

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

VASU ABHIRAMAN, TERESA K. CRAW-
FORD, LORETTA MIRANDOLA, JEN-
NIFER MOSBACHER, ANITA TUCKER,
ESSENCE JOHNSON, LAUREN WAITS,
SUZANNE WAKEFIELD, MICHELLE AU,
JASMINE CLARK, DEMOCRATIC NA-
TIONAL COMMITTEE, and DEMOCRATIC
PARTY OF GEORGIA, INC.,

Petitioners,

Civil Case No. 24CV010786

v.

STATE ELECTION BOARD,

Respondent.

VERIFIED PETITION FOR DECLARATORY RELIEF

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INTRODUCTION

1. Three months before the November 5 general election, Georgia's State Election Board ("SEB") has attempted to upend the required process for certifying election results. Through rulemaking, SEB has attempted to turn the straightforward and mandatory act of certification—*i.e.* confirmation of the accurate tabulation of the votes cast—into a broad license for individual board members to hunt for purported election irregularities of any kind, potentially delaying certification and displacing longstanding (and court-supervised) processes for addressing fraud. Under two rules each passed by a 3-2 vote, election officials must now (1) conduct a "reasonable inquiry" prior to certification and (2) permit individual county board members "to examine all election related documentation created during the conduct of elections." According to their drafters, these rules rest on the assumption that certification of election results by a county board is discretionary and subject to free-ranging inquiry that may delay certification or foreclose it entirely. But that is not the law in Georgia. Rather, election officials have a *non-discretionary* duty to certify results by 5 p.m. six days after election day. Allegations of fraud or election misconduct are then resolved by the courts in properly filed challenges, not by county boards in the counting process.

2. In theory, both rules could be read as facially consonant with Georgia statutes, by permitting only such "reasonable inquiry" or "examinations" as would not delay certification beyond the statutory deadline (much less prevent certification from happening at all). But that is not what the drafters of those rules intended. To the extent either rule does allow election officials to delay certification or not certify—as the rules' drafters avowedly intend—it is invalid. Accordingly, there is a live controversy about the meaning of these SEB rules and their validity. That controversy is causing ongoing injury to petitioners, who must act now to prepare for November's election under an uncertain legal regime, and who will be further harmed if

certification of November’s election results are delayed or blocked in any county. Indeed, county officials across Georgia have *already* sought to block or delay certification after recent elections, and the amended rules give them new tools to try again.

3. To remedy these harms and prevent chaos in November, this Court should follow decades of binding precedent and declare both that the statutes mean exactly what they say and that SEB’s rules must be construed consistent with those statutes in order to be a valid exercise of SEB’s authority.

SUMMARY

4. Georgia law provides that certification is mandatory, according to the following process.

5. When a polling location closes, the poll manager, accompanied by a poll worker, collects memory cards and results tapes (including any “zero tapes” showing that no votes have been tabulated by a scanner), seals them in an envelope, signs the envelope, and transmits it to the certifying election official. O.C.G.A. §§ 21-2-379.11(e)–(f). Under Georgia law, certifying officials (typically a county board of elections) are called “superintendents.” *See id.* § 21-2-2(35), *quoted infra* ¶ 18. Upon receiving those materials, the superintendent verifies the signatures on each envelope. O.C.G.A. § 21-2-379.11(g). The superintendent then breaks the envelopes’ seals, removes their contents, and downloads the results stored on the memory cards into the election-management system to obtain results for certification. *Id.*

6. Election “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.” O.C.G.A. § 21-2-493(k) (emphasis added); *see also id.* § 21-2-493(a). The mandatory county-level certification is just an early step

in the certification process. After the county superintendents certify their returns, the Secretary of State must “immediately” undertake his own tabulation, computation, and canvassing process, O.C.G.A. § 21-2-499(a), and must then certify the votes to the Governor. *See id.* § 21-2-499(b).

7. Post-election procedures allowing candidates to challenge certified results are keyed to county-level certification. A candidate within the recount threshold must request a recount within two business days after certification. O.C.G.A. § 21-2-495(c). And where there is a basis to believe “misconduct, fraud, or [election] irregularit[ies]” may have compromised the results, an election contest must be filed within 5 days after certification. O.C.G.A. §§ 21-2-522, 524.

8. Settled Georgia law establishes that election contests—not certification—are the designated mechanism for resolving disputes about alleged irregularities in the election process. Such contests are a separate process, within the judicial system and thus with the attendant evidentiary standards and other procedural protections, that follows certification. O.C.G.A. § 21-2-522(1), (3), (4).

9. If election officials have concerns about possible election irregularities, they are free to voice those concerns at the time of certification, so that they may be considered and adjudicated, by judges, in any subsequent election contest. But they may not point to those election irregularities (or anything else) as a basis for delaying certification or denying it entirely. Absent a valid court order, certification by the deadline is mandatory.

10. Notwithstanding these laws, on August 6, 2024, SEB approved an amendment to Rule 183-1-12-.02 that adds a new, amorphous definition of certification that is premised on the mistaken idea that certification is discretionary. Rule 183-1-12-.02 as amended (the “Reasonable Inquiry Rule”) provides that the phrase “[c]ertify the results of a primary, election, or runoff,” or

words to that effect, means to attest, *after reasonable inquiry* that the tabulation and canvassing of the election are complete and accurate and that the results are a true and accurate accounting of all votes cast in that election.” Ex. A at 2 (emphasis added).

11. The amended rule does not define “reasonable inquiry,” and that term has no basis in the election code or case law. The drafter of the Reasonable Inquiry Rule stated that (1) the rule “makes it clear that [certification] is not a ministerial act” and (2) superintendents had the discretion “to vote no on certification.” SEB Hr’g Tr., <https://sos.ga.gov/sites/default/files/forms/24-05.08.2024%20SEB%20307%20final.pdf>, at 292:8–13 (May 8, 2024). He also stated that the Reasonable Inquiry Rule purports to “make[] it clear that [certification] is not a ministerial act.” *Id.* at 289:7–14.

12. Less than two weeks later, SEB approved an amendment to Rule 183-1-12-.12, again expressly premised on the false assertion that certification is discretionary. Rule 183-1-12-.12 as amended (the “Examination Rule”) demands that county boards make available to any board member for examination “all election related documentation created during the conduct of elections prior to certification of results.” Ex. B at 3. The amended rule does not define the documentation that must be provided, and the examination requirement again has no basis in the election code or case law. Here, too, the drafter of the Examination Rule stated that it would confirm the “discretion” of election officials with respect to certification. Ex. E at 2.

13. At minimum, these novel requirements introduce substantial uncertainty in the post-election process and—if interpreted as their drafters have suggested—invite chaos by establishing new processes at odds with existing statutory duties. If these requirements are interpreted as the drafters assert, county boards or other superintendents could (unlawfully) delay certifying an election in order to complete a “reasonable inquiry,” or could even (unlawfully) purport to

exercise discretion regarding whether to certify at all. Indeed, county boards or other superintendents might (wrongly) interpret the rules to *require* discretion or delay while conducting a “reasonable inquiry” or examining “all election related documentation.” To the extent the rules are construed in one or more of these ways, however, county boards or other superintendents would both violate the statutes governing the mandatory certification process and displace detailed certification procedures created by the General Assembly.

14. A delay or failure to certify at the county level would run headlong into the Secretary of State’s own certification obligations, potentially interfering with binding federal deadlines (3 U.S.C. § 5(a)(1)), and could result in the Secretary certifying results without counting ballots from the affected county. That would mean mass disenfranchisement of eligible, registered Georgians.

