assembly. The Hand-Count Rule will likely lead to substantial delays and confusion in the timely tabulation of voting results in a manner neither contemplated nor desired by the General Assembly.

90.

Additionally, the General Assembly’s delegation of rulemaking authority to the SEB is broad and undefined—and thus unconstitutional. It does not contain “sufficient” and “realistic” parameters that would allow the SEB to impose the requirements in the Hand-Count Rule. To the extent that any guidance is given, Plaintiffs contend it is insufficient. The Election Code merely advises that the SEB can promulgate rules that provide “consistency” and “uniformity” in the certification process. The Hand-Count Rule goes well beyond this requirement. It contradicts statutory requirements and interjects substantial subjectivity and human error into the process of closing polls.

91.

Finally, the General Assembly has no authority to delegate its legislative role to the SEB at all, as any such legislative delegation violates Ga. Const. Art. I, Sec. II, Par. III. This is particularly true where the General Assembly has set forth in over 500 pages of the Georgia Code Annotated the rules by which votes of our citizens must be counted. The conveyance of a gap-filling role to cover items the General Assembly did not specifically legislate is constitutionally impermissible.

92.

For the foregoing reasons, the Court should declare that the Hand-Count Rule contrary to the Election Code, and that the SEB lacks constitutional and statutory authority to promulgate it.

COUNT X

**INJUNCTION AGAINST THE SEB AND THE STATE FROM ENFORCING
RULES IN COUNTS VII THROUGH XI**

93.

Paragraphs 1-92 of the Complaint and Amended Complaint are incorporated herein by reference.

94.

If the Court issues the declarations requested in Counts VII, VIII, or IX then the Court should enjoin the State and the SEB (which the State of Georgia stands in the shoes of for purposes of this action) from enforcing those rules set forth in those Counts.

PRAYER FOR RELIEF

1. That the Court enter the declarations requested herein.
2. That the Court enter the injunctions requested herein.
3. That the Court provide any other relief necessary and proper to effectuate the relief requested herein.

Respectfully submitted this 25th day of September 2024.

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EXHIBIT A



GEORGIA DEPARTMENT OF LAW

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ATTORNEY GENERAL

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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 B

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.

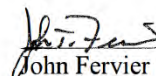
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board's webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events>

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 C

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 .

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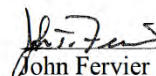
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- Electronically by emailing SEBPublicComments@sos.ga.gov
- By mailing comments to:
State Election Board
C/O Alexandra Hardin
2 Martin Luther King Jr. Drive, S.E.
8th Floor West Tower Suite 802
Atlanta, Georgia 30334

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 D

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.

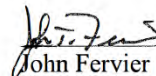
Information regarding how to join and provide public comment at the meeting will be available on the State Election Board’s webpage at: <https://sos.ga.gov/page/state-election-board-meetings-events> .

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)

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

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day served the foregoing **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** upon all parties in this case via this Court's Odyssey electronic filing system which will automatically serve all counsel of record with electronic service of the same. In addition, we have also served the following individuals via secure electronic mail:

Wright Banks
Chief Deputy of the Office of the Attorney General
wbanks@law.ga.gov

Kristyn Long
Executive Counsel in the Office of Governor Brian
Kemp kristyn.long@georgia.gov

Elizabeth Young
Senior Assistant Attorney General
eyoung@law.ga.gov

This 25th day of September 2024.

/s/ Christopher Anulewicz
Christopher Anulewicz