

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

TERESA CRAWFORD, VASU
ABHIRAMAN, LORETTA MIRANDOLA,
ANITA TUCKER, DEMOCRATIC
NATIONAL COMMITTEE, and
DEMOCRATIC PARTY OF GEORGIA,
INC.,

Petitioners,

v.

Civil Case No. _____

STATE ELECTION BOARD,

Respondent.

VERIFIED PETITION FOR DECLARATORY RELIEF

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INTRODUCTION

1. Just 42 days before the general election, the State Election Board (“SEB”) has adopted a rule that the Attorney General has concluded is very likely unlawful and that the Secretary of State has cautioned strongly against. As explained below, the Attorney General and the Secretary of State are right, and this Court should swiftly block the rule’s implementation before it can go into effect and wreak havoc on the general election.

2. The new “Hand Count Rule” adds an additional hurdle to Georgia’s established process for collecting and tabulating ballots. At thousands of precincts across the state, trios of poll workers will be required to hand count the total number of voted Election Day ballots to verify that they match machine-calculated totals. If the poll workers identify an “inconsistency” between their count and the machine count (a term that is left undefined), they must “correct” it if possible (another term that is left undefined).

3. The Rule violates Georgia law for numerous reasons. It improperly adds a new requirement to the Election Code beyond what the General Assembly contemplated and conflicts with the statutes the General Assembly did enact—in particular, by shifting part of the responsibility to oversee the tabulation of ballots from the county board to workers at individual precincts. More broadly, SEB has exceeded its rulemaking authority, which is limited to rules and regulations that are “conducive to the fair, legal, and *orderly conduct* of primaries and elections” and “obtain uniformity.” O.C.G.A. §§ 21-2-31(1), (2) (emphasis added). If the Hand Count Rule is allowed to go into effect, the general election will not be orderly and uniform—large counties will face significant delays in reporting vote counts, election officials will struggle to implement new procedures at the last minute, poll workers will not have been trained on the new Rule because it was adopted too late, and the security of the ballots themselves will be put at risk. Finally, SEB failed to follow the bedrock administrative law procedures that limit

unelected agencies' ability to unilaterally make policy—i.e., the requirement to provide notice before taking an action and the requirement to provide a contemporaneous statement of reasons for that action.

4. The Hand Count Rule is so improper on its face that both Georgia's chief elections officer and chief law enforcement officer felt compelled to speak out in opposition prior to the Rule's adoption. The Attorney General's office took the highly unusual step of explaining that the Hand Count Rule "very likely exceed[s] the Board's statutory authority and ... appear[s] to conflict with the statutes governing the conduct of elections." Ex. A at 1-2. Even beyond these problems, the Attorney General's office noted that "the passage of *any rules* concerning the conduct of elections are disfavored when implemented as close to an election as" the Hand Count Rule at issue here. *Id.* at 2.

5. The Secretary of State's office (via its General Counsel) similarly singled out the Hand Count Rule as one of the "most concerning rules under consideration," because it would "require tremendous personnel resources and time," "could lead to significant delays in reporting," and "needlessly introduce the risk of error, lost ballots, or fraud." Ex. B at 2. And, like the Attorney General, the Secretary's office warned that it is "[i]t is far too late in the election process for counties to implement new rules and procedures"—particularly when "many poll workers have already completed their required training." *Id.* at 1.

6. None of this could have come as a surprise to SEB, which—despite the Attorney General's and Secretary of State's opposition—adopted the Hand Count Rule by a 3-2 vote on September 20, 2024. Attached to the petition that initially proposed the Hand Count Rule was a message from the Secretary of State's office informing counties that having "poll workers hand

count ballots at each polling location on election night is not something your poll workers should do” because it conflicted with the Election Code and raised “security” concerns. Ex. C at 9.

7. In sum, the Hand Count Rule is contrary to the Election Code, exceeds the Board’s rulemaking authority (not least because it changes the rules of the game in the ninth inning) and violates foundational limits on agencies that are intended to avoid precisely the scenario here—an unelected body unilaterally making significant changes to the law without notice or explanation. To protect the sanctity of the state’s laws and to prevent election night chaos, this Court should declare that the Hand Count Rule exceeds SEB’s statutory authority and enjoin that rule from going into effect.

PARTIES

8. Petitioner Teresa K. Crawford is a duly appointed member of the five-member Fulton County Board of Registration and Elections, which is responsible for overseeing all elections for Fulton County. Ms. Crawford is one of the two nominees of the Fulton County Democratic Party. Ms. Crawford was sworn into office on July 8, 2021, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

9. Under Georgia law, “[s]uperintendent’ means: (A) [e]ither the judge of the probate court of a county or the county board of elections, the county board of elections and registration, the joint city-county board of elections, or the joint city-county board of elections and registration, if a county has such.” O.C.G.A. § 21-2-2(35).

10. The Fulton County Board of Registration and Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), and is therefore bound by the computation, canvassing, and tabulation requirements set forth in O.C.G.A. §§ 21-2-70(9) and 21-2-493. As a superintendent,

the Fulton County Board of Registration and Elections is also responsible for ensuring the poll workers it employs comply with the Hand Count Rule.

11. Petitioner Vasu Abhiraman is a duly appointed member and serves as Vice Chair of the five-member DeKalb County Board of Registration and Elections, which is responsible for overseeing all elections for DeKalb County. Mr. Abhiraman is one of the two nominees of the DeKalb County Democratic Party, having been appointed to the position by the Chief Judge of the Stone Mountain Judicial Circuit in DeKalb County on June 26, 2023. Mr. Abhiraman was sworn into office on July 20, 2023, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that he would, “at all times truly, impartially, and faithfully perform [his] duties *in accordance with Georgia laws*” (emphasis added).

12. The DeKalb County Board of Registrations and Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), and is therefore bound by the computation, canvassing, and tabulation requirements set forth in O.C.G.A. §§ 21-2-70(9) and 21-2-493. As a superintendent, the DeKalb County Board of Registrations and Elections is also responsible for ensuring the poll workers it employs comply with the Hand Count Rule.

13. Petitioner Loretta Mirandola is a duly appointed member of the five-member Gwinnett County Board of Registrations and Elections, which is responsible for overseeing all elections for Gwinnett County. Ms. Mirandola is one of the two appointees of the Gwinnett County Democratic Party, having been appointed to the position on November 8, 2023. Ms. Mirandola was sworn into office on December 26, 2023, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

14. The Gwinnett County Board of Registrations and Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), and is therefore bound by the computation, canvassing, and tabulation requirements set forth in O.C.G.A. §§ 21-2-70(9) and 21-2-493. As a superintendent, the Gwinnett County Board of Registrations and Elections is also responsible for ensuring the poll workers it employs comply with the Hand Count Rule.

