

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

VASU ABHIRAMAN, TERESA K.  
CRAWFORD, LORETTA MIRANDOLA,  
JENNIFER MOSBACHER, ANITA  
TUCKER, ESSENCE JOHNSON, LAUREN  
WAITS, SUZANNE WAKEFIELD,  
MICHELLE AU, JASMINE CLARK,  
DEMOCRATIC NATIONAL COMMITTEE,  
and DEMOCRATIC PARTY OF GEORGIA,  
INC.,

Petitioners,

v.

STATE ELECTION BOARD,

Respondent.

Civil Case No. 24CV010786

**BRIEF OF AMICI CURIAE  
GEORGIA FIRST, INC. AND THE LINCOLN PROJECT IN SUPPORT OF  
PETITIONERS' VERIFIED PETITION FOR DECLARATORY RELIEF**

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## INTRODUCTION

*“Democracy means the rule of law, a system of checks and balances that limits the power of . . . state [actors] and protects the rights of individual citizens. It means regular elections contested by different parties presenting competing programs for the people’s choice and mandate.”*

— President Ronald Reagan<sup>1</sup>

Good government is not a partisan issue. A government of the people must be both driven and constrained by the rule of law. Responsible, limited government must be based on rational decision-making, not conspiracies, and provide clear rules that foster stability, restrict the conduct of government officials, and provide predictable, uniform effects on citizens—regardless of where a person lives, what he believes, or how he votes. Honoring these principles is essential to the protection of freedom and preservation of public trust in the system that has served this country well for more than 200 years. And there is perhaps no sphere of government action for which scrupulous adherence to the rule of law and basic principles of sound governance is more vital than the administration of elections to choose the leaders who make and enforce our laws.

The rules that Petitioners challenge in this case undermine all of these values. These rules are unworkable for local election workers and officials—the people who do the hard work of administering elections—as reflected in the scores of comments provided to the State Election Board (“SEB”) from across Georgia. The rules impose crushing obligations, contain virtually no standards, and conflict with rules laid down by Georgia’s legislature and courts for more than a century. That they were imposed by unelected bureaucrats just weeks before a national

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<sup>1</sup> Written Responses of President Ronald Reagan to Questions Submitted by the Soviet Newspaper Izvestiya, *available at* <https://www.reaganlibrary.gov/archives/speech/written-responses-questions-submitted-soviet-newspaper-izvestiya>.

presidential election magnifies the draconian burdens they impose on local officials. Indeed, the substance, timing, and context in which these rules were passed all support the conclusion that—far from promoting the rule of law—they were designed to generate chaos, sow doubt in our democratic institutions, and destabilize the conduct of Georgia’s elections to permit radicals to subvert the will of the people.

Though our partisan affiliations may differ from the Petitioners, *Amici Curiae* Georgia First, Inc. and The Lincoln Project stand with the Petitioners in asking the Court to strike down the rules promulgated by the SEB that are challenged in this case.

#### **STATEMENT OF INTERESTS OF AMICI CURIAE**

*Amicus Curiae* Georgia First, Inc. (“Georgia First”) is a Georgia-grown, nonpartisan organization committed to ensuring that Georgians enjoy—among other things—fair, secure elections unimpeded by partisan politics and gamesmanship. Georgia First’s Board of Directors is studiously bipartisan. Its founder and Executive Director, Natalie Crawford, is a lifelong Republican and was formerly Chairwoman of the Habersham County Board of County Commissioners, where she served as county commissioner for eight years. In that role, Ms. Crawford had responsibilities in the funding and oversight of county election operations, so she has particular familiarity with the challenges local election officials face as a result of the rules challenged in this case. Georgia First has an interest in preserving the integrity and stability of Georgia’s electoral system and preventing actions that undermine the public’s trust in that system, like those at issue in this litigation.

The Lincoln Project is an organization comprised of Republicans and American conservatives dedicated to ensuring the integrity of both the electoral process and that of the candidates and officeholders voters choose in those elections. The organization has submitted

amicus briefs in cases involving the administration of elections—and attempted partisan interference with the administration of elections—in states across the country. The Lincoln Project has an interest in this case in protecting the voting rights of Georgians, including those who support the organization, from the risks posed by conspiracy-driven, standardless rules that invite chaos, uncertainty, and partisan meddling in the process of gathering and counting votes.

## **BACKGROUND**

In the last month and a half, the Georgia SEB—or, more accurately, three members of the SEB—have adopted a raft of new election rules that radically change how votes are cast, counted, and certified in the State of Georgia. Chiefly at issue in this case are two rules that became effective only this month.

