

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY
STATE OF GEORGIA

OCT 10, 2024 12:15 PM

Danielle F. Forté
Danielle F. Forté, Clerk
Muscoogee County, Georgia

MUSCOGEE COUNTY BOARD OF)
ELECTIONS AND REGISTRATION,)
)
Petitioner,)
)
v.)
)
STATE ELECTION BOARD,)
)
Respondent.)

Civil Action No.
SU2024CV002288

EMERGENCY MOTION TO EXPEDITE DECLARATORY JUDGMENT ACTION

Petitioner moves to expedite this declaratory judgment action in light of the fast-approaching November election. Over the last two months, Georgia’s State Election Board (the “SEB”) passed several rules that dramatically alter election operations statewide. Despite a chorus of experts—including the Secretary of State and the Attorney General¹—calling upon it to halt adoption of new rules, and Election Day being just a few weeks away, the SEB passed six of its eleven proposed rules on September 20. These rules stand to impose burdensome and unexpected obligations on election administrators throughout Georgia, including Petitioner.

Among these approved rules, Petitioner challenges Rule 183-1-12-.12(a)(5), which amends a pre-existing rule and now requires the hand-counting of all ballots cast on Election Day statewide. As the Petition explains, the Hand Counting Rule will undoubtedly cause confusion on

¹ On the eve of the meeting, the Office of the Georgia Attorney General issued a memorandum warning the SEB that “several of the proposed rules [including the Hand Counting Rule], if passed, very likely exceed the Board’s statutory authority and in some instances appear to conflict with the statutes governing the conduct of elections.” Mem. from AAG Elizabeth Young to Chairman John Fervier (Sept. 19, 2024), <https://atlantaciviccircle.org/wp-content/uploads/2024/09/StateElectionBoard.pdf>.

Election Day, delay the reporting of election results, impose significant burdens on elections administration, and undermine public trust in the election system. These concerns are particularly acute as a result of the timing of the passage of the Hand Counting Rule, which becomes effective on October 22.

This is not the “eve of the election”—the election has begun. The Muscogee County Board of Elections, like many other election administrators, has long since set their budgets for this election, has already trained many poll workers, and secured polling locations. Overseas, military and absentee ballots have been sent out. In-person early voting begins on October 15. Each moment in the coming days is critical for election professionals to ensure a secure, fair, and orderly election. Implementing new rules at the eleventh hour places a significant burden on election officials, asking them to alter many steps of their election procedure with no additional funding or resources for those changes. In some instances, administrators are confused or uncertain about how to implement the Hand Counting Rule due to ambiguities in the text.

Petitioner, therefore, seeks a declaratory judgment to clarify, in advance of the election, that the Hand Counting Rule is unlawful and cannot require Georgia election officials, in conflict with state law, to hand-count ballots in the manner the Hand Counting Rule prescribes. Specifically, Petitioner seeks a declaration that the Hand Counting Rule is invalid and an injunction to preclude enforcement of the Hand Counting Rule during this election.

Given that Election Day is less than four weeks away and this case involves pure questions of law, Petitioner respectfully urges the Court to expedite this case and hold a hearing or trial on a schedule that will allow this Court to resolve Petitioner’s claims before Election Day. Among other things, Petitioner has already hired staff, begun to train them, and determined their payroll budgets for poll workers. A declaration that the Hand Counting Rule is invalid will allow Petitioner and

other election officials to resume election administration procedures with minimal disruption and without concern for an unreasonable and burdensome new rule to implement.

In contrast, deferring judgment until hand-counting processes have begun risks confusion and imposes heavy burdens on counties. Doing so will likely require this Court, and other courts across the state, to rule on these consequential issues in a matter of hours through rushed emergency proceedings. In the meantime, counties will have been forced to expend time and money to hire and re-train staff and secure additional locations for hand-counting. Allowing hand counts to proceed could also result in errors in counting the votes cast. In light of these and the other considerations outlined below, the Court should expedite this proceeding.²

LEGAL STANDARD

Georgia's Declaratory Judgment Act recognizes that declaratory judgments may sometimes be needed on an urgent or expedited basis. O.C.G.A. § 9-4-5 thus provides that declaratory judgment petitions "may be tried at any time designated by the court," with the exception that a trial cannot be held "earlier than 20 days after the service" of a petition without the parties' consent. *Id.*

More generally, this Court has broad discretion to expedite proceedings where good cause exists. Under uniform Superior Court Rule 6.7, "[u]pon written notice and good cause shown, the assigned judge may shorten or waive the time requirement applicable to emergency motions, except motions for summary judgment, or grant an immediate hearing on any matter requiring such expedited procedure."

