

GEORGIA ASSOCIATION OF VOTER REGISTRATION AND ELECTION OFFICIALS

September 17, 2024



Dear Members of the State Election Board,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GAVREO is neutral on this rule.

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

GAVREO Executive Board