15. Petitioner Anita Tucker is a duly appointed member and serves as Assistant Secretary of the five-member Forsyth County Board of Voter Registrations & Elections, which is responsible for overseeing all elections for Forsyth County. Ms. Tucker is one of the two appointees of the Forsyth Democratic Party, having been appointed to the position on February 16, 2022. Ms. Tucker was sworn into office on March 1, 2022, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

16. The Forsyth County Board of Voter Registrations & Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), and is therefore bound by the computation, canvassing, and tabulation requirements set forth in O.C.G.A. §§ 21-2-70(9) and 21-2-493. As a superintendent, the Forsyth County Board of Registrations and Elections is also responsible for ensuring the poll workers it employs comply with the Hand Count Rule.

17. Petitioner Democratic National Committee (“DNC”) is the principal committee of the Democratic Party, dedicated to electing Democratic candidates and protecting voters’ rights. DNC has a core interest in ensuring proper and legal administration of elections. That interest is harmed when ballots cast for Democratic candidates are lost or discarded through hand counts unauthorized by law. This interest is also harmed when election results from particular counties or precincts are improperly delayed, as will occur under the Hand Count Rule. Such delays

introduce opportunities for bad-faith actors to claim that fraud has affected election results—a result that would undermine public confidence in the results and in the election of Democratic candidates specifically. Finally, DNC’s interests are harmed when ballots are left unsecured or removed from the chain of custody established by the General Assembly, as this introduces a real risk that the ballots will be tampered with or lost.

18. Petitioner Democratic Party of Georgia, Inc. (“DPG”) is a political party as defined by O.C.G.A. § 21-2-2(25), and is the official Democratic Party organization in Georgia. DPG is dedicated to electing Democratic candidates in the state and protecting Georgians’ voting rights. As stated in its charter, DPG is “committed to the wisdom and efficacy of the will of the majority” and seeks to “protect and enhance political freedom of all people and to encourage the meaningful participation of all citizens within the framework of the United States Constitution and the laws of the United States and the State of Georgia.” Charter and Bylaws of the Democratic Party of Georgia, Preamble (Aug. 28, 2021).

19. Like the DNC, DPG has a core interest in ensuring proper and legal administration of elections. That interest includes ensuring that ballots cast for Democratic candidates (including by DPG members) are securely handled and tabulated. That interest is harmed when, for example, ballots cast for Democratic candidates are lost or discarded through hand counts. This interest is also harmed when election results from particular counties or precincts are delayed, as will occur under the Hand Count Rule. Such delays introduce opportunities to claim that fraud has affected election results, undermining public confidence in the results and in the election of Democratic candidates specifically. Finally, DPG’s interests are harmed when ballots are left unsecured or removed from the chain of custody established by the General Assembly, which introduces the risk that ballots will be tampered with or lost.

20. DPG has a further interest in ensuring that its members who serve as election officials (*e.g.*, election superintendents, as members of county Boards of Registration and Elections, and poll managers, assistant poll managers, and poll clerks) know their legal obligations with respect to their respective duties after polls close.

21. Respondent SEB is a Georgia state board and is attached for administrative purposes to the Secretary of State's office. SEB is an agency within the meaning of the Georgia Administrative Procedure Act ("APA"). *See* O.C.G.A. §§ 21-2-30 to -36. SEB is authorized "[t]o formulate, adopt, and promulgate [only] such rules and regulations," as are "consistent with law" and "as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2). 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

22. Petitioners reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 21 inclusive.

23. Petitioners Crawford, Abhiraman, Mirandola, and Tucker (collectively, "the Board Member Petitioners") each have standing because the relief sought would "guide and protect the *petitioner[s]* from uncertainty and insecurity with respect to" the interaction between the Hand Count Rule and their duty to comply with O.C.G.A. §§ 21-2-436, 21-2-483, and 21-2-420, which do not authorize the required hand count. *Cobb County v. Floam*, 319 Ga. 89, 97 (2024) (emphasis in original). The Board Member Petitioners will also have to divert their time and resources to educating fellow election officials on the appropriate role of poll managers, assistant poll managers, and poll clerks after polls close, which will take time away from working on essential board functions.

24. The Board Member Petitioners separately each have standing because O.C.G.A. § 21-2-33.2 allows SEB to take over a county elections board if it determines that the county board violated three election laws or rules during the last two election cycles, or that there is clear and convincing evidence of “nonfeasance, malfeasance, or gross negligence” in two elections within two years. The Board Member Petitioners require immediate guidance on the interaction between the Hand Count Rule and their statutory duties to ensure that they do not run afoul of O.C.G.A. § 21-2-33.2, triggering a “strike” and risking an exercise of SEB’s takeover authority. Avoiding a violation of O.C.G.A. §§ 21-2-436, 21-2-483, and 21-2-420—and, in turn, a strike under O.C.G.A. § 21-2-33.2—provides an additional reason that “the relief sought by” the Board Member Petitioners has “some *immediate legal effect on the parties’ conduct*,” *Perdue v. Barron*, 367 Ga. App. 157, 163 (2023) (emphasis in original).

25. DNC and DPG each have associational standing. The Georgia Supreme Court has explained that “associational standing permits an organization ... to sue on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 387 (2022). This three-part test is satisfied here because (1) DNC members who live and vote in Georgia have standing to sue SEB in their own right, as do DPG members who live and vote in the state (including the DPG-appointed election superintendents); (2) DNC and DPG each seek, through this litigation, to ensure that votes cast for Democratic candidates in November are properly secured and counted and that their members serving as election superintendents and poll workers know their legal obligations; and (3) neither the claims asserted nor the relief requested by petitioners require the

participation of either organization's members in this lawsuit, because both present purely legal issues.

26. In particular, DPG has associational standing to bring suit on behalf of its members because of the legal uncertainty introduced by the Hand Count Rule. This uncertainty includes whether and how DPG members currently serving on county Boards of Registration and Elections and as poll managers, assistant poll managers, and poll clerks can meet the requirements of the Hand Count Rule consistent with their statutory obligations.

27. DNC and DPG also each have standing independent from their members because each organization has been and will be injured directly by the Hand Count Rule.

