

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

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

Plaintiffs,

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

Intervenor-Plaintiffs,

v.

STATE OF GEORGIA,

Defendant.

Civil Action File No. 24CV011558

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**COMPLAINT IN INTERVENTION**

1. A mere 46 days before the November 5, 2024 General Election, the State Election Board (“SEB”) has issued a flurry of rules outside its statutory grant of authority, attempting to throw the mechanics of running the election and the counting of votes into disarray. Through rulemaking, the SEB has tried to unlawfully expand its authority by re-writing Georgia’s election laws, requiring hand counting of ballots at the precinct level at the close of polls.

2. The SEB passed a new rule requiring, upon the close of the polls, “three sworn precinct poll officers to independently count the total number of ballots removed from the scanner, sorting into stacks of 50 ballots, continuing until all of the ballots have

been counted separately by each of the three poll officers.” Then, only “[w]hen all three poll officers arrive at the same total ballot count independently, they shall each sign a control document containing the polling place, ballot scanner serial number, election name, printed name with signature and date and time of the ballot hand count.” If the number of ballots “do not reconcile with the hand count ballot totals, the poll manager [must] immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken.” Amendment to Rule 183-1-12.12(a)(5) [hereinafter “Hand Counting Rule”].

3. There is no basis in law for the Hand Counting Rule.

4. This Rule unnecessarily complicates and threatens Georgia’s well-established and well-vetted elections process. It risks preventing the timely tabulation of election results and disrupts the orderly counting of ballots by requiring multiple poll officers to repeatedly handle ballots prior to their tabulation. The late-issued rule further threatens orderly election administration because it contravenes the training that many poll officers have already received ahead of the upcoming election, and leaves little time to try to re-train in an attempt to rectify the discrepancies.

5. The Attorney General, the chief legal officer of the State and counsel to the SEB, O.G.C.A. § 45-15-12, informed the SEB that the Official Code of Georgia did not authorize the changes to administrative rules that the SEB sought to make.

6. The SEB ignored the legal guidance of the Office of the Attorney General and passed these amendments anyway.

7. Intervenor-Plaintiffs seek judgment from this Court declaring that the the Hand Counting Rule is invalid and an unlawful exercise of the SEB's authority and an injunction preventing its enforcement.

### **PARTIES**

8. Intervenor-Plaintiff, the Georgia State Conference of the NAACP ("Georgia NAACP") is a non-partisan, interracial, nonprofit membership organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular Black Americans. It is headquartered in Atlanta and currently has approximately 10,000 members, across approximately 180 local units in at least 120 counties in Georgia, including several college and university units throughout the state. Many Georgia NAACP members are registered voters and plan to vote in the upcoming General Election.

9. Georgia NAACP has long sought to prevent efforts to suppress or disenfranchise Black voters and other voters of color and continues to work to protect voting rights through litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get-out-the-vote activities, and election protection. The organization focuses efforts on Black and other underserved and underrepresented communities in Georgia.

10. Ahead of the General Election, the Georgia NAACP has been working to register prospective voters, holding get-out-the-vote events, including Sunday early voting events, such as "Souls to the Polls," advising their members and their broader

constituents to check their voter registration. Beyond voting, Georgia NAACP's general mission focuses on multiple pillars of social justice and civil rights, including ensuring political, educational, social, and economic equality of rights for all persons, and eliminating racial hatred and racial discrimination.