15. Clarity on the validity and meaning of the Reasonable Inquiry and Examination Rules, including a judicial determination that any “reasonable inquiry” or examination of documents may not delay or prevent county boards or other superintendents’ mandatory duties, is therefore required. Such relief is needed now, before the November 5 election and the start of the six-day clock the election code sets for certification. Election officials are already setting procedures and staffing for canvassing. Similarly, candidates and political organizations are already allocating resources and making efforts to ensure that every vote is counted. Withholding relief until a county board or other superintendent relies on the rules to delay certification or not certify at all risks disorder, including extremely rushed emergency judicial proceedings across multiple courts; imposes additional burdens on Georgia’s courts, election officials, and political organizations; and could lead to the discarding of valid votes cast by qualified electors.

16. This Court should declare that the Reasonable Inquiry and Examination Rules (together, the “Rules”) must be construed consistent with the statutory authority discussed above and, to the extent the rules confer discretion otherwise, they are an invalid and unlawful exercise of SEB’s authority. And in all events, both rules are independently unlawful because, as elaborated below, SEB failed to follow Georgia’s Administrative Procedure Act when enacting them.

PARTIES

17. Petitioner Vasu Abhiraman is a duly appointed member and serves as Vice Chair of the five-member DeKalb County Board of Registration and Elections, which is responsible for overseeing all elections for DeKalb County. Mr. Abhiraman is one of the two nominees of the DeKalb County Democratic Party, having been appointed to the position by the Chief Judge of the Stone Mountain Judicial Circuit in DeKalb County on June 26, 2023. Mr. Abhiraman was sworn into office on July 20, 2023, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that he would, “at all times truly, impartially, and faithfully perform [his] duties *in accordance with Georgia laws*” (emphasis added).

18. Under Georgia law, “[s]uperintendent” means: (A) [e]ither the judge of the probate court of a county or the county board of elections, the county board of elections and registration, the joint city-county board of elections, or the joint city-county board of elections and registration, if a county has such.” O.C.G.A. § 21-2-2(35).

19. The DeKalb County Board of Registration and Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), *see supra* ¶ 18, and is therefore bound by O.C.G.A. §§ 21-2-70(9) and 21-2-493(k). As a superintendent, the DeKalb County Board of Registration and Elections is also subject to the Examination Rule and required under the Reasonable Inquiry Rule to conduct a “reasonable inquiry” before certification.

20. Petitioner Teresa K. Crawford is a duly appointed member of the five-member Fulton County Board of Registration and Elections, which is responsible for overseeing all elections for Fulton County. Ms. Crawford is one of the two appointees of the Fulton County Democratic Party. Ms. Crawford was sworn into office on July 8, 2021, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

21. The Fulton County Board of Registration and Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), *see supra* ¶ 18, and is therefore bound by O.C.G.A. §§ 21-2-70(9) and 21-2-493(k). As a superintendent, the Fulton County Board of Registration and Elections is also subject to the Examination Rule and required under the Reasonable Inquiry Rule to conduct a “reasonable inquiry” before certification.

22. Petitioner Loretta Mirandola is a duly appointed member of the five-member Gwinnett County Board of Registrations and Elections, which is responsible for overseeing all elections for Gwinnett County. Ms. Mirandola is one of the two appointees of the Gwinnett County Democratic Party, having been appointed to the position on November 8, 2023. Ms. Mirandola was sworn into office on December 26, 2023, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

23. The Gwinnett County Board of Registrations and Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), *see supra* ¶ 18, and is therefore bound by O.C.G.A. §§ 21-2-70(9) and 21-2-493(k). As a superintendent, the Gwinnett County Board of Registrations and

Elections is also a “superintendent” subject to the Examination Rule and required under the Reasonable Inquiry Rule to conduct a “reasonable inquiry” before certification.

24. Petitioner Jennifer Mosbacher is a duly appointed member and serves as Vice Chair of the five-member Cobb County Board of Elections and Registration, which is responsible for overseeing all elections for Cobb County. Ms. Mosbacher was appointed to the position by the Chair of the Cobb County Board of Commissioners on June 7, 2021. Ms. Mosbacher was sworn into office on June 21, 2021, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

25. The Cobb County Board of Elections and Registration is a “superintendent” under O.C.G.A. § 21-2-2(35), *see supra* ¶ 18, and is therefore bound by O.C.G.A. §§ 21-2-70(9) and 21-2-493(k). The Cobb County Board of Elections and Registration is also a “superintendent” subject to the Examination Rule and required under the Reasonable Inquiry Rule to conduct a “reasonable inquiry” before certification.

26. Petitioner Anita Tucker is a duly appointed member and serves as Assistant Secretary of the five-member Forsyth County Board of Voter Registrations & Elections, which is responsible for overseeing all elections for Forsyth County. Ms. Tucker is one of the two appointees of the Forsyth Democratic Party, having been appointed to the position on February 16, 2022. Ms. Tucker was sworn into office on March 1, 2022, and, as required by O.C.G.A. § 21-2-70(15)(B), took an oath of office affirming that she would, “at all times truly, impartially, and faithfully perform [her] duties *in accordance with Georgia laws*” (emphasis added).

27. The Forsyth County Board of Voter Registrations & Elections is a “superintendent” under O.C.G.A. § 21-2-2(35), *see supra* ¶ 18, Georgia election law and is therefore bound

by O.C.G.A. §§ 21-2-70(9) and 21-2-493(k). As a superintendent, the Forsyth County Board of Voter Registrations & Elections is also subject to the Examination Rule and required under the Reasonable Inquiry Rule to conduct a “reasonable inquiry” before certification.

28. Petitioner Essence Johnson is a resident of Cobb County. Ms. Johnson is a member of DPG who has voted for Democratic candidates in prior Georgia primaries and elections and who plans to vote in the November 2024 general election. Ms. Johnson has an interest in her ballot being properly counted, an interest that is harmed if Cobb County does not timely certify and submit its election results to the Secretary of State so that those votes can then be timely certified by the Secretary.

29. Petitioner Lauren Waits is a resident of Fulton County. Ms. Waits is a member of DPG who has voted for Democratic candidates in prior Georgia primaries and elections and plans to vote in the November 2024 general election. Ms. Waits has an interest in her ballot being properly counted, an interest that is harmed if Fulton County does not timely certify and submit its election results to the Secretary of State so that those votes can then be timely certified by the Secretary.

30. Petitioner Suzanne Wakefield is a resident of DeKalb County. Ms. Wakefield is a member of DPG who has voted for Democratic candidates in prior Georgia primaries and elections and plans to vote in the November 2024 general election. Ms. Wakefield has an interest in her ballot being properly counted, an interest that is harmed if DeKalb County does not timely certify and submit its election results to the Secretary of State so that those votes can then be timely certified by the Secretary.

31. Petitioner Michelle Au is the Democratic nominee for the Georgia House of Representatives District 50 in the November 2024 general election. The general election for that

district is contested and competitive. Representative Au is a member of DPG. Representative Au has an interest in the votes cast for her being properly counted, an interest that is harmed if Fulton County does not timely certify and submit its election results to the Secretary of State so that those votes can then be timely certified by the Secretary.

32. Petitioner Jasmine Clark is the Democratic nominee for Georgia House of Representatives District 108 in the November 2024 general election. The general election for that district is contested and competitive. Representative Clark is a member of DPG. Representative Clark has an interest in the votes cast for her being properly counted, an interest that is harmed if Gwinnett County does not timely certify and submit its election results to the Secretary of State so that those votes can then be timely certified by the Secretary.

33. Petitioner the Democratic National Committee (“DNC”) is the principal committee of the Democratic Party, dedicated to electing Democratic candidates and protecting voters’ rights. DNC has a core interest in ensuring proper and legal administration of elections, counting of ballots, and certification of results. That interest—which includes ensuring that votes cast for Democratic candidates are properly counted—is harmed when votes for Democratic candidates are not timely certified by the superintendent and submitted to the Secretary of State so that those votes can then be certified by the Secretary.