28. First, DNC and DPG are injured when ballots containing votes for Democratic candidates are hand counted in violation of Georgia law. Hand counting will cause significant delays and may interfere with the election of Democratic candidates if ballots cast for such candidates are among those delayed, discarded, or lost during hand counts.

29. Second, DNC and DPG are injured when citizens are denied their fundamental right to vote. Each organization's mission is to ensure that citizens can exercise their political freedoms through meaningful participation in the framework of the U.S. Constitution. Ballots that are lost or discarded during hand counts are not counted. That denies the person who cast that ballot their fundamental right to vote.

30. Third, the confusion that the Hand Count Rule introduces has already caused and will continue to cause a diversion of DNC's and DPG's resources. When poll workers hand count ballots, DNC and DPG must each expend resources on monitoring the process to ensure that it is timely and securely completed, and that votes are properly counted—responsibilities that are not normally a part of either DNC's or DPG's mission. By the same token, time and

money spent on the Hand Count Rule (including responding to calls from voters and local officials confused about the rule's requirements) will deny those same resources to activities that are a core part of the DNC/DPG missions, *e.g.*, increasing Democratic voter turnout.

JURISDICTION AND VENUE

31. SEB is subject to the jurisdiction of this Court pursuant to Georgia Constitution Article VI, § 4, ¶ I and O.C.G.A. § 50-13-10. Actions brought pursuant to O.C.G.A. § 50-13-10 “shall be in accordance with Chapter 4 of Title 9, relating to declaratory judgments,” including sections 9-4-2 and 9-4-3.

32. Venue is proper under O.C.G.A. §§ 9-10-30, 21-2-30(j), and 50-13-10(b).

FACTUAL ALLEGATIONS

A. Georgia's Process For Computation, Canvassing, And Tabulation

33. In enacting the Georgia Election Code, the General Assembly created a comprehensive, integrated system of election administration that ensures qualified voters cast proper votes and that such votes are accurately counted and officially reported on an expedited timeline. *See generally* O.C.G.A. §§ 21-2-1 through 21-2-604. On knowledge and belief, the system created by the General Assembly has worked effectively and efficiently in avoiding errors and fraud.

34. All Georgia counties use a touch screen voting machine for in-person voting on Election Day. O.C.G.A. §§ 21-2-300(a)(1)-(3); 21-2-2(7.1). When checking in at the polls, voters confirm their identity and receive a microchipped card with their specific ballot. Ga. Comp. R. & Regs. § 183-1-12-.11(2)(a), (b). Voters take the card to a machine and insert it to display their ballot, then mark their selections on the screen. Ga. Comp. R. & Regs. § 183-1-12-.11(2)(b). When finished, voters print a scanner ballot, then feed that ballot into a digital

scanner. *Id.* The ballot is “cast” when scanned. *See id.* (after scanning the printed ballot reflecting voter’s choices, voter returns access card to poll officer).

35. As relevant here, the Code provides that once ballots are cast and polling locations close, county superintendents must start the process of counting, canvassing, tabulating, and certifying Election Day votes. O.C.G.A. § 21-2-493(a); *see also id.* §§ 21-2-490 through 21-2-504. This continues until all ballots have been counted and tabulated, and the official results released to the public. O.C.G.A. § 21-2-493(a). Per a law enacted last year, superintendents *must* also report the total number of ballots cast within their jurisdiction to the Secretary of State and the public by 11:59 P.M. on Election Day. O.C.G.A. § 21-2-421.

36. Despite this challenging timeline, the superintendents’ counting, canvassing, and tabulation of the official results cannot start until the poll manager for each precinct transmits the precinct election materials to the superintendent. The Code lays out specific sets of steps that the poll manager must follow before transmitting can begin.

37. In describing these steps, the Election Code at times distinguishes between precincts using “paper ballots” on the one hand, and precincts using automated devices like voting machines or optical scanners on the other. *Compare* O.C.G.A. §§ 21-2-430 to 440 (paper ballots), *with, e.g.,* O.C.G.A. §§ 21-2-450 to 457 (voting machines). Beginning with the 2020 election, no Georgia precincts may use “paper ballots” marked by hand for Election Day voting (with limited exceptions for emergencies and provisional ballots). *See* O.C.G.A. § 21-2-300(a)(2) (requiring use of scanning ballots marked by electronic ballot markers); SEB Rule 183-1-12-.01; *Curling v. Raffensperger*, 50 F.4th 1114, 1119 (11th Cir. 2022). Although there are minor variations between the provisions governing automated devices, those differences are

immaterial here—for the reasons explained below, *nothing* in the statutes governing Georgia’s current voting procedures permits the process required by the Hand Count Rule.¹

38. For example, under the provisions governing optical scanners, the poll manager must “[u]pon the completion of voting ... prepare and sign a ballot recap form” that shows “(1) The number of valid ballots; (2) The number of spoiled and invalid ballots; and (3) The number of unused ballots.” O.C.G.A. § 21-2-484. The recap form and any “defective, spoiled, and invalid ballots” are sealed in envelopes. *Id.* Those envelopes are placed in a separate envelope container that, “along with the voted ballots,” is then “sealed by the manager” in a ballot container “so that it cannot be opened without breaking the seal.” “The manager and one poll officer shall then deliver the ballot container and the envelope container, if applicable, to the tabulating machine center or other place designated by the superintendent and shall receive a receipt therefor.” *Id.*

39. Once received at “the tabulating center, the seal on each container of ballots shall be inspected, and it shall be certified that the seal has not been broken before the container is opened.” O.C.G.A. § 21-2-483(c). “The ballots of each polling place shall be plainly identified and cannot be commingled with the ballots of other polling places.” *Id.* After tabulation, the superintendent then completes and signs an additional ballot recap form. *Id.* § 21-2-483(d).

¹ All Georgia precincts now must use “electronic ballot markers” for election day voting. O.C.G.A. § 21-2-300. Electronic ballot markers are required by statute to produce a “paper ballot” for security and transparency purposes. *Id.* § 21-2-300(a)(2). But the ballots produced by these machines are not “paper ballots” as defined in O.C.G.A. §§ 21-2-430 to 21-2-440 because they are not given to voters as blanks to be filled out. The Georgia Supreme Court has indicated that the statutes governing “paper ballots” can be applied to precincts using automated devices in one limited circumstance—where a candidate dies shortly before election. *See Rhoden v. Athens-Clarke County Board of Elections*, 310 Ga. 266, 269-271 (2020) (noting that Election Code provisions governing use of automated devices did not address how to treat the death of a candidate).