11. The Georgia NAACP has an interest in preventing the disenfranchisement of eligible voters, including its members and voters it may have assisted with navigating the voting process. Specifically, the Georgia NAACP members will be harmed because hand counting ballots is unreliable and increases the risk of errors and mistakes. Because hand counting also creates issues of ballot security, such as ballots getting spoiled, inadvertently or otherwise if poll officials tamper with individual ballots or accidentally spoil individual ballots by spilling liquids for example, the Georgia NAACP members are at a risk of disenfranchisement. The prospect that multiple poll officials will now be privy to the candidates chosen by voters on the printed ballots before all the votes are tabulated also threatens to disenfranchise the Georgia NAACP's members. The Georgia NAACP's members will also be harmed because hand counting also has the potential to delay certification and thus makes it much harder for the State to meet the certification deadline. Because of the Hand Counting Rule, the Georgia NAACP members face uncertainty as to whether their votes will count—it is possible that their votes will not be counted at all because of potential “discrepancies” or if certification is delayed.

12. The new Hand Counting Rule also strains the Georgia NAACP's limited resources by requiring the organization to redirect its staff and volunteer time away from planned activities and campaigns to troubleshoot any issues that arise from the

application and administration of the Hand Counting Rule on Election Day. Ahead of the Election, the Georgia NAACP has worked hard to register prospective voters and to educate them and is now planning to mobilize these voters to the polls. After the election, the Georgia NAACP plans to help members and constituents who cast provisional ballots at the polls to cure those ballots within the three days after November 5. The Hand Counting Rule would force the Georgia NAACP to divert its resources away from the election protection work and direct it towards responding to problems caused by the Hand Counting Rule. The Georgia NAACP's work relating to other initiatives in the criminal justice and economic justice spaces would also suffer for the same reasons.

13. The Hand Counting Rule frustrates the Georgia NAACP's mission to ensure that voters in underserved and marginalized communities are able to cast ballots that count. The Hand Counting Rule threatens to undo much of the hard work that the Georgia NAACP has done in terms of registering voters and mobilizing them to the polls in the first place by increasing the risk that their ballots are thrown out.

14. Intervenor-Plaintiff, the Georgia Coalition for the People's Agenda, Inc. ("GCPA" or "People's Agenda") is a Georgia nonprofit corporation with its principal place of business located in Atlanta, Georgia. GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members across the Georgia in various cities and counties. Many of these members are registered voters and plan to vote in the upcoming General Election.

15. In addition to its main office in Atlanta, GCPA has additional offices in Athens, Augusta, Albany, Savannah, Macon, and LaGrange. GCPA is planning to open an

office in Rome later this year. Each office serves roughly 10 to 12 surrounding counties on a regular basis.

16. GCPA works to encourage and support voter registration and participation, particularly among Black and other underrepresented communities in Georgia.

17. GCPA has an interest in preventing the disenfranchisement of eligible voters, including its members and voters it may have assisted with navigating the voting process. GCPA's members stand to be disenfranchised because hand counting ballots is unreliable and increases the risk of errors and mistakes in counting. GCPA's members will also be impacted because hand counting creates issues of ballot security, such as ballots getting spoiled, inadvertently or otherwise if poll officials tamper with individual ballots or accidentally spoil individual ballots by spilling liquids for example. The prospect that multiple poll officials will now be privy to the candidates chosen by voters on the printed ballots before all the votes are tabulated further threatens to disenfranchise GCPA's members. GCPA's members also face uncertainty as to whether their votes will end up counting because hand counting has the potential to delay certification and makes it much harder for the State to meet the certification deadline. Thus, it is very well possible that their votes will not be counted at all because of potential "discrepancies" or if certification is delayed.

18. The Hand Counting Rule limits GCPA's ability to engage in all of its planned activities ahead of the General Election. GCPA has dedicated its staff time to registering, educating, and activating voters to show up at the polls. And after the election, GCPA staff and volunteers plan to spend the bulk of their time helping voters

who cast provisional ballots at the polls to cure those ballots. GCPA has limited resources to cover all of this work, with seven paid full-time staff members working in the main Atlanta office, and six coordinators, each assigned to a particular area of Georgia. The coordinators are responsible for organizing the organization's activities in the communities they serve, including civic engagement activities, voter registration drives, voter mobilization efforts, and the organization's educations and coalition work.