34. Petitioner the Democratic Party of Georgia, Inc. (“DPG”) is a political party as defined by O.C.G.A. § 21-2-2(25), and is the official Democratic Party organization in Georgia. DPG is dedicated to electing Democratic candidates in the state and protecting Georgians’ voting rights. And as stated in its charter, DPG is “committed to the wisdom and efficacy of the will of the majority” and seeks to “protect and enhance political freedom of all people and to encourage the meaningful participation of all citizens within the framework of the United States

Constitution and the laws of the United States and the State of Georgia.” Charter and Bylaws of the Democratic Party of Georgia, Preamble (Aug. 28, 2021).

35. DPG has a core interest in ensuring proper and legal administration of elections, counting of ballots, and certification of results. That interest includes ensuring that votes cast for Democratic candidates (including by DPG members) are properly counted and included in the appropriate certifications. This interest is harmed when votes for Democratic candidates are not timely certified by the superintendent and submitted to the Secretary of State so that those votes can then be timely certified by the Secretary. DPG has a further interest in ensuring that its members serving as election superintendents and as members of county Boards of Registration and Elections know their legal obligations with respect to certification.

36. Respondent SEB is a Georgia state board and division of the Secretary of State’s Office. SEB is an agency within the meaning of the Georgia Administrative Procedure Act. *See* O.C.G.A. §§ 21-2-30 to -36. SEB is authorized “[t]o formulate, adopt, and promulgate [only] such rules and regulations,” as are “consistent with law.” *Id.* § 21-2-31(2). SEB regularly conducts business in Fulton County at its principal office, 2 Martin Luther King, Jr. Drive, Suite 802, Floyd West Tower, Atlanta, Georgia 30334.

STANDING

37. Petitioners reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 36 inclusive.

38. Petitioners Abhiraman, Crawford, Mirandola, Mosbacher, and Tucker (collectively, the “Board Member Petitioners”) each have standing because the relief sought would “guide and protect the *petitioners* from uncertainty and insecurity with respect to” the interaction between the Rules and their duty to comply with O.C.G.A. §§ 21-2-70(9) and 21-2-

493(k), which set forth certification obligations. *Cobb County v. Floam*, 319 Ga. 89, 97 (2024) (emphasis in original). The Board Member Petitioners will also have to divert their time and resources to educating fellow board members on the appropriate role of county certification, which will take time away from working on essential board functions.

39. The Board Member Petitioners separately each have standing because O.C.G.A. § 21-2-33.2 allows SEB to take over a county elections board if it determines that the county board violated three election laws or rules during the last two election cycles, or that there is clear and convincing evidence of “nonfeasance, malfeasance, or gross negligence” in two elections within two years. The Board Member Petitioners require immediate guidance on the interaction between the Rules and their statutory certification duties to ensure that they do not run afoul of O.C.G.A. § 21-2-33.2, triggering a “strike” and risking an exercise of SEB’s takeover authority. Avoiding a violation of O.C.G.A. § 21-2-70(9) and O.C.G.A. § 21-2-493(k)—and, in turn, a strike under O.C.G.A. § 21-2-33.2—provides an additional reason that “the relief sought by” the Board Member Petitioners has “some *immediate legal effect on the parties’ conduct*,” *Perdue v. Barron*, 367 Ga. App. 157, 163 (2023) (emphasis in original).

40. Yet another independent basis on which the Board Member Petitioners each have standing is that the Examination Rule requires certain voting data (not mentioned or defined anywhere in the election code) as well as “all election related documentation” to be compiled and reviewed by county election board members, and requires those members to engage in additional procedures prior to certification. Absent relief, the Board Member Petitioners must begin assembling this information and implementing those procedures.

41. Petitioners Johnson, Wakefield, and Waits (collectively, the “Voter Petitioners”) each have standing because they are voting citizens of Georgia. The uncertainty that the Rules

introduce and the resulting risk that county boards of elections will not timely certify election results mean that the Voter Petitioners cannot know whether their ballots in the November 2024 general election will be counted, or whether instead their fundamental right to vote will be denied.

42. Petitioners Au and Clark (collectively, the “Candidate Petitioners”) each have standing because they are candidates for the Georgia House of Representatives. The uncertainty that the Rules introduce and the resulting risk that county boards of elections will not timely certify mean that the Candidate Petitioners cannot know whether all votes cast for them in the November 2024 general election will be counted. Absent additional clarity on the nature of election superintendents’ certification duties and the legality of the rules, the Candidate Petitioners must prepare for the “reasonable inquiry” process the rule mandates, which will require diverting resources that they would otherwise devote to furthering their candidacies.

43. DNC and DPG each have associational standing. The Georgia Supreme Court has explained that “associational standing permits an organization ... to sue on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Black Voters Matter Fund, Inc. v. Kemp*, 313 Ga. 375, 387 (2022). This three-part test is satisfied here because (1) DNC members who live and vote in Georgia have standing to sue SEB in their own right, as do DPG members who live and vote in the state (including the members of DPG County Committees, DPG-appointed election superintendents, and Voter Petitioners); (2) DNC and DPG each seek, through this litigation, to ensure that votes cast for Democratic candidates in November are properly counted and that their respective members serving as

election superintendents, as members of county Boards of Registration and Elections, or otherwise as county-level election administrators know their legal obligations with respect to certification; and (3) neither the claims asserted nor the relief requested by petitioners require the participation of either organization's members in this lawsuit.

44. In particular, DPG has associational standing to bring suit on behalf of its members because of the legal uncertainty introduced by the Rules—including whether and how DPG members currently serving on county Boards of Registration and Elections can meet the requirements of those rules consistent with their statutory obligations.

45. DNC and DPG also each have organizational standing because each has been and will be injured directly by the Rules.

46. First, DNC and DPG are each injured when votes for Democratic candidates are not properly certified and submitted to the Secretary of State so that those votes can then timely be certified by the Secretary, because that reduces the chance of Democratic candidates being elected. Delays in certification or the failure to certify because of either rule (or both) will interfere with the certification and submission of votes cast for Democratic candidates.

47. Second, DNC and DPG are each injured when citizens are denied their fundamental right to vote, because part of each organization's mission is to ensure that citizens can exercise their political freedoms through meaningful participation in the framework of the U.S. Constitution. Delays in certification or the failure to certify because of either rule (or both) infringe that fundamental right.

48. Third, the confusion that the Rules introduce has already caused and will continue to cause a diversion of DNC's and DPG's resources. When election results are not certified or delayed, or when a county engages in a "reasonable inquiry" or examination that imperils timely

certification, DNC and DPG must each expend resources on monitoring the inquiry to ensure that the results are certified and that votes for Democratic candidates are properly counted. Spending money on preparing for and engaging in a contested inquiry, which is not part of either DNC's or DPG's mission, means DNC and DPG each cannot use that money to further activity that *is* a part of their missions, *e.g.*, increasing Democratic voter turnout. Further, if election results are not timely certified in a particular county, or if a county chooses to engage in an inquiry or examination under the rules, DNC and DPG each will receive an influx of calls from voters in that county who are concerned about whether their votes will count, which requires both DNC and DPG to divert employees and volunteers away from otherwise assisting voters in Georgia.

49. Further, and regardless of whether election results are in fact not certified or delayed, the uncertainty that the Rules create as to both the definition of "reasonable inquiry" and the scope of the documents to be examined is causing and will continue to cause a diversion of DNC's and DPG's resources. Both organizations currently engage in a county-liaison program in which they seek to support county election superintendents in running free and fair elections. These efforts include educating county officials about the requirements of state election law and advocating for the interests of their constituents. Because of the passage of the rules, the county-liaison programs will have to spend more of their time and resources educating county officials about their certification obligations, which will directly displace time the programs would otherwise spend working on issues important to DNC's and DPG's constituents, such as ensuring voters are registered, advocating for ample advance voting hours and locations, and the like.

JURISDICTION AND VENUE

50. SEB is subject to the jurisdiction of this Court pursuant to Georgia Constitution Article VI, § 4, ¶ I and O.C.G.A. §§ 9-4-2, 9-4-3, and 50-13-10.

