

No. S25M0259

IN THE SUPREME COURT OF GEORGIA

STATE OF GEORGIA,

Defendant,

REPUBLICAN NATIONAL COMMITTEE and
GEORGIA REPUBLICAN PARTY, INC.,

*Defendants-Intervenors-
Appellants,*

v.

ETERNAL VIGILANCE ACTION, INC., SCOT TURNER, and JAMES
HALL,

Plaintiffs-Appellees,

GEORGIA STATE CONFERENCE OF THE NAACP and
GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.,

Plaintiffs-Intervenors-Appellees.

On Appeal from the Superior Court of Fulton County
Case No. 24CV011558

**BRIEF OF *AMICI CURIAE* BIPARTISAN FORMER
ELECTION
OFFICIALS OPPOSING THE HAND COUNT RULE**

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I. INTEREST OF *AMICI*

Amici curiae Mary Carole Cooney, Matthew Crane, Sheree Giardino, Sheila Reiner, David Worley, and Baoky Vu, oppose a recent rule passed by the Georgia State Election Board (“SEB”) that requires election workers to hand count all ballots submitted on Election Day.¹ SEB Rule 183-1-12-.12(a)(5) (eff. Oct. 22, 2024) (“Hand Count Rule” or “Rule”). *Amici* are a bipartisan group of former election officials, who together have decades of experience overseeing all aspects of election administration in Georgia and other states. They have participated in and overseen everything ranging from voter registration and early voting through the post-Election Day processes of tabulation of votes and certification of election results. *Amici* are intimately familiar with the practical challenges of administering free and fair elections within given budgetary, logistical, and legal parameters. Given their years of service as election administrators, *amici* are strongly invested in ensuring that elections, including in Georgia, continue to be conducted in a fair and orderly manner. Based on their experience, *amici* submit this brief to explain why the Hand Count Rule must remain enjoined.

¹ **Mary Carole Cooney** is a former board chair of the Fulton County Board of Voter Registration and Election. **Matthew Crane** is a former clerk and recorder of Arapahoe County, Colorado. **Sheree Giardino** is a former board member of the Cherokee County Board of Elections and Registration. **Sheila Reiner** is a former clerk and recorder of Mesa County, Colorado. **David Worley** is a former Georgia State Election Board member. **Baoky Vu** is a former vice chair of the DeKalb County Board of Voter Registration and Elections.

II. INTRODUCTION²

The Hand Count Rule is entirely unnecessary both because of existing safeguards to ensure an accurate vote count and because hand counting will not lead to more accurate results. Moreover, hardworking election staff across the state will be unable to effectively implement the necessary changes required by the Rule in time and will be unable to meet their statutory obligations to produce election results that are both accurate and timely.³ The top election official in Georgia, the Secretary of State, agrees with *amici*'s assessment, as explained in a recent letter to the SEB. This Court must uphold the injunction preventing the SEB from imposing this needless requirement on election workers, as they are already in the midst of ensuring voters have sufficient access after a historic hurricane and through early voting. As explained further below, the Hand Count Rule is in violation of Georgia statutes and in excess of the statutory authority provided to the SEB. *See* O.C.G.A. § 50-13-19(h). *Amici* therefore respectfully ask this Court to keep in place the ruling of the superior court enjoining the Hand Count

² No party or counsel for any party authored this brief in whole or in part, and no monetary contribution intended to fund the preparation or submission of this brief was made by such counsel or any party.

³ Some of the above-named *amici* timely submitted comments to the SEB during the rulemaking process, pointing out the various ways in which the Rule is unnecessary and burdensome. The SEB never adequately addressed these concerns.

Rule to stop it from taking effect and throwing election administration into chaos.

III. ARGUMENT

A. *The Hand Count Rule is unnecessary.*

The Hand Count Rule requires that three separate election workers hand count all election day ballots. SEB Rule 183-1-12-.12(a)(5). They must keep counting until they all independently arrive at the same ballot count numbers. *Id.* After this, they must compare their totals to the numbers recorded on the precinct poll pads, ballot marking devices, and scanner recap forms, and reconcile any differences. *Id.* Implicitly acknowledging the enormous number of ballots that will have to be counted on Election Day, and the time this will take, the Rule allows that the hand count of the ballots can begin after Election Day but must “finish during the week designated for county certification.” *Id.*