19. Outside of the voting arena, GCPA works on criminal justice reform, equity in education, economic empowerment for Black-owned businesses, environmental justice, and elder issues. GCPA seeks to balance its limited time and resources between these areas. All of these planned activities stand to suffer because the Hand Counting Rule will force GCPA to divert its resources from these activities towards troubleshooting the potentially multitude of issues that will arise if this new Rule stays in effect during the General Election.

20. The Hand Counting Rule frustrates GCPA's mission to ensure that voters in underserved and marginalized communities are able to cast ballots that count. The Hand Counting Rule threatens to undo much of the hard work that GCPA has undertaken throughout the year and ahead of the 2024 General Election in terms of registering voters and mobilizing them to the polls in the first place by increasing the risk that their ballots are thrown out.

21. Defendant State of Georgia is the proper Defendant in this matter under Article I, Section II, Paragraph V(b)(2) of the Georgia Constitution. This action is brought to declare the rules of the SEB void and to enjoin their enforcement. Pursuant to

Article I, Section II, Paragraph V(b)(2) of the Georgia Constitution, this action must be filed against the State. The SEB is an agency of the State of Georgia. O.C.G.A. § 21-2-30(a). It is authorized “[t]o formulate, adopt, and promulgate [only] such rules and regulations,” as are “consistent with law.” *Id.* § 21-2-31(2). The SEB regularly conducts business in Fulton County at its principal office, 2 Martin Luther King, Jr. Drive, Suite 802, Floyd West Tower, Atlanta, Georgia 30334. On September 20, 2024, SEB passed amendments to Rule 183-1-12.12(a)(5); Intervenor-Plaintiffs challenge those amendments.

## **JURISDICTION AND VENUE**

22. The Court has subject matter jurisdiction over this matter pursuant to Ga. Const. Art. I, Sec. II, Para. V (“What Acts Void”), Ga. Const. Art. VI, Sec. IV, and O.C.G.A. §§ 9-4-2(a), 9-4-3(a), 9-5-1.

23. Personal jurisdiction over the State and venue are proper pursuant to Ga. Const. Art. VI, Sec. II, Para. VI.

## **FACTS**

### **A. Authority of the SEB**

24. The SEB’s limited authority to promulgate rules springs solely from laws duly enacted by the General Assembly.

25. The General Assembly has authorized the SEB 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 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).

26. A statutory grant of rule making authority, however, 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). Only the General Assembly has the constitutional authority to legislate. *See HCA Health Services of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995).

27. The SEB’s authority extends only to “adopt rules and regulations to carry into effect a law already passed” or otherwise “merely administer and effectuate an existing enactment of the General Assembly.” *HCA Health Services of Ga.*, 265 Ga. At 502.

28. A rule or regulation that “attempts to add” requirements or procedure inconsistent with the statutes is invalid. *Dep’t of Hum. Res. v. Anderson*, 218 Ga. App. 528, 529 (1995).

29. The SEB invokes O.C.G.A. § 21-2-483(a), O.C.G.A. § 21-2-436, and O.C.G.A. §21-2-420(a) as the authority underlying the amendments to Rule 183-1-12.12(a)(5).

30. O.C.G.A. § 21-2-483(a) applies only to precincts that use optical scanning voting equipment and only at the tabulation center. It provides no basis to allow for the Hand Counting Rule.

31. O.C.G.A. § 21-2-436 applies only to precincts that use paper ballots. It provides no basis to allow for the Hand Counting Rule.

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

33. None of these statutes authorize the SEB to enact the Hand Counting Rule in a manner that is lawful.

#### **B. Duties of Poll Officers After the Close of Polls**

34. The Official Code of Georgia, enacted by the duly elected legislature, establishes a comprehensive, integrated system of election administration. The Code ensures that qualified voters cast proper votes and that such votes are counted and reported. *See generally* O.C.G.A. §§ 21-2-1 through 21-2-604.

