

June 17, 2024

Georgia State Election Board
2 MLK Jr. Drive
Suite 802, Floyd West Tower
Atlanta, GA 30334

Re: Petition for Rule Changes pursuant to GA Regs. 183-1-1-.01

Dear State Election Board Members,

I, the undersigned respectfully submit this petition for adoption of a rule pursuant to Rule 183-1-1-.01.

Please find enclosed three copies of the revised petition. The intent of this petition is to have the State Election Board adopt a rule to affirm **existing** Georgia law. As discussed during the May SEB meeting, this rule is necessary to allow county Superintendents/ Boards of Registration and Elections to exercise their authority to oversee the conduct of elections. Members of the SEB expressed concerns about excluding entire precincts from the certification and fears that voters would be disenfranchised. The proposed rule would not allow for that because Georgia Law describes the steps that must be taken when discrepancies are found and how the returns from precincts with discrepancies will be counted justly.

While there are ongoing discussions and debates about access to other documents and election records – this rule does not address those issues. This simply seeks to operationalize an existing statutory requirement to allow counties to uniformly conduct the minimum level of review as described in the law. Further explanation of the need for this rule is provided below in sections (c), (d), and (f) of the petition. There is a crisis in confidence in our elections and the oversight of elections in each county is critical to restoring trust.

I respectfully request that this revised proposed rule promulgation be considered at the next SEB meeting as required by GA Regs. 183-1-1-.01(4).

(a) Name and address of the petitioner / co-petitioner.

Name:
Address

City State
Email

(b) Full text of the rule desired to be promulgated.

See Addendum A

(c)(d) Statement of the reason such rule should be promulgated and pertinent facts.

Superintendents/County Boards of Registration & Elections (BRE) serve an important role in the oversight of elections in Georgia. The powers and duties of the Superintendent described in GA Code § 21-2-70 include the critical duty to “**inspect systematically and thoroughly**” the conduct of elections “to the end that primaries and elections may be honestly, efficiently and uniformly conducted.” The oversight of elections includes the duty to “receive from poll officers the returns of all primaries and elections, to **canvass and compute the same, and to certify the results thereof** to such authorities as may be prescribed by law.”

Recently, various parties have suggested that the BRE has no discretion to inspect the conduct of elections and no permission to review the returns from poll officers. In fact, some outside entities have asserted that the certification of election results in a county is nothing more than a ministerial task and that the members of the board have no discretion but to rubber stamp results – sight unseen.

Although the language of the statutes is clear and unambiguous, the State Election Board should promulgate the proposed rule to ensure that members of the County Boards can perform, at minimum, their statutory duty unencumbered by outside influences and misunderstanding of the law.

One common-sense requirement in the Election Code is a mandatory comparison of the number of ballots cast to the number of voters who voted. GA Code § 21-2-493(b) requires this reconciliation to be done **prior to** the computing and prior to certification. This is a duty of the Superintendent that is **explicitly required in the law**.

It should be noted that issues such as double scanning of ballots – which the SEB has recognized as a problem -- would be detected if the reconciliation required in 21-2-493 (b) were properly completed. Errors should be identified and corrected before certification.

(e) Parties who may be affected by the proposed rule.

The SEB should adopt the proposed rules to ensure that every Superintendent/Board follows the same procedures as required in §21-2-493(b) in order that the citizens of Georgia will have confidence that the counties uniformly, properly, and lawfully fulfill their duties, reconcile the number of ballots to the number of voters so that certification of election results accurately reflects the will of the voters in every county.

(f) Citations that authorize, support, or require the action requested by petition.

After the close of the polls on Election Day, the Superintendent/Board must ensure that canvassing of the absentee ballots continues until all lawful ballots have been tabulated, and ensure all advance voting and election day and provisional ballots are tabulated and the results released to the public.

GA Code § 21-2-493(a) The superintendent shall, after the close of the polls on the day of a primary or election, at his or her office or at some other convenient public place at the county seat or in the municipality, of which due notice shall have been given as provided by Code Section 21-2-492, **publicly commence the computation and canvassing of the returns and continue until all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast on the day of the primary or election have been counted and tabulated and the results of such tabulation released to the public and, then, continuing with provisional ballots** as provided in Code Sections 21-2-418 and 21-2-419 and those absentee ballots as provided in subparagraph (a)(1)(G) of Code Section 21-2-386 from day to day until completed...

As a common sense check and balance of election returns, the General Assembly described a mandatory step to ensure one person-one vote. **Before the board computes or certifies any votes**, they must first compare the number of unique voters who participated to the number of ballots cast from each precinct. Certainly, prior to the time for certification, the County has a list of all people who voted absentee, by advance voting, in person on election day and provisionally. No person is permitted to vote if they do not first identify themselves and confirm that they are a qualified elector. That list must be available for the Board to review the record of unique voters who participated in the election separated by precinct so they can compare the **number of voters to the number of ballots**.

