

August 18, 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: Proposed Rulemaking to Revise SEB Rule 183-1-12-.12(a)(5)

Dear Chairman Fervier and Georgia State Election Board Members:

On behalf of the Brennan Center for Justice at New York University School of Law, we write to provide comment on the Proposed Rulemaking to Revise Rule 183-1-12-.12(a)(5).¹ The State Election Board has listed this proposal as a procedure matter at its August 19, 2024 meeting.²

We urge the Board to reject the proposed amendments requiring new hand counting procedures after the polls close on Election Day. Like the similar proposal to mandate hand counting procedures during advance voting, the suggested language here will unnecessarily undermine existing security protocols and overburden county election superintendents and staff who would be required to create and implement new training materials on an accelerated timeline.

The proposed amendment would task election workers with additional, onerous steps after the polls close, such as independently hand-counting cast ballot amounts to cross-check with numbers found in “precinct poll pads,” ballot marking devices (which print ballots that voters may choose to spoil before casting³), and the interim count of ballots from the ballot scanners.⁴ Workers would be directed to correct perceived inconsistencies between these varying records before placing voted ballots in sealable containers. The amendment’s purported purpose is to

¹ 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.

² Georgia State Election Board, “Agenda August 19, 2024,” accessed August 15, 2024, <https://sos.ga.gov/page/state-election-board-meetings-events>.

³ E.g., Ga. Sec’y of State Office, Poll Worker Manual 65-67 (May 2021), <https://georgiapollworkers.sos.ga.gov/Shared%20Documents/Georgia%20Poll%20Worker%20Manual%202021.pdf>.

⁴ Ga. Comp. R. & Regs. 183-1-14-.02(8).

“enhance election integrity,” provide “more accurate results,” and reduce both “the opportunity for collusion to sabotage election results” “electronic voting system error complaints.”⁵

But these changes would have the exact opposite effect on ballot counting procedures in Georgia, which already have several safeguards in place to ensure voted ballots are included in election results. Current regulations mandate a strict and elaborate chain of custody process after voting concludes on Election Day.⁶ As relevant for this proposed amendment, existing rules require a poll manager and two sworn witnesses to place completed ballots in a sealable container and log/inventory such container for secured storage and transport to the election superintendent.⁷ Accredited poll watchers may also be present to observe this process.⁸ Together, these procedures ensure the election system is secure.

The proposed amendment would muddle this process and greatly increase the risk of ballots being misplaced or damaged, by requiring additional election workers (three poll workers) to individually handle voted paper ballots—counting into stacks of 50—for an extended and unbounded period before placing the ballots in a sealable container. Voted paper ballots would remain outside of their designated containers for as long as it takes the poll workers to count the ballots—potentially from multiple scanners—and arrive at uniform numbers. This is a tedious task at the end of a long voting day, ripe for human error, such as neglecting to place a single stack of 50 ballots in a secure container. Poll managers would also need to document and explain perceived “inconsistencies” with multiple machine totals that may not represent a significant concern—for instance when voters change their mind after printing a ballot and spoil it before casting, or if a voter checks in but exits the voting site without casting a ballot, escaping the notice of poll workers. Concurrently, the new process paves the way for heightened misinformation and accusations of fraud by inserting human error into a process which, at bottom, is intended to provide a reliable paper trail for use in risk-limiting audits that help serve as one of many checks against potential programming errors or other technical failures in ballot scanners.⁹ With these concerns in mind, it’s unsurprising that the Secretary of State’s office asked counties in 2022 not to implement such a process.¹⁰

In addition to these glaring security concerns, the suggested changes carry significant burdens on county election superintendents. Georgia law requires superintendents to provide training for all poll workers ahead of an election cycle.¹¹ Superintendents will be required to quickly amend their training materials should the proposed changes be implemented ahead of the November

⁵ Georgia State Election Board, “Notice of Proposed Rulemaking, Revisions to 183-1-12-.12,” accessed August 15, 2024, https://sos.ga.gov/sites/default/files/2024-07/notice_of_proposed_rulemaking_183_1_12_12a5_v2.pdf.

⁶ Ga. Comp. R. & Regs. 183-1-12-.12(a)–(b).

⁷ Ga. Comp. R. & Regs. 183-1-12-.12(a)(5).

⁸ Ga. Code Ann. § 21-2-408; Ga. Comp. R. & Regs. 183-1-12-.12(a)(9).

⁹ U.S. Election Assistance Commission, “Best Practices: Chain of Custody,” July 13, 2021, https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf.

¹⁰ Petition to Amend Rule 183-1-12-.12(a)(5), presented by Fayette County Board of Elections Member Sharlene Alexander (Exhibit A).

¹¹ Ga. Code Ann. §§ 21-2-70(8), 21-2-99(a)–(b).

election. In order to do so, counties will need to divert already limited resources away from other responsibilities on an accelerated timeline, including poll worker recruitment efforts that are already underway.¹²

Election officials in Georgia already take a series of administrative steps to ensure a secure and accurate vote count at the end of all voting periods. Now is the time to ensure they have the resources to follow these steps precisely and consistently – not to unnecessarily encumber counties with ill-conceived procedures less than three months away from Election Day. For these reasons, the Board should reject the Proposed Rulemaking to Revise Rule 183-1-12-.12(a)(5).

Sincerely,

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¹² See, e.g., “Cobb County hoping for hundreds of new poll workers ahead of presidential election,” WSBTV.com, August 1, 2024, <https://www.wsbradio.com/news/local/cobb-county-hoping-hundreds-new-poll-workers-ahead-presidential-election/BFGPNW6AAZA7JKBNZUHZSAUL7A/>; Matt Vasilogambros, “Wanted: Poll workers. Must love democracy.,” *Stateline*, July 29, 2024, <https://stateline.org/2024/07/29/wanted-poll-workers-must-love-democracy/>.