

IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

VASU ABHIRAMAN, TERESA K.  
CRAWFORD, LORETTA MIRANDOLA,  
JENNIFER MOSBACHER, ANITA  
TUCKER, ESSENCE JOHNSON, LAUREN  
WAITS, SUZANNE WAKEFIELD,  
MICHELLE AU, JASMINE CLARK,  
DEMOCRATIC NATIONAL COMMITTEE,  
and DEMOCRATIC PARTY OF GEORGIA,  
INC.,

Petitioners,

v.

STATE ELECTION BOARD,

Respondent.

Civil Case No. 2024CV010786

**MOTION OF *AMICI CURIAE* GEORGIA  
LEGISLATORS**

**MOTION OF *AMICI CURIAE* GEORGIA LEGISLATORS TO FILE A BRIEF IN  
SUPPORT OF PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT**

*Amici Curiae* House Representatives Solomon Adesanya, Segun Adeyina, Teri Anulewicz, Debra Bazemore, Eric Bell, Karen Bennett, Debbie Buckner, Rhonda Burnough, Lisa Campbell, Park Cannon, Omari Crawford, Viola Davis, Saira Draper, Karla Drenner, Becky Evans, Stacey Evans, Gloria Frazier, Lydia Glaize, Betsy Holland, El-Mahdi Holly, Carolyn Hugley, Shelly Hutchinson, Derrick Jackson, Sheila Jones, Marvin Lim, Karen Lupton, Pedro Marín, Dewey McClain, Tanya F. Miller, Billy Mitchell, Angela Moore, Farooq Mughal, Phil Olaleye, Mary Margaret Oliver, Esther Panitch, Sam Park, Ruwa Romman, Kim Schofield, Sandra Scott, Doug Stoner, Rhonda Taylor, Long Tran, Anne Allen Westbrook, David Wilkerson, Al Williams, Mary Frances Williams, Inga Willis, and House Minority Leader James Beverly respectfully seek leave of this Court to appear as *amici curiae* and file their brief in support of Petitioners' Request for

Declaratory Relief. The brief is attached to this Motion as Exhibit A. In support of this motion, *amici curiae* state the following.

**Interest of *Amici Curiae***

*Amici* are current members of the General Assembly.<sup>1</sup> Under Article II of the Georgia Constitution, the General Assembly is responsible for enacting the laws that govern Georgia elections. In particular, the General Assembly has enacted detailed statutory requirements prescribing the process of certifying election results. In addition to serving as Georgia legislators interested in upholding the rule of law, several *amici* have extensive experience in voting rights and election law. As members of the General Assembly, *amici* strive to enact laws that ensure fair and secure elections. When the State Election Board adopts rules that contradict state law, it usurps the constitutional role of the General Assembly. As such, *amici* have an important interest in ensuring that the State Election Board complies with enacted law.

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<sup>1</sup> No counsel for a party authored this brief in whole or part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici*'s counsel made a monetary contribution to the preparation or submission of this brief. A list of all *amici* is available at Appendix A.

WHEREFORE, *amici curiae* request this Court accept and consider the brief attached hereto.

Respectfully submitted, this 10<sup>th</sup> day of September, 2024.

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# EXHIBIT A

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## SUMMARY OF ARGUMENT

When voters elected the members of the General Assembly, they entrusted the legislature with the powers bestowed upon it by the Georgia Constitution—including enacting the laws that govern the conduct of elections in Georgia. In passing rules that directly contradict long-standing statutes, the State Election Board undermines democratic principles by contradicting the will of Georgians and thus exceeds its board authority. Georgia law, as enacted by the General Assembly, explicitly states that election returns “*shall* be certified by the superintendent not later than 5:00 PM on the Monday” following the election. O.C.G.A. § 21-2-493(k) (emphasis added). Furthermore, “[e]ach superintendent . . . *shall* perform all the duties imposed upon him or her by [the election code], which *shall* include . . . certify[ing] the results thereof to such authorities as may be prescribed by law.” O.C.G.A. § 21-2-70 (emphasis added). With this unambiguous language, the General Assembly has made clear that certification is a mandatory duty. Georgia Courts have unanimously agreed. *See, e.g., Bacon v. Black*, 162 Ga. 222 (1926); *Thompson v. Talmadge*, 201 Ga. 867 (1947). Nonetheless, acting on petitions that erroneously described certification as discretionary, the Elections Board adopted two rules, the “Reasonable Inquiry Rule” and the “Examination Rule,” that purport to give superintendents broad authority, and even an obligation, to investigate the conduct of elections and potentially to delay or deny certification. To the extent the Election Board’s challenged rules suggest that certification is discretionary or that the superintendent or individual board members must or even may, as part of the certification process, engage in an inquiry and document review process beyond the error correction described in O.C.G.A. § 21-2-493, the rules usurp the General Assembly’s authority and are invalid.