The stated purpose of the Hand Count Rule is to ensure the “accurate counting of ballots.” *See* SEB Notice of Proposed Rulemaking, Revisions to Subject 183-1-12-.12 *Tabulating Results* (Aug. 21, 2024), https://sos.ga.gov/sites/default/files/2024-08/seb-notice_of_proposed_rulemaking_183_1_12_.12a5_hand_count.pdf. However, existing Georgia statutes and SEB Rules detail a comprehensive process to ensure the accuracy of results, including through risk-limiting audits,

recounts, and reconciliation processes. *See, e.g.*, O.C.G.A. § 21-2-493 (computing returns and reconciling discrepancies and errors); O.C.G.A. § 21-2-495 (recounts and recanvasses of the vote); O.C.G.A. § 21-2-498 (procedures for risk-limiting audits); SEB Rule 183-1-15-.03 (recount processes by electronic tabulation and manual hand count); SEB Rule 183-1-15-.04 (conducting audits).

For example, if the number of votes cast for a particular candidate or question in a precinct exceeds the number of voters in that precinct, the number of voters who cast a vote in that precinct, or the number of ballots cast in that precinct, this discrepancy *must* be investigated and resolved through a detailed process set out by the Legislature. *See* O.C.G.A. § 21-2-493. Given these existing safeguards, the Hand Count Rule will not provide any meaningful benefit to ensuring accurate results. Instead, it will impose significant burdens and delay.

B. The Hand Count Rule will be disruptive to election administration and result in significant delays, in violation of Georgia law.

As an initial matter, imposing new requirements or changing them at the eleventh hour is hugely disruptive to the election administration process and will, in *amicus's* experience, make it impossible for election officials to adequately train their staff to comply with rule changes. It is therefore improper to impose dramatic rule changes so close to Election Day unless

absolutely necessary. The SEB voted on the Hand Count Rule on September 20, and the Rule was set to take effect tomorrow, mere days before Election Day, while election officials are administering early voting.

A large county like Fulton County can employ over 3,000 staff and volunteers who must be carefully trained on various complex components of election administration. Election officials across the state train their staff for weeks to ensure that the election—from mailing absentee ballots and early voting through Election Day, canvassing, and certification—runs smoothly. Indeed, this training was either well underway or complete in Georgia counties at the time the SEB even considered and voted on the Hand Count Rule. The implementation of new requirements at this stage will require staff and volunteers to be retrained, which cannot be done adequately within the remaining time. Inadequately trained staff increase the likelihood of inadvertent errors. The Secretary of State agrees, and in a letter regarding the Rule, stated that “[i]t is far too late in the election process for counties to implement new rules and procedures” and that “many poll workers have already completed their required training.” Ex. I at 1, Trial Br. of Intervenor Pls. Ga. NAACP & GACP (“SOS Ltr.”).

As former election officials, *amici* are intimately familiar with the complexity of election administration and the challenges facing election officials. Based on our experience, the process of hand counting ballots as

required by the Hand Count Rule can take hours. Over 4 million people voted in Georgia in the 2016 presidential election. Secretary of State Brian P.

Kemp, *Statewide Results*, Georgia Election Results,

<https://results.enr.clarityelections.com/GA/63991/184321/en/vts.html?cid=5000>

(last updated Dec. 1, 2016). In 2020, the total was almost 5 million. Georgia

Secretary of State Brad Raffensperger, *Results*, Nov. 3, 2020 General

Election,

<https://results.enr.clarityelections.com/GA/105369/web.264614/#!/detail/5000>

(last updated Nov. 20, 2020). In larger counties, voting locations see

significant numbers of voters on Election Day. A single ballot scanner in one

of these locations may contain thousands of ballots. Having three separate

officials count these ballots by hand until they arrive at the same number

(and if one of the three officials arrives at a different number, requiring the

ballots to be counted again), and also arrive at a number that matches the

numbers produced by the electronic voting systems, can create significant

delay. Research demonstrates that it is difficult for people to do repetitive

and monotonous tasks, like counting hundreds or thousands of ballots, and

that they will lose focus, leading to inaccurate results and having to redo the

count. Daniel Gartenberg, et al., *Examining the Role of Task Requirements in*

the Magnitude of the Vigilance Decrement, 9 *Frontier Psych.*, art. no. 1504

(Aug. 20, 2018). Such delay affects subsequent necessary election

administration processes—such as bringing the ballots to a central tabulation facility for further processing—which are tightly tied to a strict timeline. The Secretary similarly determined that the Rule “could lead to significant delays in reporting,” and result in “error.” SOS Ltr. at 2.