Finally, the “official returns of the votes cast on ballots at each polling place shall be printed by the tabulating machine,” and the “returns thus prepared shall be certified and promptly posted.” *Id.* § 21-2-483(h).

40. Similarly detailed provisions govern poll workers’ duties with respect to other kinds of automated devices. *See, e.g.*, O.C.G.A. §§ 21-2-454; 21-2-455; 21-2-456.

41. After the official precinct-level results are consolidated, tabulated, and certified, the county superintendent then transmits the results to the Secretary of State. O.C.G.A. § 21-2-493(a), (k).

42. Beyond the measures laid out above, the Code ensures that ballots are accurately counted by mandating that superintendents perform certain precinct-level cross-checks and instructing them on how to resolve any numerical discrepancies detected by those cross-checks. *See, e.g., id.* §§ 21-2-493(e)–(h). If there are discrepancies, a superintendent may order a recount or recanvass under certain circumstances before the superintendent proceeds with certification. *See* O.C.G.A. § 21-2-495.

43. During the county-level canvassing process, the superintendent reviews various pieces of precinct-level information, including the number of electors in each precinct, *see id.* § 21-2-493(b), the number of persons who voted in each precinct, *id.*, the number of ballots cast in each precinct, *id.*, the unsealed and sealed returns of votes from each precinct, *id.* §§ 21-2-493(g)–(h), and, for each precinct using automated devices, the records from the general returns showing the machine counters and the internal records showing the machine counters prior to the start of the election, *id.* § 21-2-493(f). The county superintendent is then tasked with “compar[ing] the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast” and if there is a

discrepancy, to “investigate[]” the issue. O.C.G.A. § 21-2-493(b). If, for example, it appears that the vote total for any candidate or question exceeds the number of electors or the total number of persons who voted in the precinct, no votes shall be recorded until this investigation occurs. *Id.*

44. The computation, canvassing, and tabulation of official results must be completed as quickly as possible, because election officials must certify results “not later than 5:00 P.M. on the Monday following the date on which such election was held.” O.C.G.A. § 21-2-493(k). This year, that deadline falls on November 12, 2024.

B. Georgia’s Process For Securing Ballots And Chain Of Custody Requirements

45. The Election Code also ensures that proper votes cast by qualified voters are accurately counted and reported through a comprehensive security and chain-of-custody scheme. *See generally* O.C.G.A. §§ 21-2-1 through 21-2-604.

46. For example, in elections where optical scanners are used, the General Assembly has provided that poll managers must seal ballot containers at individual precincts, then securely deliver those containers with another poll officer to a centralized tabulation center. O.C.G.A. § 21-2-484. Counting must be open to the public and performed only by persons under the direction of the superintendent. O.C.G.A. §§ 21-2-483(a)-(b). Ballot containers are inspected at the tabulating center and “it shall be certified that the seal has not been broken before the container is opened.” *Id.* § 21-2-483(c). The ballots of each polling place must be plainly identified and cannot be commingled with the ballots of other polling place ballot counting. *Id.* After tabulation of the votes, the superintendent completes and signs a ballot recap form showing the number of valid ballots, the number of spoiled and invalid ballots, and the number of unused ballots. *Id.* § 21-2-483(d).

47. Similarly, in elections where voting machines are used, as soon as the polls close, “the poll officers shall immediately lock and seal the operating lever or mechanism of the machine so that the voting and counting mechanism will be prevented from operation.” O.C.G.A. § 21-2-454(a). The poll officers then sign a certificate stating, among other things, that the machine was locked and sealed. *Id.* As soon as possible after the ballot count, the superintendent must have the voting machines placed in storage, where they will remain locked against voting for as long as may be necessary or advisable because of any existing or threatened contest over the result of the election. *Id.* § 21-2-457.

C. Attacks On Voting Machines

48. While some advocates have suggested ballots should be counted by hand for accuracy reasons, studies have shown that ballot scanners are more accurate. *See, e.g.,* Orey et al., *How Ballot Tabulators Improve Elections*, Bipartisan Policy Center (Apr. 25, 2022), <https://bipartisanpolicy.org/explainer/how-ballot-tabulators-improve-elections/>; Goggin & Byrne, *An Examination of the Auditability of Voter Verified Paper Audit Trail (VVPAT) Ballots* (Jan. 2007), <https://accurate-voting.rice.edu/wp-content/uploads/2007/08/evt07-goggin.pdf>. Election Experts Oppose Hand-Counting Ballots. Here’s why, CBS News, <https://www.cbsnews.com/pittsburgh/news/hand-counting-ballots-explained/> (discussing study finding “poll workers who counted ballots by hand were off by as much as 8%”).

49. The Secretary of State’s office agrees, informing SEB that counting ballots by hand (which includes leaving them unsecured during hand counts) is much more likely to introduce “error, lost ballots, or fraud” than would occur if ballots scanners are used. *See* Ex. B at 2; *cf. Collier v. Board of Comm’rs*, 240 Ga. App. 605, 605-606 (1999) (county voting registrar removed from office for mishandling absentee ballots, including by opening them and accidentally leaving some in a desk drawer).

50. Indeed, a group of former elected officials and lawyers, including numerous Republicans, opposed the Hand Count Rule for this very reason. They explained that “[h]and counts are less accurate, more expensive, and slower than machine counts.” Ex. D at 2 (emphasis omitted). Voting machines “can better handle the high-capacity workload of an election, and they excel at the ‘tedious and repetitive tasks’ with which humans generally struggle.” *Id.* at 3. Voting machines are also “fully vetted,” and certified for accuracy by the U.S. Election Assistance Commission. *Id.*

D. The Origins Of The Hand Count Rule

51. On June 6, 2024, a member of the Fayette County Board of Elections named Sharlene Alexander filed a petition to amend SEB Rule 183-1-12-.12(a)(5). *See generally* Ex. C. The petition proposed that SEB adopt a “long-standing tradition in Fayette County” of having “three sworn poll officials” hand count the total number of paper ballots and compare that total against the ballot “scanner[’s] count.” *Id.* at 4.

52. Ms. Alexander said that the petition was spurred by an October 2022 email from the Secretary of State’s Elections Director instructing that “***hav[ing] poll workers hand count ballots at each polling location on election night is not something your poll workers should do***” based both on existing law and “to ensure maximum security for the voted ballots.” Ex. C at 9 (emphasis added). The same email further instructed that the process of “removing ballots from ballot boxes and sealing them in transport containers.... should be done efficiently, transparently, and immediately after the poll.” *Id.*

53. During a subsequent on-the-record discussion of her petition, Ms. Alexander stated that the hand count procedure in her county involved removing all the ballots from a ballot scanner and placing them in a “big pile.” Ex. E at 221:1. Then, three poll workers start “pulling those ballots out of the pile” and “quickly” count them into “stacks of fifty.” *Id.* at 221:2-4. The

stacks are then “push[ed]” to the next person to count the stack until all three poll workers have hand counted the same number of ballots. *Id.* at 221:6-8.