51. Venue is proper under O.C.G.A. §§ 9-10-30, 21-2-30(j), and 50-13-10(b).

FACTUAL ALLEGATIONS

A. Georgia's Process for Tabulation, Canvassing, Certification, and Contest

52. The Georgia election code provides for a comprehensive, integrated system of election administration. The code ensures, by a variety of mechanisms, that qualified voters cast proper votes and that such votes are counted and reported—all according to a reticulate legislative scheme. *See generally* O.C.G.A. §§ 21-2-1 through 21-2-604. County-level certification is just one part of this multi-step computational process of ensuring that eligible Georgian can make their voices heard in the democratic process and are not denied their fundamental right to vote. *See id.* § 21-2-493.

53. Once the ballots are cast and polling locations close, the votes are counted, canvassed, and certified in accordance with these statutory requirements. *See* O.C.G.A. §§ 21-2-490 through 21-2-504. County-level certification serves a very specific purpose within this process: to aggregate all the votes from all the precincts in a county, and to ensure the numerical accuracy of that vote count. *See id.* § 21-2-493. For example, the code ensures mathematical accuracy by mandating certain precinct-level cross-checks and instructing superintendents on how to resolve any numerical discrepancies detected by those cross-checks. *See, e.g., id.* §§ 21-2-493(e)–(h).

54. Before county-level certification, a superintendent may order a recount or recanvass in the circumstances specified by O.C.G.A. § 21-2-495. And during county-level canvassing, the superintendent will review various pieces of precinct-level information, including the number of electors in each precinct, *see id.* § 21-2-493(b), the number of persons who voted in each precinct, *id.*, the number of ballots cast in each precinct, *id.*, the unsealed and

sealed returns of votes from each precinct, *id.* §§ 21-2-493(g)–(h), and, for each precinct using voting machines, the records from the general returns showing the machine counters and the internal records showing the machine counters prior to the start of the election. *See id.* § 21-2-493(f). The statute itself sets forth the information actually relevant to performing these computations.

55. Once mathematical accuracy is attained, the superintendent has no discretion to refuse certification. *See* O.C.G.A. § 21-2-493(k). Rather, “[a]s the returns from each precinct are read, computed, and found to be correct or corrected” in accordance with § 21-2-493, “they shall be recorded on the blanks prepared for the purpose until all returns from the various precincts ... shall have been duly recorded; then they shall be added together,” and those “consolidated returns shall then be certified by the [county] superintendent ... not later than 5:00 P.M. on the Monday following the date on which such election was held.” *Id.*

56. The mandatory county-level certification is far from the end of the certification process. After the county superintendents certify their returns, the Secretary of State must “immediately” undertake his own tabulation, computation, and canvassing process, O.C.G.A. § 21-2-499(a), and must then certify the votes to the Governor. *See id.* § 21-2-499(b). A delay or failure to certify at the county level would run headlong into the Secretary of State’s own certification obligations, potentially interfering with binding federal deadlines (3 U.S.C. § 5(a)(1)), and could result in the Secretary certifying results without counting ballots from the affected county.

57. Other steps in the election process—which occur both before and after county-level certification—are geared towards validating individual ballots and preventing, detecting,

and remediating fraud. Allegations of fraud or election misconduct are resolved by the courts, not by county boards in the counting process.

58. For example, Article 13 of the election code provides an expedited procedure for contesting elections in court *after* they are certified. An elector may contest an election based upon several grounds, including “misconduct, fraud, or irregularity by any primary or election official or officials,” “when illegal votes have been received or legal votes rejected at the polls,” and “for any error in counting the votes or declaring the result of the primary or election.” O.C.G.A. § 21-2-522(1), (3), (4). If an election contest changes the results, Georgia law authorizes the superintendent to recertify the election. *See id.* at § 21-2-493(1); *see also id.* at § 21-2-499(a) (authorizing Secretary of State to recertify election following receipt of corrected certified returns from counties).

59. The statutory scheme set forth in the Georgia election code—with its detailed processes and remedies to address misconduct, fraud, or error—strikes a balance by requiring that counties certify election results while providing for other preventive measures and an expedient judicial process to address cases when serious questions arise. County-level certification is mandatory and serves a particular purpose, while other parts of the Election Code provide avenues that are specifically tailored to address fraud and similar concerns. Those avenues, which proceed according to frameworks expressly adopted by the General Assembly and overseen by the courts, are contingent upon, and must not be displaced by, county-level certification.

B. Recent Refusals To Certify Election Results

60. For many decades, the certification of election results was a straightforward administrative process that was faithfully followed by local officials without fanfare or

controversy. But, in recent years, efforts to delay or impede the certification of election results have become increasingly common. During the 2020 election cycle, these efforts culminated with the January 6, 2021 attack on the U.S. Capitol.

61. In the years since, numerous counties have refused to certify election results until ordered to do so in emergency litigation. For example, Otero County in New Mexico refused to certify results after a 2022 primary until the New Mexico Supreme Court ordered the county to comply with a statutory certification deadline. *See Order Granting Writ of Mandamus, Oliver v. Otero County Commission*, No. S-1-SC-39426 (N.M. June 15, 2022). Likewise, Cochise County in Arizona refused to certify the 2022 general election results, relenting only after the Secretary of State obtained a court order. *See Schouten, Rural Arizona County Certifies Midterm Election Results After Judge’s Order*, CNN (Dec. 1, 2022), <https://www.cnn.com/2022/12/01/politics/cochise-county-arizona-certify-midterm-election/index.html>. And other counties, such as in Pennsylvania, have similarly refused to certify results until ordered by a court. *See, e.g., Richards, Pennsylvania sues county election boards over refusal to certify primary results*, NBC News (July 12, 2022), <https://www.nbcnews.com/politics/2022-election/pennsylvania-sues-county-election-boards-refusal-certify-primary-resul-rcna37965>.

62. Here in Georgia, “[a]t least 19 election board members across nine Georgia counties have objected to certifying elections during the past four years.” Mark Niese, *et al., Georgia Republicans Lay Groundwork to Oppose Certifying Presidential Election*, Atlanta J. Const. (Aug. 16, 2024), <https://www.ajc.com/politics/georgia-republicans-pursue-power-over-certifying-election-results/JXEH2QC43JCIBJ7QEPXOLSK5SY/>. The Coffee County Board of Elections and Registration refused to certify a recount following the 2020 election cycle. *Letter: Coffee Co. cannot certify results from second statewide recount*, WALB News (Dec. 8, 2020),

<https://www.walb.com/2020/12/08/letter-coffee-co-cannot-certify-results-second-statewide-recount/>. Likewise, members of the Cobb, DeKalb, and Spalding County election boards refused to vote to certify election results in November 2023. Niese, *Several Republican officials vote against certifying Georgia elections*, Atlanta J. Const. (Nov. 22, 2023), <https://www.ajc.com/politics/several-republican-officials-vote-against-certifying-georgia-elections/XRALMPAOZFHABLVH7756GILWD4/>. And a member of the Gwinnett County Board of Voter Registrations and Elections refused to vote to certify election results in March 2024. Official Meeting Minutes, Gwinnett County Board of Voter Registrations and Elections (Mar. 21, 2024), https://www.gwinnettcountry.com/static/upload/bac/6/20240321/m_14788_03.21.2024_BRE_Special_Meeting_Minutes_OFFICIAL.pdf.

63. Most recently, a member of the Fulton County Registration and Elections Board refused to vote to certify the May 2024 primary results. Chidi & Levine, *Republican who refused to certify Georgia primary a member of election denialist group*, The Guardian (June 4, 2024), <https://www.theguardian.com/us-news/article/2024/jun/04/republican-julie-adams-georgia-election-integrity-network>. Indeed, that member has brought suit in this Court, seeking a declaration that her duties regarding certification are discretionary. *See Adams v. Fulton County Board of Elections & Registration*, Fulton County Superior Court, Case No. 24-CV-006566 (May 24, 2024).