The delay necessarily occasioned by the Hand Count Rule flies in the face of Georgia statutory requirements. Georgia statutes explicitly state that ballot counts at the precinct level should occur “as soon as possible.” O.C.G.A. § 21-2-420(b) (“The election superintendent shall ensure that each precinct notifies the election superintendent of the number of ballots cast and number of provisional ballots cast as soon as possible after the time for the closing of the polls and the last elector votes.”). And while the SEB has broad rulemaking powers, the statutes do *not* give the SEB authority to undermine their mandates, including that ballot counts be made available promptly. However, this is exactly what the SEB would be doing if the Hand Count Rule were to be implemented. The Georgia Legislature has empowered the SEB “[t]o formulate, adopt, and promulgate such rules and regulations, *consistent with law*, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2) (emphasis added). As outlined above, the Hand Count Rules are not “consistent with law,” and the SEB therefore does not have authority to adopt them. Indeed, the Attorney General’s Office has stated that the Hand Count Rule “very likely exceed[s]

the Board's statutory authority and . . . appear[s] to conflict with the statutes governing the conduct of elections." Ex. D at 2, Trial Br. of Intervenor Pls. Ga. NAACP & GACP. Therefore, under Georgia law, the trial court was correct to enjoin the Rule. *See* O.C.G.A. § 50-13-19(h).

C. The Hand Count Rule raises security concerns, is impractical to implement, and costly.

The Hand Count Rule undermines important security mandates contained in current statutes and Board rules. *See, e.g.*, O.C.G.A. §§ 21-2-386, 21-2-483; SEB Rule 183-1-12-.12(a)(5). These statutes and Rules contain multiple provisions requiring that ballots be handled and transported in a secure manner. Indeed, ensuring security of ballots and proper chain of custody is of the utmost importance, as all election administrators know. However, requiring multiple poll workers to repeatedly handle ballots undermines security. Elections Director Blake Evans explicitly acknowledged this in an email he sent to election officials on October 6, 2022. Ex. A at 9, Trial Br. of Intervenor Pls. Ga. NAACP & GACP. In that email, Evans states that election officials should not require poll workers to hand count ballots, explaining: "In order to ensure maximum security for the voted ballots, poll workers should not prolong the process of removing ballots from ballot boxes and sealing them in transport containers. This process should be done efficiently, transparently, and immediately after the polls have closed and

votes have been cast.” *Id.* We agree with Evans’s assessment that hand counts of ballots can undermine ballot security. In addition, repeated handling of ballots can also degrade the ballots and the markings on the ballots, making them difficult to decipher.

The Hand Count Rule is also unworkable from a practical standpoint. The Rule seems to acknowledge the immense burden of having to hand count thousands of ballots after polls close on Election Day and states that a poll manager can decide to start the hand count on the day following the election. SEB Rule 183-1-12-.12(a)(5). However, it requires the hand count to be completed “during the week designated for county certification.” *Id.* Assuming election workers will have time to hand count all ballots cast on Election Day during this time period fundamentally ignores the post-election administration duties of these individuals. This is the time period when election workers are busiest, at the end of an already busy and exhausting few weeks of advance voting, when many have been working long days, seven days a week. This is the time period when election workers have to transport ballots, carefully preserving chain of custody, organize teams to tabulate votes, double and triple check that all processes are working smoothly, and reconcile any errors or differences in the counts. To add hand counting ballots to this lengthy task list will take the election workers’ jobs from already difficult to impossible. The Hand Count Rule’s statement that the decision on

when to begin the hand count should “take into account factors such as staffing requirements, fatigue, and concerns about efficiency and accuracy” merely serves to acknowledge the problem with this Rule, without providing any way whatsoever to solve this problem. *Id.*

Finally, the requirement that multiple poll workers at each precinct work numerous additional hours will impose additional costs on counties. Even if election officials are able to find poll workers willing to stay for hours to hand count ballots, these poll workers will need to be paid for their time. Moreover, these poll workers will have to be trained, which will require additional supervisor as well as poll worker time. All of this will add to the already burgeoning costs of elections in the state—costs that the Hand Count Rule does not acknowledge.

IV. CONCLUSION

For the foregoing reasons, *amici* strongly urge the Court to keep the Hand Count Rule enjoined.

This submission does not exceed the word-count limit imposed by Rule 20.

Respectfully submitted this 21st day of October, 2024.

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CERTIFICATE OF SERVICE

I certify that there is a prior agreement with the Appellees Eternal Vigilance, Inc., et al., the Georgia State Conference of the NAACP, and The Georgia Coalition for the People's Agenda, Inc. to allow documents in a PDF format sent via e-mail to suffice for service under Supreme Court Rule 14:

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