54. Ms. Sara Ghazal, an SEB member who voted against the Hand Count Rule, noted that most counties employing precinct-level hand counting had been plagued by problems and delays. *Id.* at 226:1-21.

55. On August 19, 2024, SEB member Janelle King proposed an oral amendment to Ms. Alexander’s petition. Ex. F at 134:17-139:7.

56. Ms. King’s additions allow the poll manager or assistant poll manager to start the hand count the day after election day (a determination left to their discretion) “and finish during the week designated for county certification.” Ex. G at 3. She also proposed that “[i]f 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.” *Id.*

57. When SEB considered Ms. King’s amendment on the record, Ms. King acknowledged that there were “valid concerns” regarding the Hand Count Rule, such as fatigue of poll workers, increased staffing, and increased costs. Ex. F at 134:7-16.

E. Adoption of the Hand Count Rule

58. On August 21, 2024, SEB publicly posted the Hand Count Rule for notice and comment. Ex. G at 1. The text in the notice of proposed rulemaking tracks Ms. King’s amendment exactly, and adds the material bolded below to Rule 183-1-12-.12(a)(5):

The poll manager and two witnesses who have been sworn as poll officers as provided in O.C.G.A. § § 21-2-94 and 21-2-95 shall unseal and open each scanner ballot box, remove the paper ballots from each ballot box, **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.

Id. at 2.

59. These changes mean that (1) the poll manager and two poll officers in each precinct must hand count the total number of ballots, (2) reconcile their independent counts, (3) attest to an agreed hand count total, (4) compare the hand count total to that of the precinct poll pads, the ballot marking devices, and scanner recap forms, and, (5) if the counts do not reconcile, “immediately determine the reason for the inconsistency” and “correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken.” Ex. G at 2.

60. The proposed rule also added four subsections to the end of Rule 183-1-12-.12(a)(5). Ex. G at 3. These subsections state that the “decision about when to start the process described in [the Hand Count Rule] is up to the Poll Manager or Assistant Poll Manager,” authorize poll managers to begin the hand count process after election day when

scanners have more than 750 ballots, provide procedures for such post-election day counting, and require that post-election day counting occur at “the County election office.” *Id.*

61. The rulemaking announcement stated that a “public hearing w[ould] be held on Friday, September 20” in order to “provide the public an opportunity to comment upon and provide input into the proposed rule amendments.” Ex. G at 1.

62. A range of individuals and organizations submitted comments to SEB on the Hand Count Rule. The overwhelming majority of comments from county officials and voting rights experts opposed the enactment of the rule.

63. For example, on September 16, the Secretary of State’s general counsel submitted a letter noting that the Secretary had “received an overwhelming number of comments from county election officials expressing concern about the [SEB] changing Georgia’s election rules” shortly before an election and singling out the Hand Count Rule as one of “[t]he most concerning rules under consideration.” Ex. B at 1-2. The Hand Count Rule, the Secretary’s office explained, (1) “would require tremendous personnel resources and time,” (2) “could lead to significant delays in reporting,” (3) “would disrupt existing chain of custody protocols under the law” and (4) and “needlessly introduce the risk of error, lost ballots, or fraud.” *Id.* at 2.

64. The very next day, the Georgia Association of Voter Registration and Election Officials (GAVREO)—which represents local election officials—sent a similar letter to SEB opposing the Hand Count Rule (among other proposed rules). Ex. H at 1. The letter emphasized that GAVREO had stepped in because the rules under consideration “are poorly written, inefficient, would not accomplish their stated goals, or go directly against state law.” *Id.* In particular, GAVREO was concerned that the Hand Count Rule had the “potential to delay

results; set fatigued employees up for failure; and undermine ... confidence” in the outcome of the election. *Id.* at 2.

65. On September 19, 2024, the Georgia Attorney General’s office took the extraordinary step of advising SEB that the Hand Count Rule was likely illegal and beyond the agency’s authority. Ex. A at 4. The Attorney General explained that there are “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. The Hand Count Rule was thus not “tethered to any statute” and the “precise” kind of regulation “that agencies cannot do.” *Id.* at 4.

66. The Attorney General also urged SEB not to adopt *any* new rules so close to the election. Ex. A. The Attorney General’s Office warned that “the passage of any rules concerning the conduct of elections are disfavored when implemented ... close to an election” due to the heightened risk of “voter confusion.” *Id.* at 2.

67. The Attorney General’s office reminded SEB that the agency “itself has utilized [a similar] principle” when defending against challenges to laws close in time to elections. Ex. A at 2, citing *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.”). Ex. A at 2. The Attorney General’s office thus advised SEB to “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.” *Id.*

68. Finally, on the same day as the Attorney General's letter was delivered, DPG submitted comments urging SEB to reject the proposed rule. Ex. I at 3. DPG stated that the Hand Count Rule "[is] ripe for human error, vulnerable to abuse, and would add considerably to the workload demanded of election workers." *Id.* DPG explained that the proposed rule did not account for a situation in which "election workers express fatigue or an inability to hand count votes on Election Day but the Poll Manager decides to initiate the process anyways." *Id.* at 4. DPG asked "[w]hat happens if the hand counts are not completed on time? Are those votes thrown out? Would the delay provide County Boards of Election with a pretext to vote against certification on the mistaken belief that they are entitled to do so as part of their 'reasonable inquiry' under the Board's recently adopted rules?" *Id.* And DPG explained that the Hand Count Rule provides county administrators "no time to implement and train workers on the[] new procedures." *Id.*

69. On September 20, 2024, SEB adopted the Hand Count Rule in a 3-2 vote. *See* Ex. J at 2.

70. In its comments, DPG had requested that SEB "issue a concise statement of the principal reasons for and against [the Hand Count Rule's] adoption and incorporate therein its reason for overruling the consideration urged against its adoption." Ex. I at 8. SEB failed to provide such a statement, even though it is expressly required by O.C.G.A. § 50-13-4(a)(2) ("Upon adoption of a rule, the agency ... 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.").