The first mandates that county boards of elections may only certify election results after a “reasonable inquiry . . . that the results are a true and accurate accounting of all votes cast in that election.” New SEB Rule 183-1-12-.02(c.2) (the “Reasonable Inquiry” Rule). The term “reasonable inquiry” is glaringly undefined, as multiple commenters explained to the SEB before it adopted the new rule. That term also appears nowhere in Georgia’s Election Code. *See* O.C.G.A. § 21-2-493 (defining counties’ certification obligations). And the rule’s implication that county election officials have discretion to *not* certify election results also contradicts at least a century of settled Georgia law that “[t]he duties of the managers or superintendents of election . . . are purely ministerial.” *Bacon v. Black*, 133 S.E. 251, 253 (Ga. 1926).

The second rule obligates county boards to make available to any individual board member “all election related documentation created during the conduct of elections prior to certification of results.” New SEB Rule 183-1-12-.12(1)(6) (the “All Documentation” Rule). Again, the term “all election related documentation” is left entirely undefined, and could

conceivably include mountains of documents not even in the possession of county boards. Again, nothing in the Election Code contemplates anything like this—to the contrary, the statute expressly enumerates the limited universe of documents county board members are to be provided before certification. *See, e.g.*, O.C.G.A. § 21-2-70(9). And again, nothing in the century-plus of caselaw relating to election certification suggests that each individual county election board member has a right or obligation to review an unbounded universe of documents before performing his ministerial duty to certify election results.

Importantly, both rules exceed the SEB’s authority. The General Assembly has only delegated to the SEB authority to “promulgate rules and regulations so as to obtain uniformity” and promote “consisten[cy]” that are “conducive to the fair, legal, and orderly conduct” of elections. O.C.G.A. § 21-2-31. Neither of these rules promotes any of these purposes.

Most troublingly for the local government officials tasked with implementing these undefined, seemingly boundless new rules, the rules challenged here are but two of more than a dozen significant rule changes that SEB has implemented with less than 90 days left before the 2024 Presidential Election. Indeed, the SEB adopted new, far-reaching rules as late as last week. This fleet of new rules on the eve of an election imposes significant administrative hardships on the local government officials who administer elections, undermines public confidence in our election systems, and poses a very real risk of creating chaos in the aftermath of the election that could jeopardize the votes of thousands, if not tens of thousands, of Georgia voters.

## **ARGUMENT AND CITATION OF AUTHORITIES**

### **I. The challenged rules impose insurmountable burdens on local election officials.**

The SEB’s rules impose duties on election officials that are virtually impossible to satisfy, that will guarantee disuniformity, and that seem designed to undermine public confidence in those officials’ performance of their vital roles.



Take the Reasonable Inquiry rule. That regulation provides no guidance to county election officials about what a “reasonable inquiry” would entail. County board members are left to guess at what they must do in the mere six days between election day and when, by law, they are required to certify election returns. *See* O.C.G.A. § 21-2-493(k). Those inquiries will almost certainly vary from county to county and official to official. The rule gives no guidance to voters either. The inevitable variation in how any “reasonable inquiry” is performed—coupled with voters’ invariably differing conceptions of what inquiry is appropriate—is virtually certain to sow mistrust of both hardworking county election officials and of the election results, regardless of the outcome of the elections. Indeed, for the SEB members who voted for these rules, that appears to have been the point.

The same is true of the “All Documentation” Rule. It is likely actually impossible for county boards to gather and disseminate to each individual member “all election related documentation” in the six days between election day and certification, at least if those words have their ordinary, breathtakingly broad meaning. Yet anything short of everything under the sun will likely result in some voters (and potentially some individual board members) crying foul. Thus, like the Reasonable Inquiry Rule, the All Documentation Rule imposes incredible burdens on local election officials that seem tailor-made to sabotage officials’ ability to perform their jobs and maintain the public trust.

As the Georgia Association of Voter Registration and Election Officials explained in its press release shortly after these rules were adopted, “[g]iven the proximity of the election, introducing new rules at this stage would create unnecessary confusion among both the public and the dedicated poll workers and election officials who are critical to ensuring a smooth and efficient voting process.” *See* Ex. A (August 21, 2024 Press Release from GAVREO). Local

election officials in Georgia are “already in the midst of extensive training preparation for our poll workers and preparing for one of the biggest and most scrutinized elections in years,” and “last-minute changes to the rules risk undermining the public’s trust in the electoral process and place undue pressure on the individuals responsible for managing the polls and administering the election. This could ultimately lead to errors or delays in voting, which is the last thing anyone wants.” *Id.*

These concerns were echoed in comments made by more than a dozen local election workers and officials to the SEB before it adopted these rules. Those public servants—the boots on the ground tasked with implementing these rules—noted that the proposed rules were “far too vague and overbroad” to be workable, would “lead to inconsistencies in how election results are certified,” and would “harm . . . voters” by creating a patchwork of potential delays in the certification of election results. “[T]he vagueness” of the rules, they warned, would “put . . . all . . . County Election Boards in jeopardy of violating the law.” Moreover, “a single board member [could] derail the certification process by bogging down . . . election professionals with burdensome reporting requests and inquiries.” Many worried that county boards simply “do not have the resources in our Elections office to generate the additional materials and be able to certify the election on time.” And they observed—correctly—that there was “already a judicial process in place to handle discrepancies and errors if they occur,” meaning that in addition to creating serious risks of delay, confusion, and partisan gamesmanship, the rule changes were also entirely unnecessary.