² In response to similar requests in other litigation challenging recent rules promulgated by the SEB, other courts in Georgia have expedited proceedings. *See, e.g., Democratic Party of Ga. v. State Election Board*, No. 24CV012349, Scheduling Order dated Oct. 3, 2024 (setting preliminary injunction hearing for Oct. 16 and hearing on declaratory judgment for Oct. 21); *Eternal Vigilance Action, Inc., v. State of Ga.*, No. 24CV011558, Scheduling Order dated Oct. 2, 2024 (setting Oct. 16 hearing on declaratory judgment).

ARGUMENT

The proximity of the general election and the immediate burden that the Hand Counting Rule will impose on Petitioner warrant the expedited resolution of this case. Election Day is under a month away, and voting is well underway in Georgia. The SEB's hand-counting rule has already begun to wreak havoc on the procedures election officials in Georgia have been hard at work to implement, and to sow confusion and mistrust in the election process.

Implementing the Hand Counting Rule imposes immediate and significant costs on Petitioner. County boards of elections have been left scrambling to find ways to comply with new election requirements, having already hired and trained staff and secured polling locations. Petitioner will have to seek additional funding to pay for additional staff hours, produce training materials, and develop processes that would allow for the secure transportation and storage of ballots to be hand-counted after Election Day. As set out in the Petition, some components of the Hand Counting Rule contradict the Georgia elections code. An expedited judgment in this case also reduces the risk that new hand-counting procedures will introduce errors into the ballot-counting process, and lead to greater confusion and mistrust in the election process.

Because this case presents pure questions of law—namely, whether the Rule conflicts with existing state law—it is amenable to expedited resolution. Georgia courts have recognized that accelerated resolution is appropriate for legal questions requiring no fact development or discovery. *See, e.g., Uni-Worth Enterprises v. Wilson*, 244 Ga. 636, 640 (1979) (holding that trial court was authorized to render conclusive findings of law when granting early temporary relief).

As outlined in the Petition, the SEB has clearly exceeded its powers in enacting the Hand Counting Rule. The SEB can only adopt rules that “carry into effect a law already passed” or

otherwise effectuate an action taken by the General Assembly. *HCA Health Services of Ga., Inc. v. Roach*, 265 Ga. 501, 502 (1995). The Georgia legislature has declined to require the hand counting of ballots, and none of the sources of authority relied upon by the SEB justify the changes. Moreover, the Hand Counting Rule is unreasonable. It contains several ambiguities as to how it should be implemented, and the Rule introduces logistical burdens that degrade election administration, not improve it. This Court should resolve the uncertainty caused by the Rule now—in advance of the election, and before it requires election officials to expend significant time and resources to prepare to implement it.

In doing so, the Court would follow a long line of Georgia cases recognizing that expedition is appropriate in the context of elections. *See, e.g., Anderson v. Carter*, 2002 WL 34190748, at *1 & n.1 (Ga. Super. Ct. Fulton Cnty. Aug. 19, 2002) (expediting election case based on impending election); *Whitmer v. Thurman*, 241 Ga. 569, 569 (1978) (noting “the necessity of a decision prior to the primary election”); *McKinney v. Brown*, 242 Ga. 456, 456 (1978). Expediting this action will not harm or prejudice the SEB. To the contrary, SEB would also benefit from avoiding emergency litigation while the election is underway.

CONCLUSION

For all of the foregoing reasons, the Court should expedite this case, setting the following schedule:

1. The deadline for the SEB to respond to this motion is seven (7) days after service of the motion;
2. The deadline for the SEB to file an answer to the verified petition is fourteen (14) days after service of the Petition;

3. The hearing/trial on this action will be set to allow this Court sufficient time to resolve Petitioner's claims before Election Day; and
4. Each side will be permitted to file one hearing/trial brief no later than three (3) days before the date of the hearing/trial.

Respectfully submitted this 10th day of October, 2024,

PAGE, SCRANTOM, SPROUSE,
TUCKER & FORD, P.C.

By: /s/ Thomas F. Gristina

James C. Clark, Jr.
Ga. Bar No.: 127145
jclark@pagescrantom.com
Thomas F. Gristina
Ga. Bar No.: 452454
tgristina@pagescrantom.com

1111 Bay Avenue, Third Floor
P.O. Box 1199
Columbus, Georgia 31902
(706) 324-0251

Jonathan B. Miller*
Public Rights Project
490 43rd Street, Unit #115
Oakland, CA 94609
T: (510) 738-6788
jon@publicrightsproject.org

*Application for admission *pro hac vice* forthcoming

Counsel for Petitioner

CERTIFICATE OF SERVICE

On this 10th day of October 2024, a true and correct copy of the foregoing was: (1) electronically filed with the Clerk of Court using the Court's eFileGA electronic filing system; (2) given to a process server to be served in conjunction with the verified petition on Respondent State Election Board and the Georgia Attorney General; and (3) sent via Certified Mail to the following recipients:

State Election Board
c/o Chairman John Fervier
2 MLK Jr. Drive
Suite 802 Floyd West Tower
Atlanta, Georgia 30334

Office of the Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334

/s/ Thomas F. Gristina
Counsel for Petitioner