B. The Petition for the Reasonable Inquiry Rule

64. On March 26, 2024, Fulton County Board of Registration and Elections member Michael Heekin petitioned SEB to amend Rule 183-1-12-.02. (The prior week, Heekin had voted against certifying the March 2024 Democratic presidential primary election results. *See* Board of Registration and Elections Approved Minutes (Mar. 18, 2024), <https://fultoncountyga>.

gov/-/media/BRE31824-Approved-Minutes.pdf.) Heekin’s petition stated that “what it means to certify an election is not defined in either the Georgia Election Code or SEB Rules,” and “[t]his creates a challenge in the efficient administration of Georgia elections, especially when elections are not perfect, which they rarely are.” Ex. C at 1.

65. The petition expressly fosters confusion about whether certification is mandatory. It states, “[i]n the absence of a standard for certification, are superintendents performing a simple bureaucratic act of certifying the tabulated results of an election even if those results are suspect? Or are they entrusted to use their professional judgment in the certification process?” Ex. C at 1.

66. The petition purports to borrow from guidance on certification issued by the U.S. Election Assistance Commission (“EAC”), which the petition characterizes as “suggest[ing] that certifying the results of an election requires election officials to pass judgment on the election as a whole.” Ex. C at 2.

67. The petition states the “proposed amendment adopts the EAC definition, while stating explicitly that certifying officials should properly conduct a reasonable inquiry in arriving at the certification decision.” Ex. C at 2.

68. The petition was first considered at SEB’s May 8, 2024 meeting.

69. At that meeting, Heekin stated that SEB regulations had not previously defined what “certify” means and that “it would be helpful” to have such a definition. SEB Hr’g Tr., 288:4–15.

70. Heekin made no mention of the existing statutory framework for certification, and testified that he believed (contrary to Georgia law) that board of elections members had the discretion to “vote no on certification.” SEB Hr’g Tr. 288:11–13; *see also id.* at 292:8–13 (“We want to vote yes on certification.... [W]e should be able to see before we make the certification

vote.”). He testified that the Reasonable Inquiry Rule “makes it clear that [certification] is not a ministerial act”; instead, “[t]here is a higher order process, mental processes that go on in” certification. *Id.* at 289:7–14.

71. Heekin then stated that the Reasonable Inquiry Rule borrowed from the EAC’s certification guidance, though he acknowledged that the guidance contains no reference to any “reasonable inquiry” requirement. SEB Hr’g Tr. 288:20–289:20.

72. The EAC in fact defines “Certification of Election” as “[a] written statement attesting that the tabulation and canvassing of the election is complete and accurate.” U.S. EAC, Glossary of Election Terminology, at 21 (July 16, 2021) (hereafter “EAC Glossary”), https://www.eac.gov/sites/default/files/glossary_files/Glossary_of_Election_Terms_EAC.pdf. This definition contains no reference to a “reasonable inquiry.”

73. The EAC further defines “Certification of Official Election Results” as a “written statement attesting that the election results are a true and accurate accounting of all votes cast in a particular election.” EAC Glossary 21. This definition contains no reference to a “reasonable inquiry.”

74. The EAC elsewhere recognizes that “[s]tate laws guide the certification process at the local level”; that the “method, scope, and timing of post-election activities vary by state”; and that “[l]ocal election officials certify election results using a variety of methods, as outlined in state law.” U.S. EAC, Election Certification, at 1–2 (Feb. 2022), https://www.eac.gov/sites/default/files/electionofficials/postelection/Guide_to_Election_Certification_EAC.pdf.

75. On May 8, 2024, SEB voted to advance the petition into proposed rulemaking. Niese, *Georgia Election Board Proposes an “Inquiry” Before Certifying Results*, Atlanta J.

Const. (May 9, 2024), <https://www.ajc.com/politics/georgia-election-board-proposes-a-new-rule-before-certifying-results/TW3BLX7EQFAQ7I4OD43IF6SSZ4/>.

C. Adoption of the Reasonable Inquiry Rule

76. On July 3, 2024, SEB publicly posted the Reasonable Inquiry Rule for notice and comment. Ex. A at 1.

77. The Reasonable Inquiry Rule modifies SEB Rule 183-1-12-.02 to add the following:

(c.2) “Certify the results of a primary, election, or runoff,” or words to that effect, means to attest, after reasonable inquiry that the tabulation and canvassing of the election are complete and accurate and that the results are a true and accurate accounting of all votes cast in that election.

Ex. A at 2.

78. The notice of proposed rulemaking incorrectly stated that “[t]he main features of the amendments to this rule are that it adopts the U.S. Election Assistance Commission’s definition of certification.” Ex. A at 2.

79. On August 3, 2024, Donald Trump stated at a rally in Atlanta, referring to the three Republican SEB members, “They’re on fire. They’re doing a great job.” Gringlas, *A new rule in Georgia could allow local election boards to refuse to certify results*, NPR (Aug. 9, 2024), <https://www.npr.org/2024/08/08/nx-s1-5065909/a-new-rule-in-georgia-could-allow-some-election-boards-to-refuse-to-certify-results>. He added, again referring to the Republican SEB members: “Janice Johnston, Rick Jeffares and Janelle King, three people are all pitbulls fighting for honesty, transparency and victory.” *Id.*

80. A range of individuals and organizations commented on the Reasonable Inquiry Rule during the notice and comment period.

81. On August 5, 2024, DPG submitted comments urging SEB to reject the Reasonable Inquiry Rule. Ex. D at 2. DPG made clear that the rule “violates Georgia’s election statute and exceeds the [SEB’s] authority.” *Id.* DPG comments also explained that the rule “serves only as a pretext to sow seeds of doubt about the election certification process, all but guaranteeing chaos in Georgia elections in the coming weeks and months.” *Id.* And DPG highlighted “the all-too-real risk of subjecting elections officials across the state to threats of violence” arising from the extraordinary uncertainty the Reasonable Inquiry Rule seeks to introduce. *Id.*¹

82. On August 6, 2024, SEB adopted the Reasonable Inquiry Rule on a 3-2 vote. The board’s three Republican members voted in favor. The Democratic member and non-partisan chair opposed the rule.

83. In its comments, DPG had requested that SEB, if it adopted the Reasonable Inquiry Rule, also “issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.” Ex. D at 2; *see* O.C.G.A. § 50-13-4(a)(2). SEB has not done so. Nor has it otherwise indicated whether or how it had “consider[ed] fully all written and oral submissions respecting the proposed rule,” O.C.G.A. § 50-13-4(a)(2), in advance of adopting the Reasonable Inquiry Rule.

84. Following the passage of the Reasonable Inquiry Rule, Georgia Secretary of State Brad Raffensperger posted on social media that “Georgia’s Election Integrity Act requires counties to certify the election results by November 12th and we fully anticipate that counties

¹ Exhibit D (and Exhibit F discussed below) each differ from what was submitted to SEB only in terms of whether the exhibits are separate from the letter or (as in Exhibit D and F) in a single .pdf. For completeness, the cover email demonstrating timely submission of each comment is included within Exhibit D and Exhibit F.

will follow the law.” @GaSecofState, X (Aug. 7, 2024), <https://x.com/GaSecofState/status/1821179635972850114>.

85. On August 15, Secretary Raffensperger issued a press release “denouncing the 11th-hour effort” by SEB “to impose new activist rulemaking that would undermine key provisions of” Georgia law. Press Release, Brad Raffensperger, Georgia Secretary of State, *Raffensperger Defends Georgia’s Election Integrity Act from Last Minute Changes Delaying Election Results* (Aug. 15, 2024), <https://sos.ga.gov/news/raffensperger-defends-georgias-election-integrity-act-last-minute-changes-delaying-election>. The release quotes Raffensperger as stating: “Activists seeking to impose last-minute changes in election procedures outside of the legislative process undermine voter confidence and burden election workers.” *Id.* He explained that “procedures to ensure the quick and accurate reporting of results” are “a hallmark of Georgia’s election administration and bolsters voter confidence.” *Id.* “Delays in results,” like those caused by SEB’s new rules, “create a vacuum that leads to misinformation and disinformation.” *Id.* “These misguided, last-minute changes from unelected bureaucrats who have never run an election and seem to reject the advice of anyone who ever has could cause serious problems in an election that otherwise will be secure and accurate.” *Id.*

86. The Reasonable Inquiry Rule becomes effective 20 days after it is filed with the Secretary of State’s office. O.C.G.A. § 50-13-6(a). It is petitioners’ understanding that the Reasonable Inquiry Rule was filed with the Secretary of State’s office on August 15, which means it would become effective on September 4, 2024.