35. The current system of election administration clearly sets forth statutory duties to be carried out by poll officers upon the closing of the polls. *See, e.g.*, O.G.C.A. §§ 21-2-436; 21-2-454; 21-2-485.

36. Each polling place is run by a board consisting of a manager and two assistant managers. O.G.C.A. § 21-2-90. These managers are assisted by clerks. O.G.C.A. § 21-2-91. Collectively, these managers and clerks are called poll officers. O.G.C.A.

§§ 21-2-90, 91, 92. All poll officers are assigned by the superintendent. O.G.C.A. §§ 21-2-90, 91. Poll officers may serve in the county in which they reside, or, at the discretion of the superintendent, in an adjoining county. O.G.C.A. § 21-2-92. All poll officers are duly sworn. O.G.C.A. §§ 21-2-93, 94, 95. All poll officers must be trained by the election superintendent or designee. O.G.C.A. § 21-2-99.

37. In precincts using paper ballots, “[a]fter the polls are closed and the last elector has voted,” the poll officers announce “the number of ballots issued to electors, as shown by the stubs, and the number of ballots, if any, spoiled and returned by electors and canceled.” O.G.C.A. § 21-2-436. The poll officers then compare the number of voters as “shown by the stubs” with the “number of names shown as voting by the electors list, voter’s certificates, and the numbered list of voters.” *Id.* All of these materials must be packaged and sealed *before* the ballot box is opened. *Id.* Only after the number of ballots cast is recorded and the related materials sealed, *id.*, are the votes cast by paper ballot counted, with the results marked upon tally papers. O.G.C.A. § 21-2-437.

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

39. The Hand Counting Rule is flatly inconsistent with these statutory provisions, which provide for counting the number of ballots cast prior to the opening of

the ballot box, making it impossible to comply with both O.G.C.A. § 21-2-436 and the newly enacted Hand Counting Rule.

40. In precincts using voting machines, “[a]s soon as the polls are closed and the last elector has voted,” poll officers must “immediately” lock and seal the machine. O.G.C.A. § 21-2-454. Poll officers then canvass the returns, by “read[ing] from the counters or from one of the proof sheets” the “result as shown by the counter numbers.” O.G.C.A. § 21-2-455.

41. The Hand Counting Rule is flatly inconsistent with these statutory provisions, which call for the machines to be “immediately” locked and the number of votes cast to be determined from the counter on the machine. O.G.C.A. § 21-2-454.

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

43. The Hand Counting Rule is flatly inconsistent with these statutory provisions, which provide clear and specific directions to the poll officers. When there is

a central tabulation center, the officers must seal the ballot box “[a]s soon as the polls are closed and the last elector has voted.” O.G.C.A. § 21-2-485(1)(A). As such, it is impossible to comply with both O.G.C.A. § 21-2-485(1)(A), and the newly enacted Hand Counting Rule, which would require poll officers to open the ballot box, contrary to statute.

44. None of the statutory provisions that set out the duties of poll officers provide for hand counting of ballots prior to tabulation.

45. Unlike the Georgia Code, which sets out specific duties for poll officers depending on the type of voting system in use in a given precinct, the Hand Counting Rule sets out a blanket duty regardless of the type of voting system in use and conflicts with the statutory duties set for poll officers.

### **C. Petition for Rulemaking**

46. The Hand Counting Rule originated via a June 6, 2024 petition, from Fayette County Board of Elections member Sharlene Alexander, seeking a rule change to mandate the hand counting of ballots at polling locations by three poll workers before tabulation by the election superintendent.

47. The petition asserted that “it was a long-standing tradition in Fayette County” to hand count ballots at polling places before contrary guidance was issued by the Secretary of State. The petition further explained why Ms. Alexander believes that hand counting is good policy. Ex. A (Petition for Amendment to Election Rules (June 6, 2024)). But the petition did not cite any legal authority that would permit the SEB to

require hand counting at individual polling places before the votes are tabulated by superintendents.