As Georgia First’s Executive Director Natalie Crawford—formerly a local official with election-oversight responsibilities—explained in her recent comments to the SEB, “mandating a vague, undefined, inquiry into election results before county election boards can even certify

risk[s] unnecessary certification delays across all parties and all races.” These and other “onerous new restrictions” on county election boards, Ms. Crawford warned, would “sow chaos and dramatically undermine trust in our democratic institutions.” Unfortunately, however—as Ms. Crawford observed—that appears to be the “hyperpartisan” point of the SEB’s recent flurry of “ill-informed, conspiracy-theory-fueled rulemaking.”

The rules challenged in this action impose burdens on local Georgia election officials that will seriously impede their abilities to perform their vital roles and undermine the public trust in their work and the results of elections across this state. Those rules should be declared invalid.

**II. The rules usurp the authority of the legislature and Secretary of State and are administratively unworkable, especially given the short time left before the election.**

Practically speaking, these rules are also virtually certain to be administered in a way that will cause differential treatment of the votes cast by Georgia citizens in different parts of the state. That is particularly true given that SEB has provided virtually no guidance for how the rules should be implemented—but has instead dropped multiple, vague, unfunded mandates on local election officials with just weeks to go before a major election. As the Supreme Court explained in the wake of another hotly contested election more than two decades ago: “[T]he State may not, by . . . arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). But that is precisely what these rules are likely to do.

The authority Georgia’s legislature granted to SEB to promulgate rules is narrowly circumscribed. SEB may only adopt regulations “so as to obtain uniformity in the practices and proceedings of” local election boards and “as will be conducive to the fair, legal, and orderly conduct of primaries and elections . . . .” O.C.G.A. § 21-2-31(1)–(2). But SEB’s new rules will

invariably result in *disuniformity* and *disorder*. Local officials have been given no guidance on how to conduct the undefined, inherently subjective “reasonable inquiry” the SEB has set as a prerequisite to certification. Nor is there any guidance on how—as a practical matter—local boards could possibly provide “all election related documentation” to each individual board member as a prerequisite to certification. These rules will be interpreted differently by different local officials who will implement them in different ways. As a result, the election process will vary impermissibly from county to county—indeed, from board member to board member.

Dramatically aggravating these problems, SEB implemented these rules—and is *still* changing the rules—with just weeks to go before an election. As both the Eleventh Circuit and Supreme Court Justices have recently explained: “When an election is close at hand, the rules of the road should be clear and settled.” *Grace, Inc. v. City of Miami*, No. 23-12472, 2023 WL 5286232, at \*1 (11th Cir. Aug. 4, 2023) (quoting *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring)). Changing the rules at the last minute generates “voter confusion [and] election administrator confusion” and undermines “the [State’s] interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.” *Id.* (quoting *Democratic Nat’l Comm.*, 141 S. Ct. at 31).

If each individual county election board member has a freewheeling right to “all election documentation” he sees fit to conduct an undefined “reasonable inquiry” before certifying, it seems virtually certain (i) to introduce delay into the electoral process and (ii) to result in at least some officials—perhaps even entire counties—refusing to certify election results. Especially in the hyper-partisan climate that these rules were promulgated in, it also seems highly likely that these standardless rules will encourage further partisan gamesmanship in the vote collecting,

counting, and certification processes. These factors will magnify, not mollify, the public mistrust the rules were ostensibly designed to address.

In short, these rules violate the core constitutional prohibition on arbitrary, disparate treatment articulated by the Supreme Court in *Bush v. Gore*. They also plainly exceed the limited rulemaking authority granted to SEB in O.C.G.A. § 21-2-31, violating separation of powers principles and invading the province of both the General Assembly and the Secretary of State. Indeed, the Secretary of State’s office recently took the unusual step of sending a letter to the SEB, explaining to the board that it “lack[ed] the legal authority” under statute to take actions it was taking and explaining how its rulemaking “interfer[ed] with the Secretary’s legal authority.” Ex. B (September 16, 2024 Letter from the Secretary of State).<sup>2</sup> “[L]ast-minute changes to election procedures,” the Secretary’s office urged, “harm both voters and elections officials in the orderly administration of an election.” *Id.* Georgia’s legislature did not give the unelected bureaucrats on the SEB freewheeling authority to create entirely new requirements and burdens in the conduct of elections in Georgia.