D. The Petition for the Examination Rule

87. Cobb County Republican Chairwoman Salleigh Grubbs submitted a petition for rulemaking on June 17, 2024. Ex. E at 1. The petition expressly fosters confusion about

whether certification is mandatory. It states, “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.” *Id.* at 2. The petition contends that a new rule is necessary to ensure that counties instead “lawfully fulfill their duties” in certifying election results. *Id.*

88. Although the petition purports to ask SEB to “adopt a rule to affirm *existing* Georgia law,” Ex. E at 1, its contents go beyond any existing statutory requirements.

89. First, the proposed rule adds a non-statutory step in the canvassing process by requiring that “[a] list of all voters who voted in the election” be compiled and examined for duplicates. *Id.* at 6. That requirement goes beyond the already-detailed statutory scheme for canvassing, discussed *infra* at ¶¶ 98 *et seq.*

90. Second, the proposed rule then seeks to impose duties on “board[s]” and individual “board members,” rather than on the “superintendent” as defined in the relevant statutes. *Id.* at 6-7. By shifting authority from superintendents (often multimember boards) to individual members, the proposed rule again departs from the election code.

91. Finally, the proposed rule states that board “members shall be permitted to examine all election related documentation created during the conduct of elections prior to certification of results.” *Id.* at 6. The proposed rule does not define the universe of documents that must be assembled and made available, nor does it provide guidance to election superintendents regarding when such information must be made available. It also does not address how election superintendents should manage the burden of providing such documentation to individual board members while also conducting the critical and time-sensitive work actually required by statute as part of the county certification process.

E. Adoption of the Examination Rule

92. On July 18, 2024, the Board noticed Grubbs’s proposed rule for rulemaking and hearing on August 19, 2024. Ex. B at 1. The notice of proposed rulemaking tracks the petition exactly.

93. A range of individuals and organizations commented on the proposed rule during the notice and comment period.

94. On August 17, 2024, DPG submitted comments urging SEB to reject the proposed rule. Ex. F at 2; *see supra* n.1. DPG made clear that the rule would “violate[] Georgia’s election code and exceed[] [SEB’s] authority in violation of its enabling statute.” *Id.* DPG also explained that the proposed rule seeks “to inject some element of discretion into the performance of statutory duties of election superintendents that, by the election code’s express design, are mandatory and non-discretionary.” *Id.* DPG emphasized that the proposed rule “serves as a pretext to sow seeds of doubt about the election certification process.” *Id.* at 3. And DPG explained why the proposed rule was “neither ‘reasonable’ [n]or ‘conducive’ to orderly elections” as required by the statute conferring SEB’s rulemaking authority, *see* O.C.G.A. § 21-2-31.

95. On August 19, 2024, SEB adopted the Examination Rule on a 3-2 vote. The board’s three Republican members voted in favor. The Democratic member and non-partisan chair opposed the rule.

96. In its comments, DPG had requested that SEB, if it adopted the Examination Rule, also “issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.” Ex. F at 2; *see* O.C.G.A. § 50-13-4(a)(2). SEB has not done so. Nor has it otherwise indicated

whether or how it had “consider[ed] fully all written and oral submissions respecting the proposed rule,” O.C.G.A. § 50-13-4(a)(2), in advance of adopting the Examination Rule.

97. The Examination Rule becomes effective 20 days after it is filed with the Secretary of State’s office. O.C.G.A. § 50-13-6(a). SEB has provided no public information at this time on when that filing will occur.

EXISTING STATUTORY CERTIFICATION REQUIREMENTS

98. By requiring a “reasonable inquiry” or permitting a boundless examination prior to certification of election results, the Rules each introduce significant uncertainty into the certification process. The rules contain no guidance about what constitutes a “reasonable inquiry” or the extent of the permissible examination. Nor do they explain their interaction with existing statutory certification requirements. And as noted, the rules were introduced with justifications that presume certification is a discretionary function. That is not the law. The text, structure, and history of Georgia statutes, as well as case law interpreting them, make clear that certification is a mandatory duty.

A. Text

99. Georgia tasks county boards of election and other superintendents with administering elections. *See* O.C.G.A. § 21-2-2(35)(A); 2019 Ga. Laws 4181.

100. O.C.G.A. § 21-2-70(9) provides (with emphasis added) that “[e]ach superintendent ... *shall* perform all the duties imposed upon him or her,” including “receiv[ing] from poll officers the returns of all primaries and elections, [] canvass[ing] and comput[ing] the same, and [] certify[ing] the results thereof.” This language is mandatory; it does not permit superintendents to exercise discretion in certifying election results.

101. The Georgia Code section that specifically governs “certification” and the “[c]omputation of returns by superintendent” likewise uses mandatory language in providing that “[t]he superintendent *shall*, after the close of the polls on the day of a primary or election ... publicly commence the computation and canvassing of the returns,” adding that “[t]he consolidated returns *shall then be certified* by the superintendent.” O.C.G.A. § 21-2-493(a) & (k) (emphases added).

102. This mandatory language governs even where actual “error or fraud is discovered”; in that event, “the superintendent *shall compute and certify* the votes justly, regardless of any fraudulent or erroneous returns presented to him or her.” O.C.G.A. § 21-2-493(i) (emphasis added).

103. Georgia law also imposes a clear deadline for the completion of certification: “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.” O.C.G.A. § 21-2-493(k) (emphasis added). Because November 11, 2024 is a legal holiday (Veterans Day), this year election returns must be certified by election officials not later than 5:00 P.M. on Tuesday, November 12, 2024. *See id.* § 21-2-14.

104. The General Assembly’s use of “shall” in these statutes establishes that certification by county election superintendents is mandatory. The term “shall” means “required to,” and “[d]rafters [of statutes] typically intend and ... courts typically uphold” the use of “shall” as “mandatory.” Black’s Law Dictionary (12th ed. 2024). Georgia courts have acknowledged this, explaining that “[s]hall’ is generally construed as a word of command.” *Mead v. Sheffield*, 278 Ga. 268, 269 (2004); *Nunnally v. State*, 311 Ga. App. 558, 560 (2011)

(“‘Shall’ is recognized generally as a command, and is mandatory.”); *see also State v. Henderson*, 263 Ga. 508, 510 (1993) (“‘must’ and ‘shall’ are synonymous”).

B. Structure

105. The non-discretionary nature of the certification duty in O.C.G.A. § 21-2-493(k) is even clearer “when read with the remainder of the statutory scheme” governing elections, *Cobb Hospital, Inc. v. Emory-Adventist, Inc.*, 357 Ga. App. 617, 621 (2020).

106. The election code prescribes in detail every step of election administration, from voter registration to casting and counting votes, to county certification, and then to risk-limiting audits, election contests, and state-level certification. Within this intricate, multi-step process, county certification serves a specific purpose: to aggregate the votes from every precinct in the county and to ensure the numerical accuracy of that vote count.

107. This duty must be mandatory because otherwise there could be widespread and unjustified denial of Georgians’ fundamental right to vote.