71. The Hand Count Rule becomes effective 20 days after it is filed with the Secretary of State's office, O.C.G.A. § 50-13-6(a). According to the Secretary of State's office, it could become effective as early as October 14, 2024. Ex. B at 1.

THE HAND COUNT RULE IS INVALID

72. The Hand Count Rule is unlawful for multiple, independent reasons. First, it should be declared invalid because it has no basis in the Georgia Election Code. To the contrary, it improperly adds requirements to Georgia's comprehensive statutory scheme—requirements that also conflict with other parts of the Code. Second, SEB lacks the statutory authority to impose the Hand Count Rule because the rule is antithetical to the fair and orderly administration of the general election. Even beyond the sheer delay caused by imposing another step in the tabulation process, the Rule was adopted far too late in the election cycle and raises a serious risk that poll workers who have not had the opportunity to be properly trained will make mistakes—either causing further delay or, worse, losing or mishandling valid ballots. Third, in passing the Hand Count Rule, SEB improperly disregarded its procedural obligations under the Georgia APA to provide an adequate explanation for its ruling and sufficient advance notice of its intent to enact a new rule.

A. The Hand Count Rule Improperly Adds Requirements To The Election Code That Conflict With The General Assembly's Comprehensive Canvassing, Computation, And Tabulation Scheme

73. The comprehensive Georgia Election Code—which includes detailed processes regarding canvassing, computing, and tabulating ballots at the county and state levels—does not provide for hand counts at the precinct level in the manner contemplated by the Hand Count Rule. Adding such a requirement (and doing so in a manner in conflict with the statutory requirement that any new rule from SEB encourage fair and orderly elections) exceeds SEB's rulemaking authority.

1. The Hand Count Rule Adds Requirements That Go Beyond The Existing, Comprehensive Statutory Scheme For Canvassing, Computation, And Tabulation

74. Article III, Section I of the Georgia constitution provides that the legislative power of the state is vested exclusively in the General Assembly. SEB accordingly has “no inherent powers and no lawful right to act except as directed by the [enabling] statute.” *South Co-operative Foundry Co. v. Drummond*, 76 Ga. App. 222, 224-25 (1947).

75. Here, SEB’s authority to promulgate rules is limited “to carry[ing] into effect a law already passed” or otherwise “administer and effectuate an existing enactment of the General Assembly.” *HCA Health Servs. of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995); *see also Ga. Dep’t of Cmty. Health v. Dillard*, 313 Ga.App. 782, 785 (2013) (“[A]n administrative rule which exceeds the scope of or is inconsistent with the authority of the statute upon which it is predicated is invalid.”).

76. Nothing in the Election Code permits the kind of hand counting contemplated by the Hand Count Rule.

77. The Election Code specifies only two forms of hand counting prior to county superintendents’ certification of results. The first occurs during the tabulation of *paper* ballots marked by hand—a process that, as discussed, has nothing to do with the automated devices affected by the Hand Count Rule, O.C.G.A. §§ 21-2-435(c), 21-2-437(a). The second occurs at the tabulation center in those limited circumstances where a tabulating machine cannot read a ballot due to damage or unclear markings. *Id.* §§ 21-2-483(f), (g).

78. In enacting the Hand Count Rule, SEB engineered a third form of pre-certification hand counting with no statutory basis for doing so. While SEB’s notice of proposed rulemaking cited three Election Code provisions as “authority” for the Hand Count Rule, *see* Ex. G at 3,

SEB provided no supporting explanation for this assertion and none of the provisions support its position.

79. *First*, SEB cited O.C.G.A. §21-2-483(a), which provides that in “elections in which optical scanners are used, the ballots shall be counted at the precinct or tabulating center under the direction of the superintendent.” O.C.G.A. §21-2-483(a). It further provides that only persons “deputized by the superintendent” shall touch ballots, containers, papers, or machines used in the count. *Id.*

80. This provision is inapposite. While some machine scanning of ballots may be permitted at the precinct in cases where optical scanners are used, O.C.G.A. §21-2-483(a) provides that any such counting is under the direction of the *superintendent*, not a poll manager. More broadly, O.C.G.A. §21-2-483(c) envisions counting will take place at a tabulating center. O.C.G.A. §21-2-483(c) (“and the ballots shall be prepared for *processing by the tabulating machines*” (emphasis added)); *see also* Ex. A at 5 (Attorney General’s office noting that Section 21-2-483 “details [counting] procedures *at* the tabulation center”) (emphasis added).

81. *Second*, SEB cited O.C.G.A. § 21-2-436, but that statute is only applicable to precincts using paper ballots marked by hand. *See also* Ex. A at 6 (Attorney General’s office noting that Section 21-2-436 “contemplates the duties of poll officers ... in precincts in which *paper ballots* are used, not ballot scanners or voting machines” (emphasis added)). The Hand Count Rule, in contrast, applies only to voting “conducted via ballots marked by electronic ballot markers and tabulated by ballot scanners” and “through the use of an optical scanning voting system.” *See* Rule 183-1-12-.01.

82. *Third*, SEB cited O.C.G.A. §21-2-420(a), which states 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.” O.C.G.A. § 21-2-420(a). Nothing in the Election Code itself defines the “required accounting” so broadly as to encompass hand counting. In particular, as the Attorney General’s office informed SEB, “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.” *See* Ex. A at 6.

2. The Hand Count Rule Conflicts With Numerous Provisions Of The Comprehensive Statutory Scheme For Canvassing, Computation, And Tabulation

83. The Hand Count Rule is also in direct conflict with at least six Election Code provisions.

84. *First*, the Hand Count Rule requires that poll workers around the state create an election-related form—*i.e.*, a “control document” for recording the results of a hand count. *See* Rule 183-1-12-.12. But under O.C.G.A. § 21-2-50(a)(5), only the Secretary of State has the authority to create “all blank forms” to be used in any election. *See* O.C.G.A. § 21-2-50(a)(5); *see also* Ex. B at 1 (letter from Secretary’s Office to SEB citing Section 21-2-50 for the proposition that “the form of the ballot is exclusively within the control of the Secretary of State under Georgia law.”).

85. *Second*, the Hand Count Rule transfers a portion of the superintendent’s statutory responsibilities over the computation and canvassing of the ballots, O.C.G.A. § 21-2-493(a), to poll managers. SEB—like any other agency—is not authorized to shift statutory responsibility from one official to another. *See Dep’t of Human Res. v. Anderson*, 218 Ga. App. 528, 529 (1995) (regulation invalid where it purported to give court veto-power over certain Georgia

Department of Human Resources decisions that were left to the Department's discretion by statute).