48. The petition sought to amend Rule 183-1-12-.12(a)(5), which, in its original iteration, required poll officers to “remove the paper ballots from each ballot box” and secure them “for transport to the office of the election superintendent.” Ga. Rules & Regs. 183-1-12-.12(a)(5). In other words, that rule only ensured that ballots were moved safely from ballot boxes to the tabulation center for counting. The pre-existing rule said nothing about hand counting individual ballots *before* tabulation let alone at any time including *after* precinct-level tabulation. The proposed amendment rewrote the original rule—adding that poll officers must remove the ballots from their secure basins and count them, thereby delaying tabulation by the superintendent.

49. The petition cited three provisions of the Georgia Code that do not support the proposed rule and do not delegate any authority to the SEB to mandate hand counting. *See* Ex. A (citing O.G.C.A. §§ 21-2-483(a), 21-2-436, 21-2-420(a)).

50. In citing O.G.C.A. § 21-2-240(a), the petition complained that the provision “requires . . . that the total number of ballots cast be reported to the election [superintendent], but doesn’t specify how that number is determined.” Ex. A. The petition further complained that Georgia Code requires that the superintendent “count the ballots at the tabulation center, where any discrepancies may be much more difficult to investigate.” *Id.*

51. O.G.C.A. § 21-2-420(a) is a general provision that references the “required accounting” that is then described in later code sections detailing the duties of poll officers after the close of the polls. *See, e.g.*, O.G.C.A. §§ 21-2-436; 21-2-454; 21-2-485.

52. The petition’s own statutory analysis acknowledged the fact that “there isn’t a reconciliation of the ballots themselves at the polling place currently.” Ex. A.

#### **D. Adoption of the Hand Counting Rule**

53. When Ms. Alexander first presented the petition at the July 9, 2024, SEB meeting, SEB Member Janice Johnston described the proposed rule as “a Christmas present,” and clarified that its dictates would apply to early in-person voting and election-day voting. The SEB voted to initiate rulemaking on a 3-1 vote.

54. Election officials and poll officers denounced the hand counting proposal.

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

56. The SEB continued its discussion of the petition at the August 19, 2024, meeting, where Ms. Alexander again acknowledged that the proposed rule would change the status quo. She asserted that the proposed rule “advances election integrity by providing a checkpoint outside of the electronic system, which, today, that’s all we have.”

Ms. Alexander emphasized her belief that, “to me, this is just common sense, to have something outside of that electronic system.” Video: State Election Board Meeting at 4:07 (Aug. 19, 2024), <https://gasos.wistia.com/medias/cta38wtjkj>.

57. SEB Member Sara Tindall Ghazal spoke against the rule, noting that “today is the first day that counties are already accepting absentee ballot applications; the election is already underway, so it is way too late in our cycle to be making any changes right now.”

58. The SEB Chair John Fevrier, also spoke against the rule, noting that “the overwhelming number of officials that I’ve heard from on this rule oppose it,” and emphasizing that “this is a legislative issue and ought to go through the legislature not through this board.”

59. Even SEB member Janelle King, who ultimately voted for the rule, acknowledged that election officials expressed concerns about the burden of hand counting ballots after a 14-hour day. At King’s urging, Ms. Alexander withdrew her petition and then resubmitted it at the hearing with an amendment, proposed by King, to permit the hand counting to begin the day after Election Day.

60. With that small modification, the SEB proceeded to initiate rulemaking.

61. Two days later, on August 21, 2024, the SEB advanced the petition in two Notices of Proposed Rulemaking: one rewriting rule 183-1-12-.12(a)(5) to require hand counting of all ballots cast on Election Day, and one rewriting rule 183-1-14-.02 to require daily hand counting of ballots during early in-person voting once a ballot box reaches 1,500 ballots cast.