108. As explained, allowing any delays in certification—to say nothing of an outright refusal—would derail the detailed, reticulated scheme embodied in Georgia’s statutes. *Supra*, at ¶¶ 52–59. Only after county election officials certify election results does the Secretary of State or Governor certify the results for the state. *See* O.C.G.A. § 21-2-499(a). The election code provides that “[u]pon receiving the certified returns of any election from the various superintendents,” the Secretary of State “shall immediately proceed to tabulate, compute, and canvass the votes cast for all candidates . . . and shall thereupon certify and file in his or her office the tabulation thereof.” *Id.* For presidential electors, “[t]he Secretary of State shall also, upon receiving the certified returns . . . proceed to tabulate, compute, and canvass the votes cast for

each slate of presidential electors [and thereafter] shall immediately lay them before the Governor.” *Id.* § 21-2-499(b).

109. If a county board or other superintendent refused to certify (or delayed in certifying) to complete a “reasonable inquiry” or conduct an undefined examination, the Secretary of State would still proceed with his reporting of results, meaning that that reporting could occur *without* counting ballots from the county—thereby denying the county’s voters their fundamental right to vote. *See* O.C.G.A. § 21-2-499(b). That is because Georgia law further provides that “[n]ot later than 5:00 P.M. on the seventeenth day following the date on which such election was conducted[,] the Secretary of State shall certify the votes cast for all candidates . . . and shall no later than that same time lay the returns for presidential electors before the Governor.” *Id.* Georgia law also provides that “[t]he Governor shall certify the slates of presidential electors no later than 5:00 P.M. on the eighteenth day following the date on which such election was conducted.” *Id.* These deadlines can be altered by—but only by—a court order. *Id.* Federal law also sets a deadline for the certification of presidential electors. 3 U.S.C. § 5. The mandatory nature and timing of county certification therefore plays a crucial role in avoiding the disenfranchisement of Georgia voters.

110. The primary (and narrow) purpose of county certification is to ensure that the aggregate tabulation is numerically accurate. Other steps in the election process—which occur both before and after county certification—address the possibility of fraud. These steps include voter registration, voter verification at the polls, the risk-limiting audit process, and the election-contest process.

111. The election-contest process, in particular, allows parties to challenge an election *after* certification based upon, among other things, “[m]isconduct, fraud, or irregularity by any

primary or election official or officials,” “[w]hen illegal votes have been received or legal votes rejected at the polls,” and “[f]or any error in counting the votes or declaring the result of the primary or election.” O.C.G.A. § 21-2-522(1), (3), (4).

112. SEB must be served with a copy of any petition contesting an election. *See* O.C.G.A. § 21-2-524(b). Similarly, the relevant county election superintendent must be named as a defendant in any such contest so that it may participate in the proceeding. *See id.* § 21-2-520(2)(C). If the superintendent determines that the election result is invalid, it can reach a settlement with the petitioner. *Cf. id.* § 21-2-527.1 (stating all parties have the opportunity to object to settlements and that settlements are subject to court approval).

113. If an election contest changes the results of an election, moreover, the election code specifically authorizes that election to be recertified. O.C.G.A. §§ 21-2-493(l), 21-2-499(a). Read as a whole, the code thus strikes the balance of requiring certification—without superintendents having discretion to refuse to certify or delay—while providing a well-defined judicial avenue to address cases in which allegations of misconduct, fraud, or irregularity may be properly adjudicated. SEB has no authority to override this detailed statutory framework.

C. History and Precedent

114. Consistent with the approach of other jurisdictions, Georgia law has long treated election certification as non-discretionary.

115. For example, the Georgia Supreme Court held in *Tanner v. Deen*, 108 Ga. 95 (1899), that certain county superintendents’ refusal to certify an election was subject to mandamus, and it ordered the lower court to issue a writ of mandamus requiring the superintendents to certify, *id.* at 101–02.

116. Similarly, *Bacon v. Black*, 162 Ga. 222 (1926), held that that certification was a “purely ministerial” duty that left no discretion for any superintendents to investigate issues of irregularity or fraud, *id.* at 226.

117. And in the historic “Three Governors” case, *Thompson v. Talmadge*, 201 Ga. 867 (1947), the Georgia Supreme Court explicitly characterized canvassing (a duty the 1945 Georgia Constitution imposed on the General Assembly) as the “mathematical process of adding the number of votes,” and it cited *Bacon* (among other cases) for the rule that canvassing and certification were purely ministerial, non-discretionary duties, *id.* at 876–78 (citing *Bacon*; *People ex rel. Sherwood v. State Board of Canvassers*, 29 N.E. 345 (N.Y. 1891); and *Davis v. Warde*, 155 Ga. 748 (1923)). As the Court explained:

The General Assembly, as canvassers of the election returns in this case, were subject to the general, if not indeed the universal, rule of law applicable to election canvassers. *That rule is that they are given no discretionary power except to determine if the returns are in proper form and executed by the proper officials and to pronounce the mathematical result, unless additional authority is expressed.* They can neither receive nor consider any extraneous information or evidence, but must look only to the contents of the election returns.

Id. at 877–78 (emphases added).

118. *Thompson*’s description of this non-discretion principle as near-universal was not an exaggeration. “By 1897, the ministerial, mandatory nature of certifying returns was so well-established that one leading treatise declared ‘[t]he doctrine that canvassing boards and return judges are ministerial officers possessing no discretionary or judicial power, is settled in nearly or quite all the states.’” Lauren Miller & Will Wilder, *Certification and Non-Discretion: A Guide to Protecting the 2024 Election*, 35 *Stanford Law & Policy Review* 1, 31 (2024) (quoting George W. McRary, *A Treatise on the American Law of Elections*, 153 § 229 (4th ed. 1897)).

119. This consensus makes sense: “[T]he risk that the certifying officers would seek to manipulate the results or otherwise abuse their power outweighed any thought that they could

play a helpful role in investigating elections.” Miller & Wilder at 30. Thus, courts across the country have expressly acknowledged that giving election officials the discretion to refuse certification would both threaten to disenfranchise voters and “*create[]* opportunities for election fraud” on the part of those officials. *Id.* at 29 (emphasis added).

COUNT I – DECLARATORY JUDGMENT THAT THE REASONABLE INQUIRY RULE IS INVALID

120. Petitioners reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 119 inclusive.

121. The provisions of the Georgia Administrative Procedure Act apply to SEB rulemaking. O.C.G.A §§ 50-13-1 *et seq.* One of those provisions, O.C.G.A. § 50-13-10(a), provides that “[t]he validity of any rule, waiver, or variance may be determined in an action for declaratory judgment when it is alleged that the rule, waiver, or variance or its threatened application interferes with or impairs the legal rights of the petitioner.”

122. “The test of the validity of an administrative rule is twofold: whether it is authorized by statute and whether it is reasonable.” *Black v. Bland Farms, LLC*, 332 Ga. App. 653, 662 (2015). Even when authorized, a rule is invalid if it “exceed[s] the scope of or [is] inconsistent with the authority of the statute upon which it is predicated.” *Id.* at 663.

123. Although the Reasonable Inquiry Rule at least in theory could be read not to conflict with Georgia statutes, by permitting only such “reasonable inquiry” as would not delay certification beyond the statutory deadline (much less prevent certification from happening at all), the drafter’s express purpose was quite different. To the extent the Reasonable Inquiry Rule is consistent with the expressed intent of its drafter—conferring on election superintendents the purported discretion to delay or refuse certification—it is invalid as beyond SEB’s statutory authority. Contrary to the assertions of the drafter of the Reasonable Inquiry Rule, SEB may not

confer election superintendents with discretion over certification when, as explained, Georgia statutes make certification mandatory.

124. Specifically, O.C.G.A. § 21-2-70 provides that:

Each superintendent within his or her county or municipality *shall* exercise all the powers granted to him or her by this chapter and *shall* perform all the duties imposed upon him or her by this chapter, which shall include the following ... (9) [t]o 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.

(emphasis added).