Indeed, the SEB itself appeared to concede as much in May of this year, rejecting a rule virtually identical to the Reasonable Inquiry rule as “counter to both . . . federal and . . . state law,” before it reversed course and passed the rules challenged here even closer to the election.<sup>3</sup> The SEB was right the first time. Its rules are so vague and standardless that they cannot be constitutionally implemented, they exceed its rulemaking authority, and they invade ground reserved for the people’s elected representatives in the legislative and executive branches.

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<sup>2</sup> While the Secretary was directly addressing different recent rule changes in this portion of its letter, the same principles apply to the rules challenged here.

<sup>3</sup> Doug Bock Clark, *Officials Voted Down a Controversial Georgia Election Rule, Saying It Violated the Law. Then a Similar Version Passed.*, ProPublica (Aug. 27, 2024), available at <https://www.propublica.org/article/georgia-election-rule-violates-state-law-experts-say>

### III. Good government is not a partisan value.

In addition to being SEB’s statutory mandate, the conduct of elections in an “orderly,” “uniform” manner to protect the votes of citizens should be a shared value. Regardless of political affiliation, public servants—including the SEB’s members—should act for sound policy and the public good. But good governance is self-evidently *not* what has motivated the SEB.

A coalition of Republican, conservative, and independent former officials—including lawyers who served the administrations of multiple former Republican presidents—expressed the same concerns in letters to Governor Kemp, Attorney General Carr, and Secretary of State Raffensperger. *See* Ex. C (September 5, 2024 Letter) and Ex. D (September 24, 2024 Letter). This coalition of distinguished leaders explained that the actions taken by the three SEB members who rammed through the rules challenged here “raise[] the most profound ethic[al] and legal concerns.” Ex. D at 1. And their actions “call into serious question their nonpartisanship and commitment to the public interest and to the law.” Ex. C at 1. Indeed, one board member appeared at a rally for Donald Trump just days before working with the other two to push these rules through. *Id.* at 2. At that rally, candidate Trump called the three SEB members who voted for this rule his “‘pit bulls’ fighting for ‘victory,’” and the member in attendance stood up and waved to the crowd. *Id.*<sup>4</sup> As these leaders explained in their letter to Georgia’s top officials, the SEB members who voted in favor of these rules have “compromised the impartiality of the

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<sup>4</sup> *See also* Eric Mansfield and Aysha Bachi, *Trump says GA Election Board members are 'pit bulls' for 'victory,' but is that their job?*, Aug 5, 2024, USA Today, available at <https://www.usatoday.com/story/news/politics/elections/2024/08/05/trump-praises-georgia-election-board/74674946007/>; Greg Bluestein, Tia Mitchell, Patricia Murphy and Adam Van Brimmer, *Georgia election officials weigh voting rule changes feted by Trump*, Aug. 6, 2024, Atlanta Journal-Constitution, available at <https://www.ajc.com/politics/politically-georgia/politically-georgia-state-election-officials-weighing-voting-rule-changes-feted-by-trump/TQJE2MM7UBE5ZICC2WH3AJUPSA/>.

Board.” Ex. D at 1. “[I]n order to safeguard our Republic,” they wrote, “states must maintain public trust in the integrity of our elections by tallying votes and certifying election results without partisan influence.” *Id.* They therefore urged the Governor “to address the conduct of these three Election Board members and reverse the unlawful actions” they have taken. *Id.* at 3.

The fact that partisan political goals appear to be driving the seismic shifts in election rules the agency has promulgated in the last several weeks are likely to magnify, not mollify, the public mistrust the rules were ostensibly designed to address. Yet despite the partisan character of the rules, the harms they will cause if not stricken are likely to fall at least as heavily on counties that have historically voted for conservatives. If past experience in other states is any indication, officials from Republican-leaning counties are the most likely to delay or refuse to certify election results. As examples, officials in Cochise County, Arizona, Otero County, New Mexico, and Esmeralda County in Nevada (among other jurisdictions) each delayed or otherwise interfered with certification of election results in 2022.<sup>5</sup> Each county voted overwhelmingly in favor of candidate Donald Trump in the 2020 election.<sup>6</sup>

Regardless of the voting habits of the voters most likely to be disenfranchised by the rules at issue in this case, however, the fact remains that these rules were rushed through despite grave constitutional, legal, and practical concerns by officials brazenly flaunting their partisan

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<sup>5</sup> See Citizens for Responsibility and Ethics in Washington, *Election Certification Under Threat*, at 9–11, 49–50, 60–62 available at <https://www.citizensforethics.org/wp-content/uploads/2024/08/ElectionCertificationUnderThreat-2.pdf>

<sup>6</sup> See Cochise County, Arizona, Summary Official Results, at 2, available at <https://www.cochise.az.gov/DocumentCenter/View/660/Summary-Results-PDF>; Statewide Summary – Canvass of Returns of General Election Held on November 3, 2020 – State of New Mexico, at 1, available at <https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/ee3072ab0d43456cb15a51f7d82c77a2/87200f3f-4220-4a04-9a95-071003ff13d8/2020%20General%20Election%20Results%20Statewide%20Summary.PDF>; Esmeralda County Election Results – 2020, available at <https://www.nvsos.gov/silverstate2020gen/county-results/esmeralda.shtml>.

motivations. To maintain public trust in the system of government those elections populate, the ground rules our local officials follow for elections must be above reproach. The rules at issue here are not. They do not promote the public good, they are not sound policy, and they will not foster trust in elections. To the contrary, they appear designed to further a false narrative of voting fraud propounded for partisan reasons by one candidate (and the SEB members who voted in favor of them). These rules are unwise, unlawful, and should be stricken.