In addition to usurping the General Assembly’s role, the rules usurp the role of the courts in the election process. Georgia law empowers the courts to adjudicate election challenges. *See* O.C.G.A. § 21-2-524(a). These challenges can only be brought after an election has been certified

at the county level. *Id.* By empowering superintendents to conduct their own investigations of elections, and potentially to delay or deny certification, the challenged rules risk depriving the courts of their statutorily prescribed role in adjudicating election challenges. If the courts are unable to fulfill this crucial role, any candidate wishing to mount a proper election challenge through the courts may be denied that opportunity and election irregularities may go unaddressed.

This May, by a 4-0 vote, the Election Board rejected a proposed rule nearly identical to the Examination Rule at issue here, with both Republican and Democratic Board members expressing that the rule violated state and federal law.<sup>2</sup> Subsequent edits to the proposed rule did nothing to address its legal flaws. Nonetheless, following a change in the composition of the Election Board, the Board voted 3-2 to adopt both this rule and the equally unlawful Reasonable Inquiry Rule. Now it is left to this Court to protect the integrity of Georgia's election certification system by striking down these unlawful rules.

## ARGUMENT

### I. CERTIFICATION IS A MANDATORY DUTY UNDER GEORGIA LAW. BY CONTRADICTING THIS PRINCIPLE, THE ELECTION BOARD'S CHALLENGED RULES USURP THE ROLE OF THE GENERAL ASSEMBLY.

This state's Constitution entrusts to the General Assembly, and through the legislative process, the Governor, with the sole authority and duty to provide the laws that govern Georgia elections. Ga. Const. Art. II § 1, Para. 1; Art. V § II. Rules that defy the plain language of these duly enacted statutes such as those passed by the State Election Board fly in the face of this state's

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<sup>2</sup> Doug Bock Clark, *Officials Voted Down a Controversial Georgia Election Rule, Saying It Violated the Law*. Then a Similar Version Passed, Propublica (Aug. 27, 2024), <https://www.propublica.org/article/georgia-election-rule-violates-state-law-experts-say>.

democratic system and must be declared invalid. Georgia law makes clear that certification is a mandatory duty. The Election Board may not enact rules that contradict Georgia law.

Georgia's election code provides:

As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts which are entitled to be counted shall have been duly recorded; then they shall be added together, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns *shall then be certified by the superintendent* in the manner required by this chapter. Such returns *shall be certified by the superintendent not later than 5:00 P.M.* on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.

O.C.G.A. § 21-2-493(k) (emphasis added). The Superintendent may correct the results by examining the returns for specific metrics of mathematical consistency, O.C.G.A. § 21-2-493(b), (e)–(g), or ordering a recount or recanvass, O.C.G.A. § 21-2-493(c)–(d). Once that process is complete and the returns have been properly recorded, attested, and announced, the superintendent *shall* certify the returns. O.C.G.A. § 21-2-493(k). Indeed, even if “error or fraud is discovered, the superintendent *shall* compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.” O.C.G.A. § 21-2-493(i) (emphasis added).

Georgia courts have long understood certification to be a mandatory duty. In *Bacon v. Black*, the Georgia Supreme Court held that certification was “purely ministerial” and that “superintendents . . . have no right to adjudicate upon the subject of irregularity or fraud which will permit them to examine the ballots and review the returns of the district managers in order to ascertain whether the district returns are in fact correct or incorrect.” 162 Ga. 222, 133 S.E. 251, 253 (1926). The Court explained that the proper way to address such irregularities “is confined to

the remedy of contest as provided by law.” *Id.* In *Thompson v. Talmadge*, the Georgia Supreme Court explained that a “general, if not indeed the universal, rule of law” provides that canvassing boards “are given no discretionary power except to determine if the returns are in proper form and executed by the proper officials and to pronounce the mathematical result, unless additional authority is expressed.” 201 Ga. 867, 877 (1947). “They can neither receive nor consider any extraneous information or evidence, but must look only to the contents of the election returns.” *Id.*

Since the Court’s decision in *Thompson*, the General Assembly has amended Georgia statute regarding certification multiple times, but has only reinforced the underlying “universal[] rule of law” that certification is a mandatory duty. Through its amendments, the General Assembly has added the specific mechanisms for inspecting and correcting returns now found in O.C.G.A. § 21-2-493(b)–(g). The General Assembly’s addition of these highly specific provisions does not suggest discretion for superintendents to engage in free-ranging inquiry prior to certification, but rather strongly implies the opposite. For example, the statute provides for limited inquiry only in the event certain pre-conditions are met, such as under O.C.G.A. § 21-2-493(b) where the total votes cast exceed the total number of electors in a precinct. These are very specifically contemplated scenarios. If the General Assembly had wanted to provide superintendents with broad discretion it could easily have done so. Instead, it carved out limited and narrow contexts in which superintendents may correct results—namely addressing specific types of mathematical discrepancies and ordering recounts and recanvassing—and did nothing to alter the core principle that certification is a mandatory duty.