86. *Third*, and relatedly, the Hand Count Rule interferes with county superintendents' authority to "compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast" and if there is a discrepancy, to "investigate[]" the issue. O.C.G.A. § 21-2-493(b). This is because the Hand Count Rule requires *poll managers* to "immediately determine the reason for the inconsistency" in hand count totals and "correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken." Rule 183-1-12-.12. In other words, even if the Hand Count Rule could be read as maintaining the statutory balance of power between county superintendents and poll managers, it gives poll managers the first (and perhaps only) opportunity to address numerical inconsistencies in the ballot tallies. This is improper because that duty rests solely with county superintendents, not poll managers. O.C.G.A. § 21-2-493(b).

87. *Fourth*, the Hand Count Rule conflicts with the statutory requirement that the superintendent report to the Secretary of State—and post in a public place—the "number of ballots cast at the polls on the day of the ... election" by "not later than 11:59 pm following the close of the polls *on the day of a[n] ... election.*" O.C.G.A. § 21-2-421(a)(1) (emphasis added). In contrast, the Hand Count Rule requires only that Poll Managers and Assistant Poll Managers finish their count "during the week designated for county certification." Ex. G at 4. In other words, the Hand Count Rule purports to give poll workers the ability to (perhaps unintentionally) prevent the superintendent from timely notifying the Secretary and the public regarding the number of ballots received.

88. *Fifth*, the Hand Count Rule sets up a conflict with the statutory requirement that the superintendent finish computation and canvassing by 5:00 P.M. on the Monday following the election in order to certify the results. O.C.G.A. § 21-2-497. Again, the Hand Count Rule allows poll workers to finish their count “during the week designated for county certification.” Ex. G at 4. If the hand counts are not completed until the end of that week (for example, in large counties), it may be impossible for the county superintendent to complete his or her statutorily-required tabulation by the certification deadline. This could result in the superintendent certifying results without ballots from precincts delayed by the hand count requirement—thereby denying voters their fundamental right to vote.

89. *Sixth*, the Hand Count Rule requires all poll managers and poll officers to handle ballots regardless of their relationship with the county supervisor. Rule 183-1-12-.12(a)(5). This cannot be squared with the requirement in O.C.G.A. § 21-2-483(a) that only those deputized by the superintendent may handle ballots. O.C.G.A. § 21-2-483(a).

B. The Hand Count Rule Exceeds SEB’s Statutory Authority, Which Is Limited To Promulgating Rules That Promote “Fair ... And Orderly Conduct” And “Uniformity” During The Primaries And Elections

90. The Hand Count Rule does not just impermissibly add new requirements to existing law. It also is fundamentally inconsistent with the SEB’s statutory obligation to enact rules that promote “fair ... and orderly conduct” and “uniformity” during the primaries and elections. O.C.G.A. §§ 21-2-31(1), (2).

91. For example, the Hand Count Rule’s scope is unclear, as it does not specify what measures a poll manager may or should take to perform a correction. *See* Ex. G at 2–3. The term “correct” is amorphous and susceptible to numerous interpretations and abuses. The lack of clarity for how to “correct” discrepancies in a hand count poses a significant risk of inconsistencies across precincts, mishandling of ballots, failure to count ballots, and confusion

among poll managers. At a minimum, the failure to define the word “correct” means that the regulation is incomplete, and an incomplete regulation does not promote “orderly conduct” or “uniformity” in election administration.

92. The Hand Count Rule also imposes significant and unfair burdens on election workers. Ms. Alexander—the Fayette County resident who first suggested the Hand Count Rule—described a vote-counting process in her county that was little more than a scramble. In her own telling, a hand count would require “pull[ing] the ballots out of the scanner” and placing the ballots “in a big pile” from which three poll workers would “just start pulling those ballots out of the pile” to “quickly” count the ballots “into stacks of fifty.” Ex. E at 220:22-221:4. Then the poll worker “would push them to the next person” who would re-count the stack and so on until all three poll workers had counted each stack and confirmed they had “hand-counted” the same number of ballots. *Id.* at 221:6-12.

93. The Hand Count Rule also undermines the comprehensive security and chain of custody scheme established by the General Assembly. The Hand Count Rule requires individual poll managers at thousands of locations across Georgia to open sealed ballot boxes, and then remove, reorganize, and pass around ballots. *See* Ex. G at 2; *see also* Ex. E at 220:25-221:13 (Alexander). Experience teaches that such unguided handling of ballots poses a substantial risk that the ballots will be lost or (perhaps inadvertently) tampered with. *Cf. Collier v. Bd. of Comm’rs*, 240 Ga. App. 605, 605-06 (1999). At a minimum, the ballots could be folded, torn, or otherwise damaged in a manner that makes future tabulation difficult (e.g., during a recount, if necessary).

94. Indeed, the Secretary of State’s office has historically cautioned counties *not* to hand count ballots because “[i]n order to ensure maximum security for the voted ballots, poll

workers should not prolong the process of removing ballots from ballot boxes and sealing them in transport containers.” Ex. C at 9. This process must instead “be done efficiently, transparently, and immediately after the polls have closed and votes have been cast.” *Id.* The Hand Count Rule encourages the opposite, raising the prospect that ballots will be placed in a “big pile” outside of any secure storage, for potentially hours or days. Ex. E at 221:1.

95. As the Secretary of State’s office has explained, “having poll workers handle ballots at polling locations after they have been voted introduces a new and significant risk to chain of custody procedures. Georgia law already has secure chain of custody protocols for handling ballots, and efforts to change these laws by unelected bureaucrats on the eve of the election introduces the opportunity for error, lost or stolen ballots, and fraud.” SOS Release (Aug. 15, 2024), <https://sos.ga.gov/news/raffensperger-defends-georgias-election-integrity-act-last-minute-changes-delaying-election>.

96. The many flaws in the Hand Count Rule have been made infinitely worse by the timing of its enactment—just six weeks before the November election. Barring judicial intervention, it will take effect as early as October 14, 2024—only 22 days before the election. *See* Ex. B at 1.