### CONCLUSION

For these reasons, *Amici Curiae* Georgia First and The Lincoln Project respectfully urge the Court to strike down the rules challenged in this action by Petitioners.

Respectfully submitted this 26th day of September, 2024.

*/s/ T. Brandon Waddell*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, I caused a true and correct copy of the within and foregoing to be filed with the Clerk of Court using the eFileGA system, which will serve a true and correct copy of the same upon all counsel of record.

This 26th day of September, 2024.

*/s/ T. Brandon Waddell*  
T. Brandon Waddell  
Georgia Bar No. 252639

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# **Exhibit A**

# GEORGIA ASSOCIATION OF VOTER REGISTRATION AND ELECTION OFFICIALS



**FOR IMMEDIATE RELEASE**

## **GAVREO Calls on State Elections Board to Pause Future Rule Changes Ahead of Presidential Election**

**[Georgia, August 21, 2024]** – With less than 77 days until the Presidential Election, the Georgia Association of Voter Registration and Election Officials (GAVREO) is urging the State Election Board (SEB) to halt the implementation of additional SEB election rules that would go into effect for the upcoming election. GAVREO members are gravely concerned that dramatic changes at this stage will disrupt the preparation and training processes already in motion for poll workers, absentee voting, advance voting and Election Day preparation.

Given the proximity of the election, introducing new rules at this stage would create unnecessary confusion among both the public and the dedicated poll workers and election officials who are critical to ensuring a smooth and efficient voting process.

"We are already in the midst of extensive training preparation for our poll workers and preparing for one of the biggest and most scrutinized elections in years," said W. Travis Doss, Jr., President of GAVREO. "Any last-minute changes to the rules risk undermining the public's trust in the electoral process and place undue pressure on the individuals responsible for managing the polls and administering the election. This could ultimately lead to errors or delays in voting, which is the last thing anyone wants."

In a time when maintaining public confidence in elections is more important than ever, making changes so close to Election Day only serves to heighten concerns and fears among voters. GAVREO believes that maintaining stability in the rules governing the elections process is essential for ensuring a fair and orderly process.

"We urge the State Election Board to seriously consider the impact of further rule changes and to prioritize the integrity and smooth operation of the upcoming election. Our poll workers, election administrators and voters deserve clarity and consistency in the rules that will guide this critical process," added Mr. Doss.

For more information, please contact GAVREO, [tdoss@augustaga.gov](mailto:tdoss@augustaga.gov) or 706-821-2872.

### **About GAVREO**

\*\*\*\*The Georgia Association of Voter Registration and Election Officials (GAVREO) was established in 2019 and was constituted from the merging of the Voter Registrars Association of Georgia (VRAG) and the Georgia Election Officials Association (GEOA). Members consist of Active Election Superintendents, Election Supervisors/Directors, the County Board of Registrars, Deputy Registrars, County Election Board Members, Combined County Voter Registration and Election Board Members, and other full-time and part-time voter registration and elections staff and currently has over 500 members statewide. Many of our members have over 30 years of experience in elections administration. \*\*\*\*

# **Exhibit B**



## Office of the Secretary of State

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September 16, 2024

Mr. John Fervier  
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Mr. Chairman,

This letter is in response to your request for comment from the Secretary's office on the 11 proposed new rules and 2 petitions on the agenda for the next State Election Board meeting on September 20, 2024. We have received an overwhelming number of comments from county election officials expressing concern about the Board changing Georgia's election rules and procedures with the General Election only 50 days away.

The Board should be mindful of upcoming deadlines. The deadline for counties to mail UOCAVA ballots is **September 21** and counties will begin mailing absentee ballots on **October 7**. Advanced voting starts on **October 15** and counties are conducting preparations for in-person voting such as logic & accuracy testing. The earliest possible date new rules could take effect if passed is **October 14**, which is **22 days** before the General Election when ***Georgia voters will already be voting***.

It is far too late in the election process for counties to implement new rules and procedures, and many poll workers have already completed their required training. If the Board believes that rules changes are important for an election, the process should begin much sooner to allow for smooth implementation and training and include the input of election officials.