Here, the Election Board enacted two rules that exceed its authority. The first defines the phrase “[c]ertify the results of a primary, election, or runoff,” or words to that effect” to mean “to attest, *after reasonable inquiry* that the tabulation and canvassing of the election are complete and

accurate and that the results are a true and accurate accounting of all votes cast in that election.” SEB Rule 183-1-12-.02 (emphasis added). But nothing in Georgia statute or precedent suggests superintendents have the authority to engage in a “reasonable inquiry” beyond the narrow methods of verification and correction defined in O.C.G.A. § 21-2-493(b)–(g). Furthermore, the language of the rule suggests that a superintendent cannot certify results until a reasonable inquiry has been conducted regarding their accuracy. This directly contradicts Georgia statute, which requires superintendents to certify results by a precise deadline, even in cases where “error or fraud is discovered.” O.C.G.A. § 21-2-493(i)–(k). Because this rule contradicts Georgia statute as enacted by the General Assembly and interpreted by the Georgia courts, it must be invalidated.

The Election Board’s second rule requires that county boards make available to any board member for examination “all election related documentation created during the conduct of elections prior to certification of results.” SEB Rule 183-1-12-.12. This rule contradicts Georgia law for two reasons. First, like the reasonable inquiry rule, this rule purports to provide additional discretion to conduct wide-ranging investigations prior to certification. Second, this rule purports to empower individual board members, rather than superintendents. As defined by statute, the term “superintendent” usually refers to a county board of elections. *See* O.C.G.A. § 21-2-2(35). Nothing in Georgia statute suggests that individual board members play any role in the certification process, separate from their role as part of a superintendent.

Because both of the Election Board’s challenged rules contradict Georgia law, allowing these rules to go into effect would usurp the constitutional power of the Generally Assembly to enact the laws that govern Georgia’s elections.

## **II. DELAY OR DENIAL OF CERTIFICATION RISKS USURPING THE ROLE OF THE JUDICIARY AND DENYING THOSE WITH VALID ELECTION CHALLENGES THEIR DAY IN COURT.**

If appropriating the power of the legislative and executive branches were not bad enough, the Election Board's rules risk invading the power of the courts to adjudicate election disputes and thereby denying candidates the opportunity to address fraud and other irregularities. Georgia law provides that election challenges to address "misconduct, fraud, or irregularity by any primary or election official or officials," "when illegal votes have been received or legal votes rejected at the polls," and "for any error in counting the votes or declaring the result of the primary or election," may be filed only in the Superior Court in the appropriate county. O.C.G.A. §§ 21-2-522(1), (3), (4). This longstanding judicial process is the proper mechanism, created by the General Assembly, for investigating and remedying election disputes. But these challenges may be filed only *after* county certification is complete. If an election contest changes the results, Georgia law authorizes the superintendent to recertify the election.

There is a limited window of time in which election challenges may occur, between county certification and state and federal deadlines for completion of the election process. *See, e.g.*, O.C.G.A. § 21-2-524(a); 3 U.S.C. §§ 5 (a), (c). Any investigative process that delays certification will reduce the time for courts to process properly filed election challenges, and a sufficiently long delay could altogether displace the judiciary's proper role in adjudicating election disputes. Courts are not only the legally correct venue for election disputes, but also the most effective. Their adversarial process, review of discovery for both sides, and access to experts and testimony provide the best tools for evaluating claims of irregularities. Limiting or eliminating the ability for those alleging errors or misconduct to have their day in court could allow erroneous or fraudulent election results to remain in effect.

## **CONCLUSION**

For the foregoing reasons, the Court should declare that the Election Board's challenged rules are invalid.

Respectfully submitted, this 10<sup>th</sup> day of September, 2024.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10h day of September, 2024, a true and correct copy of the foregoing BRIEF OF *AMICI CURIAE* IN SUPPORT OF PLAINTIFF’S PETITION FOR DECLARATORY RELIEF was electronically filed with the Court using the Court’s eFileGA electronic filing system, which will automatically send an email notification of such filing to all attorneys of record, and was additionally served by emailing a copy to the currently known counsel of named parties and proposed intervenors as listed below:

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