97. Federal courts have long recognized that election administration issues and basic fairness concerns generally weigh against making significant changes to the law in close proximity to elections. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006); *see also DNC v. Wis. State Legis.*, 141 S. Ct. 28, 30 (2020) (Gorsuch, J., concurring) (noting the danger posed by changing “longstanding election rules” shortly before or while voting is underway); *Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732, 735 (2021) (Thomas, J., dissenting) (“Changing the rules in the middle of the game is bad enough. Such rule changes by officials who may lack

authority to do so is even worse.”). Thus, for example, the Eleventh Circuit has invoked *Purcell* in barring changes to election rules for the City of Miami just “three months before ... voters go to the polls,” *Grace, Inc. v. City of Miami*, 2023 WL 5286232, at *1 (11th Cir. Aug. 4, 2023), and SEB itself has previously argued that “late change[s] to the [election] law ... pose a significant risk of voter confusion and harm to the electoral process.” Ex. A at 2.

98. While *Purcell* binds only “lower *federal* courts,” *Republican National Committee v. Democratic National Committee*, 589 U.S. 423, 424 (2020) (emphasis added), its logic regarding the importance of avoiding voter confusion shortly before an election applies to the facts of this case.

99. Here, the Hand Count Rule changes longstanding election rules regarding the security, counting, canvassing, and tabulation of ballots. *See supra* pp. 25–29. And Georgia’s Attorney General, Secretary of State, and local election officials alike have urged SEB to cease its last-minute rulemakings—including its passage of the Hand Count Rule—precisely because of the concerns raised under the *Purcell* doctrine.

100. The Secretary’s office, for example, has stated that “[i]t is far too late in the election process for counties to implement new rules and procedures, and many poll workers have already completed their required training.” Ex. B at 1. Similarly, the Attorney General’s Office has cautioned against “the passage of any rules well-within the period where courts have agreed that *Purcell* applies. Ex. A at 2. And GAVREO requested a rulemaking pause because the “2024 General Election is less than 50 days away.” Ex. H at 1.

101. Imposing onerous and untested procedures within a month of election day is not “conducive to the fair, legal, and orderly conduct of primaries and elections” under any meaning of the term. *See* O.C.G.A. § 21-2-31(2).

C. SEB Violated The Georgia APA By Failing To Provide An Explanation For The Hand Count Rule Or Proper Notice Of Its Intent To Adopt The Rule

1. SEB Failed To Provide A Statement Of Reasons For Its Decision To Enact The Hand Count Rule

102. The Hand Count Rule is independently invalid because it violates a key notice and comment requirement embedded in the Georgia APA.

103. The APA provides that, prior to the adoption of a rule:

The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon 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) (emphases added).

104. Failure to comply with the statement of reasons requirements is fatal to any regulation. As the Court of Appeals held in *Outdoor Advertising Association of Georgia, Inc. v. Department of Transportation*, “[i]nasmuch as we have concluded that [the agency] violated mandated precepts of the APA in its attempt to adopt amendments to [its] rules and regulations, we must ... hold that the amendments are invalid.” 186 Ga. App. 550, 554 (1988). The court expressly noted that one of the agency’s failures was the violation of O.C.G.A. § 50-13-4(a)(2) “because the board did not consider the written and oral comments concerning the proposed amendments[.]” *Id.*

105. The same is true here. Petitioner DPG asked for its comments to be considered as to each challenged rule. *See* Ex. I. Nonetheless, SEB has not issued any statement as to why DPG’s comments on the Hand Count Rule were disregarded. That failure requires invalidation of the Hand Count Rule.

2. SEB Did Not Provide Adequate Notice Of Its Vote On The Hand Count Rule

106. The Hand Count Rule is also invalid because it violates the Georgia APA's notice requirement:

No rule adopted after April 3, 1978, shall be valid unless adopted in *exact compliance* with subsections (a) and (e) of this Code section and in substantial compliance with the remainder of this Code section.

O.C.G.A. § 50-13-4(d) (emphasis added).

107. O.C.G.A. § 50-13-4(a) provides that, prior to the adoption of a rule, the agency shall “[g]ive at least 30 days’ notice of its intended action.”

108. Failure to stringently comply with this requirement is fatal. Again, when an agency violates the Georgia APA “in [an] attempt to adopt amendments to [its] rules and regulations, ... the amendments are invalid. *Outdoor Advertising*, 186 Ga. App. at 554.

109. The *Outdoor Advertising* rule applies here. SEB's notice informed the public only that the September 20, 2024 meeting would provide “an opportunity to comment upon and provide input into the proposed rule amendments,” including the Hand Count Rule. Ex. G at 1. Nothing in the notice suggested that SEB would actually reach a final decision on the Hand Count Rule at the September 20 hearing.

COUNT I – DECLARATORY JUDGMENT THAT THE HAND COUNT RULE IS INVALID

110. Petitioners reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 109 inclusive.

111. Because the Hand Count Rule conflicts with the General Assembly's comprehensive scheme for securing, counting, canvassing, and tabulating ballots and SEB lacks authority to displace or interfere with that legislative scheme, the Hand Count Rule is invalid. *See* O.C.G.A. § 21-2-31 (SEB rulemaking must be “consistent with law”).

112. Promulgating the Hand Count Rule on the eve of the election is also not “conducive to the fair, legal, and orderly conduct of primaries and elections,” O.C.G.A. § 21-2-31(2), and will cause confusion among both voters and election officials, *Grace*, 2023 WL 5286232, at *1. Under the facts of this case, SEB lacks statutory authority to implement such sweeping changes with Election Day in sight—*i.e.*, after poll workers have been trained, election day procedures have been designed, and voters have begun casting ballots.

113. Separately, the Hand Count Rule is not authorized by statute because SEB neither “issue[d] 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,” nor “consider[ed] fully all written and oral submissions respecting the proposed rule.” O.C.G.A. § 50-13-4(a)(2).

114. Finally, the Hand Count Rule is not authorized by statute because SEB failed to give the statutorily required notice that it would vote on the Hand Count Rule at its September 20 meeting.

115. Petitioners therefore seek a declaration that the Hand Count Rule is invalid as contrary to law and violates Georgia’s Administrative Procedure Act. *See* O.C.G.A. § 50-13-10.

116. Petitioners face injury from the Hand Count Rule, and require relief to avoid the confusion, disorder, and burdens that have been and will continue to be caused by the Hand Count Rule.

PRAYER FOR RELIEF

WHEREFORE, petitioners respectfully request that the Court:

- (1) Declare that the Hand Count Rule is invalid and an unlawful exercise of SEB’s authority;
- (2) Declare that the Hand Count Rule fails to comply with the procedural requirements of the Georgia Administrative Procedure Act;

- (3) Enter a permanent injunction against the enforcement of the Hand Count Rule; and
- (4) Grant any other relief the Court deems necessary or proper.

Signatures follow on the next page.

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Respectfully submitted this 30th day of September, 2024.

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