To underscore the absurdity of the timing of the Board's actions, the amendment to Rule 183-1-12-.01 would change the form of absentee/provisional/emergency ballots, which have ***already been printed***, and counties will have already begun mailing absentee ballots to voters before any rule change would take effect. It is simply impossible to implement this change for 2024. And even if it were, the Board lacks the legal authority to pass this rule because the form of the ballot is exclusively within the control of the Secretary of State under Georgia law. O.C.G.A. § 21-2-50(a)(1), (15).

The two petitions under consideration would similarly interfere with the Secretary's legal authority. The proposed amendments to Rule 183-1-12-.19 interfere with the Secretary of State's exclusive authority over the state's voter registration database and conflict with the provisions of O.C.G.A. § 21-2-110, § 21-2-111, and § 21-2-225.

The most concerning rules under consideration would require hand-counting of ballots for every day of advance voting (Rule 183-1-14-.02(8)) and on Election Day (Rule 183-1-12-.12(a)(5)). As election officials have repeatedly told the Board, these new procedures would require tremendous personnel resources and time, and could lead to significant delays in reporting. These new procedures would disrupt existing chain of custody protocols under the law and needlessly introduce the risk of error, lost ballots, or fraud. Election workers are prohibited from tabulating ballots before the close of the polls on Election Day, which would be compromised by the viewing and counting of ballots during advance voting. There are strict legal prohibitions against the tabulation and reporting of results during early processing of absentee by mail ballots. O.C.G.A. § 21-2-386. There are no similar security and ballot secrecy controls in the proposed amendment to Rule 183-1-14-.02(8).

Other rules such as expanded poll watcher access and posting of certain reports on county websites are not objectionable, but we share the concerns of counties that there is insufficient time to implement and train elections workers on new policies now that they have already been trained. The General Assembly recently expanded poll watcher access with our support this past session with the passage of H.B. 1207. And the Elections Division already provides the absentee voter file and other data on the Secretary's website.

The U.S. Supreme Court's *Purcell* principle cautions that last-minute changes to election procedures harm both voters and elections officials in the orderly administration of an election. As Justice Kavanaugh wrote, it is a "bedrock tenet of election law" that "[w]hen an election is close at hand, the rules of the road must be clear and settled" to avoid "unfair consequences for candidates, political parties, and voters." *Merrill v. Milligan*, 142 S. Ct. 879 (2022).

The Secretary's office would welcome the opportunity to return to the normal course of business of working with the Board and GAVREO on common-sense rules that benefit voters and are consistent with law, after the election. But for now, the Board should heed the words of Justice Kavanaugh and pause any further rulemaking to ensure that the rules are "clear and settled" and avoid "unfair consequences" in the 2024 General Election.

Sincerely,

*Charlene S. McGowan*

General Counsel

# **Exhibit C**

September 5, 2024

Governor Brian P. Kemp  
206 Washington Street  
Suite 203, State Capitol  
Atlanta, GA 30334

Dear Governor Kemp:

We are a group of Republican, conservative, and independent lawyers or former elected officials. Many of us have served at the highest levels of federal and state government in Republican-led administrations. Also joining us are leaders from Georgia First, a Georgia-based, advocacy nonprofit committed to standing as a voice above the fray on democracy and elections.

Despite our diverse professional backgrounds, all of us believe that the continuation of our Republic requires that States tally votes and certify election results without partisan influence. Democracy presumes an electoral process whose mechanisms do not inherently favor any particular candidate or political party. We know you feel similarly and that you upheld these principles without regard to outside influence when you certified the 2020 presidential election even though your preferred candidate lost. It is imperative that state officials act as the stewards of the public trust and put the public interest before their partisan affiliations.

We therefore write to you (in your official capacity) to request that you act on the [ethics complaints](#) against State Election Board members Rick Jeffares, Janice Johnston and Janelle King, including those filed by former Fulton County Board of Registration and Elections [Chair Cathy Woolard](#). Those members have allegedly acted in ways that call into serious question their nonpartisanship and commitment to the public interest and to the law. Whatever their purported motives, their alleged activities—if found to be true pursuant to O.C.G.A. § 45-10-4—require their removal from the State Election Board. It is untenable to have members of the State Election Board take sides prior to the election to favor one candidate.

The allegations in the ethics complaints, which are supported by publicly available sources, are that Mr. Jeffares, Mrs. King, and Dr. Johnston have repeatedly acted in violation of their legal duties over the last two months. On July 12, 2024, for example, they reportedly [held an official board meeting with minimal notice, no posted agenda, and no livestream options](#). They did this [despite guidance from the Attorney General's office](#) that the meeting could violate the Georgia Open Meetings Act. At this meeting, these three members alone [passed](#) two controversial



and legally questionable election rules. The other two Election Board members were [not even in attendance](#).