If total number of votes for candidates exceeds the total number of people who voted in a precinct that discrepancy must be examined by the Board. In fact, the law says that no votes from that precinct can be recorded until the discrepancy is first investigated. There is no way for the Board to perform this mandatory responsibility if the member of the board are not permitted to view the list of the people who voted to compare that to the precinct results.

GA Code § 21-2-493 (b) The superintendent, **before computing the votes cast in any precinct**, shall compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast. If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or

on any question exceeds the number of electors in such precinct or **exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had.** Such excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession. The superintendent shall then examine all the registration and primary or election documents whatever relating to such precinct in the presence of representatives of each party, body, and interested candidate. Such examination may, if the superintendent deems it necessary, include a recount or recanvass of the votes of that precinct and a report of the facts of the case to the district attorney where such action appears to be warranted.

The law requires that for any precinct in which a discrepancy exists, the poll officers shall bring **all registration and election documents** for examination. The superintendent shall then examine all of the registration and election documents relating to such precinct. The expectation is that there would be few precincts, if any, with discrepancies between the number of voters and the number of ballots but the Board still has the statutory duty to reconcile the ballots to voters. If an error is found that cannot be resolved, the Superintendent/Board must determine a method to compute the votes from that precinct justly.

GA Code § 21-2-493 (i) If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action.

GA Code § 21-2-493 (k) As the returns from each precinct are read, computed, and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various precincts **which are entitled to be counted** shall have been duly recorded; **then they shall be added together**, announced, and attested by the assistants who made and computed the entries respectively and shall be signed by the superintendent. The consolidated returns **shall then be certified by the superintendent in the manner required by this chapter.** Such returns shall be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.

GA Code § 21-2-70 (15) requires an oath by each member of the board that includes,

“I, _____, do swear (or affirm) that I will as a member of the board of elections duly attend all ensuing primaries and elections during the continuance thereof, that I will to the best of my ability prevent any fraud, deceit, or abuse in carrying on the same, that I will **make a true and perfect return of such**

primaries and elections, and that I will at all times truly, impartially, and faithfully perform my duties in accordance with Georgia laws to the best of my judgment and ability.”

A member of the Board who swears an oath to make a true and perfect return of elections must certainly be permitted to review the documents and perform the required voter to ballot comparison prior to voting on certification. Denying Board members access to returns and documents upon which the results and certification rely would be inconsistent with GA law.

I hereby sign this petition asking that the State Election Board adopt the proposed/ attached rule.

I, _____, personally appeared before the undersigned officer duly authorized to administer oaths and on oath deposes that the facts stated in the Petition are true and accurate.

Respectfully submitted this the ____ day of June 2024.

Subscribed and sworn before
me on this _____ day of
_____, 2024.

Addendum A

Rule 183-1-12-.12.1 Pre-Certification Reconciliation of Number of Ballots to Number of Voters

(1) Preparing for County Certification

1. After each election but not later than 3PM on the Friday following the date on which the election was held, the Board shall meet to conduct a review of precinct returns.
2. After all absentee ballots received by the close of the polls, including those cast by advance voting, and all ballots cast in person on Election Day and all provisional ballots (that have been validated) have been tabulated, the total number of ballots cast by each vote method shall be reported for each precinct.
3. A list of all voters who voted in the election shall be compiled including by category the number of voters who voted Election Day In Person, Advance Voting, Absentee and Provisionally. The list shall be examined for duplicates. The list shall then be sorted by precinct. The total number of unique voter IDs from each precinct shall be counted. The total number of unique voters who voted by each vote method shall be reported for each precinct.
4. For each precinct, the board members shall compare the total number of ballots cast to the total number of unique voter ID numbers. In any precinct in which the number of ballots exceeds the number of unique voters, the Board shall determine the method of voting in which the discrepancy exists. The Board shall investigate the discrepancy and no votes shall be counted from that precinct until the results of the investigation are presented to the Board as required in GA Code § 21-2-493(b).
5. If any error is discovered that cannot be properly corrected, the Board shall determine a method to compute the votes justly as required in GA Code § 21-2-493(i). If fraud is discovered, the Board shall determine a method to compute the votes justly and report the facts to the district attorney for action as required in GA Code § 21-2-493(i)
5. Board members shall be permitted to examine all election related documentation created during the conduct of elections prior to certification of results.

(2) Certification Meeting

1. After all precinct discrepancies have been investigated and resolved as required by GA Code § 21-2-493, the correct or corrected returns shall be recorded until all the

returns from each precinct which are entitled to be counted are recorded; then they shall be added together, announced, and verified as accurate.

2. The consolidated returns shall then be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.