125. Similarly, O.C.G.A. § 21-2-493(a) provides (with emphasis added) that “[t]he superintendent *shall*, after the close of the polls on the day of a primary or election, ... publicly commence the computation and canvassing of the returns.” O.C.G.A. § 21-2-493(k) then states that “[t]he consolidated 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.” The place of certification within the detailed framework of the Georgia election code and the history of election certification in the state underscore the mandatory nature of these duties. Indeed, processes meant to address election irregularities are contingent on certification, and do not work without it.

126. And O.C.G.A. § 21-2-31—the provision SEB claimed authorized it to pass the Reasonable Inquiry Rule, *see* Ex. A at 4—empowers SEB to adopt only those “rules and regulations” that are “consistent with law.”

127. Petitioners therefore seek a declaration that: (a) O.C.G.A. §§ 21-2-70(9) and 21-2-493(k) set forth mandatory duties; (b) election superintendents must certify election results; (c) absent a court order to the contrary, the mandatory certification process must occur no later than 5:00 P.M. on November 12, 2024; and (d) to the extent the Reasonable Inquiry Rule confers discretion over certification to election superintendents that is inconsistent with these mandatory

duties (through the “reasonable inquiry” requirement or otherwise), it is invalid and exceeds SEB’s statutory authority.

128. Separately, the Reasonable Inquiry Rule is not authorized by statute because SEB did not meet the “basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules.” O.C.G.A. § 50-13-4(c).

129. Specifically, in adopting the Reasonable Inquiry Rule, SEB neither “issue[d] a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption,” nor “consider[ed] fully all written and oral submissions respecting the proposed rule.” O.C.G.A. § 50-13-4(a)(2).

130. Because “[n]o rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance” with the foregoing requirements, the Reasonable Inquiry Rule is invalid. O.C.G.A. § 50-13-4(d).

131. “In cases of actual controversy,” this Court has the authority “to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed.” O.C.G.A. § 9-4-2(a). The Court may also issue a declaratory judgment “in any civil case in which it appears to the court that the ends of justice require that the declaration should be made.” *Id.* § 9-4-2(b). The Court’s declaration in either circumstance “shall have the force and effect of a final judgment or decree.” *Id.* § 9-4-2(a), (b).

132. Declaratory judgments “give additional protection to persons who may become involved in an actual justiciable controversy, in that they differ between themselves as to what their rights are, and who wish to find them out before taking some dangerous step which might or might not be authorized.” *Floam*, 319 Ga. at 96.

133. Petitioners face injury from the Reasonable Inquiry Rule, and require relief to avoid the confusion and disorder that has been and will continue to be caused by the rule’s “reasonable inquiry” requirement.

**COUNT II – DECLARATORY JUDGMENT THAT
THE EXAMINATION RULE IS INVALID**

134. Petitioners reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 133 inclusive.

135. Although the Examination Rule theoretically could be read not to conflict with Georgia statutes, by permitting only such “examinations” as would not delay certification beyond the statutory deadline (much less prevent certification from happening at all), that is not the meaning the drafter intended. And to the extent the Examination Rule confers discretion on election superintendents to delay or refuse certification—as its drafter stated the rule was meant to do—it is not authorized by statute. SEB cannot confer such discretion when, as explained, Georgia statutes make certification mandatory.

136. Petitioners therefore seek a declaration that: (a) O.C.G.A. §§ 21-2-70(9) and 21-2-493(k) set forth mandatory duties; (b) election superintendents must certify election results; (c) absent a court order to the contrary, the mandatory certification process must occur no later than 5:00 P.M. on November 12, 2024; and (d) to the extent the Examination Rule confers discretion to delay or refuse certification to election superintendents that is inconsistent with these mandatory duties (by permitting board members “to examine all election related documentation” or otherwise), it is invalid and exceeds SEB’s statutory authority.

137. Separately, the Examination Rule is not authorized by statute because SEB neither “issue[d] a concise statement of the principal reasons for and against its adoption and incorporate

therein its reason for overruling the consideration urged against its adoption,” nor “consider[ed] fully all written and oral submissions respecting the proposed rule.” O.C.G.A. § 50-13-4(a)(2).

138. Petitioners face injury from the Examination Rule, and require relief to avoid the confusion, disorder, and burdens that have been and will continue to be caused by the rule.

* * *

PRAYER FOR RELIEF

WHEREFORE, petitioners respectfully request that the Court:

- (1) Declare that O.C.G.A. §§ 21-2-70(9) and 21-2-493(k) make the certification of election results a mandatory duty;
- (2) Declare that O.C.G.A. §§ 21-2-70(9) and 21-2-493(k) do not grant election superintendents discretion to delay certification of election results or not to certify at all;
- (3) Declare that, absent a valid judicial order to the contrary, election superintendents must certify the results of the November 5, 2024 election no later than 5:00 P.M. on November 12, 2024;
- (4) Declare that the Rules must each be construed consistent with these mandatory certification obligations, and to the extent either confers discretion otherwise, it is an invalid and unlawful exercise of SEB’s authority;
- (5) Declare that, to the extent either the Reasonable Inquiry or Examination Rule fails to comply with the Georgia Administrative Procedure Act, it is an invalid and unlawful exercise of SEB’s authority;
- (6) To the extent either the Reasonable Inquiry or Examination Rule is inconsistent with these mandatory certification obligations or procedurally deficient, enter a permanent injunction against the enforcement of the rules; and
- (7) Grant any other relief the Court deems necessary or proper.

Respectfully submitted this 26th day of August, 2024.

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*Attorneys for the Democratic
National Committee*

* *Pro hac vice application forthcoming*

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

VASU ABHIRAMAN, TERESA K. CRAW-
FORD, LORETTA MIRANDOLA, JEN-
NIFER MOSBACHER, ANITA TUCKER,
ESSENCE JOHNSON, LAUREN WAITS,
SUZANNE WAKEFIELD, MICHELLE AU,
JASMINE CLARK, DEMOCRATIC NA-
TIONAL COMMITTEE, and DEMOCRATIC
PARTY OF GEORGIA, INC.,

Petitioners,

v.

STATE ELECTION BOARD,

Respondent.

Civil Case No. 24CV010786

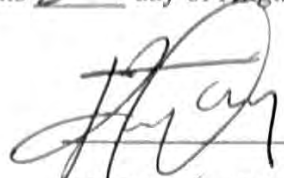
VERIFICATION OF PETITION FOR DECLARATORY RELIEF

Comes now Kevin Olasanoye, who states as follows:

1. I am over the age of 18 and competent to provide this verification.
2. I am the Executive Director of the Democratic Party of Georgia, Inc., a Petitioner in this action.
3. I have authorized the filing of the foregoing Petition for Declaratory Relief on behalf of the Democratic Party of Georgia, Inc.
4. I have reviewed the foregoing Petition for Declaratory Relief, and to the best of my knowledge and belief, all the factual allegations contained therein are true and correct.

[Signatures appear on the following page]

This 21st day of August, 2024.



KEVIN OLASANOYE
Executive Director
Democratic Party of Georgia, Inc.

Sworn to me and subscribed before me,
this 21 day of August, 2024.



NOTARY PUBLIC
My commission expires:

VERIFIED PETITION FOR DECLARATORY RELIEF

INDEX OF EXHIBITS

Exhibit	Description
Exhibit A	State Election Board - Notice of Proposed Rulemaking - 183-1-12-.02, dated July 3, 2024
Exhibit B	State Election Board - Notice of Proposed Rulemaking - 183-1-12-.12, dated July 18, 2024
Exhibit C	Michael Heekin Rule Petition, dated March 26, 2024
Exhibit D	Democratic Party of Georgia's Comment Letter Regarding Notice of Rulemaking to Amend Subject 183-1-12-.12, dated August 5, 2024 ¹
Exhibit E	Salleigh Grubbs Rule Petition, dated June 17, 2024
Exhibit F	Democratic Party of Georgia's Comment Letter Regarding Notice of Rulemaking to Amend Subject 183-1-12-.12, dated August 17, 2024

¹ Exhibit D has been divided into two parts in order to comply with the Court's e-filing system's requirements.