Less than a month later, on August 7, 2024, Mr. Jeffares, Mrs. King, and Dr. Johnston [reopened a complaint](#) about alleged voting irregularities in Fulton County during the 2020 election. They did this despite again receiving guidance from the Attorney General's office that their proposed course of action was improper because the complaint had already been fully resolved. And, as you know well, investigation after investigation has found no evidence of any supposed voting irregularities that could have changed the outcome of the 2020 election. Dr. Johnston tried to justify reopening the complaint by citing a [letter from outside legal counsel](#), [reported](#) to be a lawyer for the Georgia Republican Party, that she claimed supported her position. But this too may have violated Georgia law, as only the Attorney General can [authorize](#) the retention of outside legal counsel by the Election Board. This process appears to have been both unlawful and overtly partisan in character.

These alleged ethical failures are only compounded by these Board Members' open public support of Donald Trump's campaign. Indeed, President Trump mentioned all three by name at his August 3 Atlanta rally, calling them ["pit bulls" fighting for "victory."](#) Dr. Johnston had a seat at the front of the rally and [stood up to wave to the crowd while President Trump thanked her](#) and the crowd applauded. Mrs. King did not attend the rally but later said in an interview that she was "always grateful" for President Trump's "encouragement and support." And Mr. Jeffares told the Guardian newspaper that he [pitched a role for himself](#) in a future Trump administration to a former Trump campaign adviser. All three of these Board Members have also reportedly openly coordinated with the Republican Party, including communicating about the proposed rules [with Georgia Republican Party Chair Josh McKoon](#) in advance of the July 12 meeting. This overtly partisan behavior calls into question the State Election Board's ability to oversee elections in a fair and unbiased manner and to maintain public confidence in the process.

The State Election Board is entrusted with the vital responsibility of assuring ["fair, legal and orderly elections"](#) in Georgia. No reasonable observer could conclude that these three people are upholding that duty, according to the complaints. That is why we urge you to take immediate action to restore faith in the democratic process.

Specifically, we call on you to act on the ethics complaints and to immediately comply, pursuant to your powers, with the procedures required by O.C.G.A. § 45-10-4 (which states that the Governor or his designated agent "shall conduct a

hearing for the purpose of receiving evidence” upon the filing with the Governor of formal charges that a government board member violated the statutory code of ethics). If the ethical charges against any of the three board members are found to be true, § 45-10-4 requires that “the Governor shall forthwith remove such member from office . . .” Mr. Jeffares, Mrs. King, and Drs. Johnston have allegedly wounded the electoral process by flouting the law. Safe and accessible elections benefit all Georgians—regardless of their political party.

Sincerely,

Donald Ayer, Deputy Attorney General under President George H.W. Bush (1989-1990)

Arne Carlson, Governor of Minnesota (R) (1991-1999)

Ty Cobb, Special Counsel to President Donald J. Trump (2017-2018)

Tom Coleman, Representative of the Sixth Congressional District of Missouri (R) (1976-1993)

Natalie Crawford, Executive Director of Georgia First, former vice-chair and chair of the Habersham County Commission (R) (2015-2020)

Mickey Edwards, Representative of the Fifth Congressional District of Oklahoma (R) (1977-1993)

Shannon Ferguson, Senior Policy Analyst and Strategic Communications Director at Georgia First

Stuart Gerson, Assistant Attorney General for the Civil Division under President George H. W. Bush and President Bill Clinton (1989–1993); Acting Attorney General (1993)

Phil Lacovara, Counsel to the Special Prosecutor, Watergate Special Prosecutor’s Office (1973-1974); Deputy Solicitor General under President Richard Nixon (1972-1973)

Richard Painter, Associate Counsel to President George W. Bush (2005-2007)

Carter Phillips, Assistant to the Solicitor General under President Ronald Reagan (1981-1984)

Trevor Potter, Chairman of the United States Federal Election Commission (1992-1995)

Reid Ribble, Representative of the 8th Congressional District of Minnesota (R) (2011-2017)

Claudine Schneider, Representative of the 2nd Congressional District of Rhode Island (R) (1981-1991)

Nancy Temple, Partner at Katten & Temple LLP

Zachary Wamp, Representative of the 3rd Congressional District of Tennessee (R) (1995-2011)

# **Exhibit D**

September 24, 2024

Governor Brian P. Kemp  
206 Washington Street  
Suite 203, State Capitol  
Atlanta, GA 30334

Attorney General Chris Carr  
40 Capitol Square, SW  
Atlanta, GA 30334

Secretary of State Brad Raffensperger  
214 State Capitol  
Atlanta, GA 30334

Dear Governor Kemp, Attorney General Carr, and Secretary of State Raffensperger:

As Republican, conservative, and independent lawyers and former elected or appointed officials nationwide and in Georgia, we are writing to follow up on [our letter dated September 5, 2024](#). We previously noted that the actions of Georgia State Election Board members Rick Jeffares, Janice Johnston, and Janelle King raised the most profound ethics and legal concerns.

