

August 5, 2024

Chairman John Fervier  
Georgia State Election Board  
2 Martin Luther King Jr. Drive, S.E.  
8th Floor West Tower Suite 802  
Atlanta, GA 30334

**Re: Petition to Amend SEB Rule 183-1-12-.12**

Dear Chairman Fervier and Georgia State Election Board Members:

On behalf of the Brennan Center for Justice at New York University School of Law and United to Protect Democracy, we write to provide comment on the Petition to Amend Rule 183-1-12-.12, submitted by State Election Board Chairman Fervier.<sup>1</sup> The State Election Board has listed this petition as procedure matter at its August 6, 2024 meeting.<sup>2</sup>

The Board has received multiple proposals this year to amend rules concerning election certification.<sup>3</sup> Unlike these other proposals, the Petition to Amend Rule 183-1-12-.12 cabins its changes to expressly identifying relevant documents which local elections officials may review during the certification process. Critically, the proposal also preserves the mandatory, non-discretionary nature of election certification in Georgia. Should the Board maintain that additional clarity is needed for local certifying officials at this juncture, the Board should consider the approach found in the Chairman's petition for proposed rulemaking.

---

<sup>1</sup> The Brennan Center is a nonpartisan law and policy institute that works to reform, revitalize – and when necessary – defend our country's systems of democracy and justice. This comment does not reflect views, if any, of the NYU School of Law. United to Protect Democracy is a 501(c)(4) organization focusing on advocacy efforts to confront threats to our democracy.

<sup>2</sup> Georgia State Election Board, "Agenda August 6, 2024," accessed August 2, 2024, [https://sos.ga.gov/sites/default/files/2024-07/Agenda\\_8\\_6\\_24.pdf](https://sos.ga.gov/sites/default/files/2024-07/Agenda_8_6_24.pdf).

<sup>3</sup> Petition to Amend Rule 183-1-12-.02, presented by Michael Heekin; Petition to Amend Rule 183-1-12-.12, presented by Salleigh Grubbs.

The proposed amendment details the specific set of documents that a local election official may request during the certification process.<sup>4</sup> The enumerated reports, forms, and lists, including unofficial and official Statements of Votes Cast (SOVC), ballot recap forms, and numbered lists of voters, must be examined within the bounds of the county superintendent’s office.<sup>5</sup>

This list of documents – all of which are related to election results themselves – curbs the potential for disorder that other proposals would cause in the state’s election administration process in several ways. First, it can reduce the threat of interference with the certification process. By limiting the types of reviewable documents, the petition ensures local certifying officials are not receiving an endless number of spontaneous and unnecessary document requests while working to meet a mandatory deadline for certification.<sup>6</sup> And by keeping the list of documents to summary reports of the results themselves, the petition protects the certification process from improper attempts to investigate the election. Relatedly, the petition also ensures other post-election processes, such as post-election contests and recounts (which carry their interdependent timelines and demands for resources), can continue without delay.<sup>7</sup> Indeed, the closed universe of reviewable documents enables local election officials to protect the integrity of Georgia’s elections without needing to divert critical resources from other responsibilities. This is especially critical knowing that eighty-three percent of local election officials across the country have reported they need additional support for election administration.<sup>8</sup>

The limitation also prevents rogue local officials from embarking on a blind effort to sift through a mountain of materials of their choosing to disrupt certification. This scenario warrants careful attention, as rogue local officials have historically sought to manipulate and impede certification processes.<sup>9</sup>

In addition to the aforementioned logistical considerations, the proposed amendment importantly avoids significant pitfalls present in alternative certification petitions pending before the Board.<sup>10</sup> First, the present petition declines to invite discretionary refusals, such as suggesting certification can only be complete after “reasonable inquiry”;<sup>11</sup> instead, the petition correctly acknowledges that the county superintendents’ role is a ministerial one, reiterating that officials “shall compute

---

<sup>4</sup> Petition to Amend Rule 183-1-12-.12, presented by Chairman John Fervier.

<sup>5</sup> Petition to Amend Rule 183-1-12-.12, presented by Chairman John Fervier.

<sup>6</sup> Ga. Code Ann. § 21-2-493(k) (requiring county election superintendent to certify returns and transmit them to the Secretary of State by 5PM on the Monday after the election).

<sup>7</sup> See *id.* §§ 21-2-522, 21-2-495(c)(1).

<sup>8</sup> Brennan Center for Justice, *Local Election Officials Survey – May 2024*, May 1, 2024, <https://www.brennancenter.org/our-work/research-reports/local-election-officials-survey-may-2024>.

<sup>9</sup> Lauren Miller and Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 *Stan. L. & Pol’y Rev.* 1, 23-31 (2024), <https://law.stanford.edu/publications/certification-and-non-discretion-a-guide-to-protecting-the-2024-election/>.

<sup>10</sup> See, e.g., Gowri Ramachandran & Marina Pino, “Comment to the Georgia State Election Board: Reject a rule re-defining election certification,” Brennan Center for Justice, July 2, 2024, <https://www.brennancenter.org/our-work/research-reports/comment-georgia-state-election-board-reject-rule-re-defining-election>.

<sup>11</sup> See Ramachandran & Pino, “Comment to the Georgia State Election Board: Reject a rule re-defining election certification.”

and certify the votes justly, regardless of any fraudulent or erroneous returns presented.”<sup>12</sup> This clear directive mitigates harmful misinformation and distrust in elections that could otherwise proliferate in a system with broad discretion.<sup>13</sup>

Second, the petition avoids burdening local certifying officials with additional investigatory demands during certification. Rather than adding additional steps to the reconciliation process, such as requiring officials to cease counting votes at certain junctures, the proposed language preserves the state’s longstanding statutory framework for resolving any disputes about an election’s outcome.<sup>14</sup> This process can curb efforts by rogue local officials to delay or ultimately refuse to certify results.

By providing clear guidance on what documents can be referenced during certification, and by avoiding any suggestions that this process is discretionary or subject to delay, the proposed amendment to Rule 183-1-12-.12 limits the potential for overburdened local boards and disorder during this year’s election administration cycle. We urge the Board to consider this type of approach should it feel the need to promulgate additional rules governing certification this close to the November election.

Sincerely,

BRENNAN CENTER FOR JUSTICE  
AT NYU SCHOOL OF LAW  
Marina Pino  
Gowri Ramachandran  
120 Broadway, Suite 1750  
New York, NY 10271

United to Protect Democracy  
Peter Simmons  
2020 Pennsylvania Avenue, NW  
#163  
Washington, DC 20006

---

<sup>12</sup> Petition to Amend Rule 183-1-12-.12, presented by Chairman John Fervier.

<sup>13</sup> See Ramachandran & Pino, “Comment to the Georgia State Election Board: Reject a rule re-defining election certification.”

<sup>14</sup> Ga. Code Ann. § 21-2-493(i) (requiring officials to report facts concerning any error or fraud to the appropriate district attorney for action).