62. The notices for the Hand Counting Rule cited the same provisions of the election code as Ms. Alexander's original petition as the source of authority for the Rule. None of these code provisions actually support the Hand Counting Rule.

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

64. The Office of the Attorney General, chief legal officer of the State, O.G.C.A. § 45-15-12, sent the SEB expedited comments on the legality of the rules and opined that each rule change contemplated by the SEB was outside of its delegated authority. It emphasized that "the Board's authority to promulgate rules and regulations is limited to the administration or effectuation of the statutes in the Georgia Election Code," and that "no provisions in the statutes cited in support of these proposed rules . . . permit counting the number of ballots by hand at the precinct level prior to delivery to the election superintendent for tabulation." Ex. D (Memorandum re Request for Comments on Proposed Rules in Advance of September 20, 2024 State Election Board Meeting from Ga. Dep't of Law to the SEB (Sept. 19, 2024)).

65. The Attorney General’s Office thus advised that “these proposed rules are not tethered to any statute—and are, therefore, likely the precise type of impermissible legislation that agencies cannot do.” *Id.*

66. On September 20, 2024, the SEB approved the Hand Counting Rule anyway—over the objections of more than 500 Georgia election workers, the Secretary of State, the SEB Chair, and the legal advice of its own counsel, the Office of the Attorney General.

67. SEB Chair John Fervier also warned the SEB that the proposed Hand Counting Rule exceeded its delegated rulemaking authority.

68. Before the passage of the new Hand Counting Rule, all members of the SEB were aware and on notice that the SEB was engaging in unlawful rulemaking that was unauthorized by and conflicted with Georgia statutes.

**CLAIM I: DECLARATORY JUDGMENT THAT THE AMENDMENTS TO  
RULE 183-1-12.12(A)(5) ARE INVALID**

69. Intervenor-Plaintiffs reallege and incorporate herein by reference the allegations in Paragraphs 1 through 68.

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

limited . . . injunction . . . may be sought in a petition seeking declaratory judgment,” O.G.C.A. § 9-4-3.

71. “The test of the validity of an administrative rule is twofold: whether it is authorized by statute and whether it is reasonable.” *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 662 (2015). Even when authorized, a rule is invalid if it “exceed[s] the scope of or [is] inconsistent with the authority of the statute upon which it is predicated.” *Id.* at 663.

72. The Hand Counting Rule is not authorized by statute, is unreasonable, and both exceeds the scope of and is inconsistent with the limited rulemaking authority granted to the SEB.

73. No provision of Georgia law enacted by the General Assembly provides for the hand counting of ballots prior to tabulation.

74. The Hand Counting Rule is inconsistent with the duties of poll officers laid out in O.G.C.A. §§ 21-2-436, 21-2-454, 21-2-485.

75. The Hand Counting Rule is not authorized by the statutory provisions invoked by the SEB as the source of its authority, O.G.C.A. §§ 21-2-483(a), 21-2-436, 21-2-420(a), or any other provision of Georgia state law.

76. Accordingly, the Hand Counting Rule is not tethered to any statute—and is, therefore, impermissible legislation outside the authority of the SEB. *See HCA Health Services of Ga., Inc.*, 265 Ga. at 502.

77. Intervenor-Plaintiffs seek a declaration that the amendments to Rule 183-1-12.12(a)(5) are invalid and outside the authority of the SEB.

78. Intervenor-Plaintiffs seek further plenary relief that the enforcement of the amendments to Rule 183-1-12.12(a)(5) be enjoined.

**PRAYER FOR RELIEF**

WHEREFORE, Intervenor-Plaintiffs respectfully request that the Court:

- A. Declare that the amendments to Rule 183-1-12.12(a)(5) are invalid and outside the authority of the SEB;
- B. Enjoin enforcement of the amendments to Rule 183-1-12.12(a)(5);
- C. Grant any other relief the Court deems necessary or proper.

Respectfully submitted this 1st day of October 2024,

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