On Friday, September 20, 2024, the concerns that compelled us to write to you less than three weeks ago grew more profound. These same three board members passed a rule, by a 3-2 vote, requiring counties to hand-count the number of ballots at the precinct level. This three-member Board majority exceeded its legal authority by voting on and passing this ill-conceived hand-count rule, which is flatly contrary to applicable law. The consequences of this rule, if implemented, will be severe for the State of Georgia and its citizens. We respectfully urge you to take immediate remedial action.

In our [original September 5th letter](#), we detailed several instances in which these members have previously compromised the impartiality of the Board. We emphasized that their actions, combined with their publicly known support for former President Donald Trump's campaign, raise significant doubts about their ability to carry out their duties in a fair and unbiased manner. We urged you to act under O.C.G.A. § 45-10-4 by convening a hearing and receiving evidence of these concerns and, if necessary, removing these members from office. We remain steadfast in our belief that in order to safeguard our Republic, states must maintain public trust in the integrity of our elections by tallying votes and certifying election results without partisan influence.

Then on September 20 came the new rule. It provides that three sworn poll officers in every precinct must count the number of paper ballots in every ballot box for purposes of comparison with the number of ballots that the ballot scanner yields. On the day before these three board members voted to enact this new rule, Attorney General Carr rightly submitted a September 19, 2024, [memorandum](#) to the Board that raised serious concerns about the legality of several proposed election rules, including this hand-count rule, warning that the rules exceed the State Election Board's statutory authority and conflict with the Georgia Election Code. Specifically, the Attorney General highlighted that the now-enacted hand-count rule has (i) no basis in state law and (ii) could face successful legal challenges, including for violating the doctrine that changes in election rules should not be made close to an election given the need for adequate time for training and to put election procedures in place. Likewise, the Board's nonpartisan chair, John Fervier, has [raised](#) concerns that the hand-count has "put [the Board] in legal jeopardy."

Multiple local elections officials testified in opposition to the new rule, including because imposing it at this late date could throw the election into chaos. For example, Ethan Compton, Irwin County elections supervisor, [stated](#) that "[o]ver 200 pages of election code and rules have been implemented since 2020" and "[w]e have practiced on them, we have trained, we are prepared, we are ready. Do not change this at the last second."

Senior state officials also share the view that hand-counting could have disastrous consequences for the election and that the hand-count rule is legally dubious. Secretary of State Raffensperger has [stated](#) that "[t]hese 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." The three-person Board majority's directive for hand counting ballots also risks delaying certification, which could prevent Georgia from certifying election returns by December 11, 2024, as required by the Electoral Count Reform Act. 3 U.S.C. §§ 5(a)(1), (7).

It is clear that the Board must refrain from enacting rules that do not comport with the standards set by the legislature and stick to its proper role of promoting the fair, legal, and orderly conduct of elections.

Not only is the hand-count rule an unauthorized exercise of the Board's statutorily limited authority and legally precluded because it conflicts with state law, it is also fatally flawed as a policy matter. Hand counts are [less accurate](#), [more expensive](#), and [slower than machine counts](#). In Osage County, Missouri, for example, the County Clerk has [stated](#) that, after conducting a full hand count in April 2023, her office "intend[ed] to move forward with [their] tabulation machines for upcoming elections" because if she "were to continue hand counting[,] it would cost [Osage County] more in time, money, [] volunteers, and accuracy of votes." In Kerr County, Texas, the Kerr County Republican Party Chairman and election judge Paul Zohlen has [spoken in support](#) of the county continuing to use machine counting, not hand counts, because the

former is more accurate and would be less costly and time intensive. In fact, [a 2020 hand recount](#) in Fulton County—a single county—cost Georgia taxpayers more than \$400,000.

Voting machines are undoubtedly [more accurate](#) than full hand counts because they can better handle the high-capacity workload of an election, and they excel at the “tedious and repetitive tasks” with which humans generally struggle. Indeed, voting machines are fully vetted. Every voting machine must pass a test requiring them to accurately count at least 10 million votes before being [certified](#) by the U.S. Election Assistance Commission. And these certified machines [produce](#) comprehensive records that election officials use to verify results through multiple layers of review. This is confirmed by major research [studies](#).

Accordingly, we urge you to address the conduct of these three Election Board members and reverse the unlawful actions that they took on September 20th, including enacting the hand-count rule. We remain confident that you will continue to uphold the same principles of fairness and nonpartisanship that guided your actions following the 2020 election.

Sincerely,

Donald Ayer, Deputy Attorney General under President George H.W. Bush (1989-1990)

Arne Carlson, Governor of Minnesota (R) (1991-1999)

Ty Cobb, Special Counsel to President Donald J. Trump (2017-2018)

Tom Coleman, Representative of the Sixth Congressional District of Missouri (R) (1976-1993)

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