



September 19, 2024

Submitted via email to sepubliccomments@sos.ga.gov

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

Dear Chairman Fervier and Members of the Georgia State Election Board,

Campaign Legal Center (“CLC”) writes to express firm opposition to two proposals submitted by Sharlene Alexander (“Alexander Proposals”) and currently being considered by the State Election Board (the “Board”).

Campaign Legal Center is a non-partisan, non-profit organization that works to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC provides expert legal and policy advice on democracy issues to legislative and rulemaking bodies across the country, and has litigated campaign finance, government ethics, voting rights, and redistricting cases in numerous jurisdictions, including in Georgia.

Under the Alexander Proposals, three independent poll officers will be required to unseal and hand count ballots each day after voting during the early voting period and on Election Day, and must agree on the total count. For early voting, every ballot box with more than 1,500 ballots must be counted after each day.

As we wrote to the board on August 18, 2024 (attached hereto), the Alexander Proposals’ requirement to unseal and count paper and scanned ballots will add significant time and complexity to poll workers’ workload, and create serious and unnecessary chain of custody issues for counties.

While the Alexander Proposals purport to “reduc[e] the opportunity for collusion to sabotage election results,” the Proposals actually do the opposite. Specifically, the Proposals would introduce multiple interim steps that increase the risk of error and fatigue for election workers, and the risk of fearmongering by bad actors seeking to undermine the results of the election. By mandating that multiple poll workers effectively pass all the ballots back and forth between themselves multiple times at the end of a long Election Day, this proposal would increase the risk of ballots being damaged or misplaced, would undermine standard chain-of-custody procedures, and would increase the likelihood of administrative errors that can have a cascading effect and result in greater delays in the post-election process.

Finally, the Proposals create unnecessary additional work which will undermine the counties’ ability to meet their statutorily required certification deadline. The Proposals would naturally result in increased work hours or additional staff to complete the hand count and meet the certification deadline. The Proposals also state that if the numbers recorded by officials in the hand count do not match the numbers recorded on ballot marking devices and scanner recap forms, the officials must immediately determine the “reason for the inconsistency.” As stated above, the risk of fatigue could lead to human error which results in a miscount during the daily count. And the requirement that officials immediately take “corrective measures” for any “inconsistency” necessarily requires additional time and resources to determine the “reason,” even if the reason is mere human error from the hand count itself. In other words, these Proposals could greatly compound the work of election officials and create room for error that does not currently exist.

The need for additional resources imposes an unnecessary burden on under-resourced counties who are already having trouble maintaining the required staff to undertake the election.¹ Any effort to increase the amount of time that it will take to canvass the results threatens the ability of counties to meet the certification deadline, an untenable risk given that the Proposals do not solve any problem.

For the reasons outlined above and in our comment on August 18, 2024, we urge the Board not to adopt the Alexander Proposals.

Pursuant to O.C.G.A. § 50-13-4(a)(2), we request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rules, we request that it “issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for

¹ Mark Niese, Want to help elections? Georgia counties are hiring pollworkers, AJC (Aug. 1, 2024), <https://www.ajc.com/politics/now-hiring-jobs-open-on-2024-national-poll-worker-recruitment-day/CZAZFPORJG6BNXBD5ISUIAKSI/>.

overruling the consideration urged against their adoption.

Respectfully submitted,

/s/Jonathan Diaz
Jonathan Diaz
Director, Voting Advocacy & Partnerships
Valencia Richardson
Legal Counsel, Voting Rights
Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

Attachment 1

August 18, 2024 Letter from Campaign Legal
Center to SEB Re: Alexander Proposal



August 18, 2024

Submitted via e-mail to sepubliccomments@sos.ga.gov

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

Dear Chairman Fervier and Members of the Georgia State Election Board,

Campaign Legal Center (“CLC”) writes to express firm opposition to two proposals submitted by Salleigh Grubbs (“Grubbs proposal”) and Sharlene Alexander (“Alexander proposal”) and currently being considered by the State Election Board (the “Board”).

Campaign Legal Center is a non-partisan, non-profit organization that works to protect and strengthen the U.S. democratic process across all levels of government through litigation, policy analysis, and public education. CLC provides expert legal and policy advice on democracy issues to legislative and rulemaking bodies across the country, and has litigated campaign finance, government ethics, voting rights, and redistricting cases in numerous jurisdictions, including in Georgia.

As Georgia Secretary of State Brad Raffensperger recently remarked, these proposals are “misguided” and if adopted, would both “undermine voter confidence and burden election workers.”¹ Moreover, making abrupt changes to Georgia’s election administration rules at this stage—less than 90 days from the general election—is unduly disruptive and risks amplifying voter confusion and reducing public confidence in Georgia’s elections. The Board should reject these invitations to

¹ Kate Brumback, “Raffensperger blasts proposed rule requiring hand count of ballots at Georgia polling places,” Associated Press (Aug. 15, 2024), <https://apnews.com/article/georgia-elections-voting-hand-count-raffensperger-730c77c8a14954308c95474022b39d74>.

disrupt the administration of Georgia's elections and vote not to adopt either the Grubbs proposal or the Alexander proposal.

I. The Grubbs Proposal Will Undermine Georgia's Certification Process and Risks Disenfranchising Voters.

Under the Grubbs proposal, county boards would be prohibited from counting votes from any precinct where there is a discrepancy between the number of ballots cast and the number of unique voter IDs until an investigation is conducted and the results of that investigation are communicated to the Board.²

Adopting this rule would significantly threaten the counties' ability to certify election results by introducing redundant reconciliation processes that would unnecessarily complicate the post-election process. The proposal further gives county boards an opportunity to disrupt or delay the election process under the pretext of "addressing discrepancies," even when such discrepancies are de minimis or irrelevant to the result of any election. Permitting baseless disruption and/or delay in the canvass and certification process to "investigate" routine reconciliations that are already handled in the normal course would provide no additional election security.

Indeed, such delays would decrease public confidence in the election system, and they could be exploited to spread doubt in election outcomes and misinformation about election processes. As Secretary Raffensperger emphasized earlier this week, "quick reporting of results is a hallmark of Georgia's election administration and bolsters voter confidence. Delays in results create a vacuum that leads to misinformation and disinformation."³ By delaying results from precincts under "investigation," this rule would amplify opportunities for misinformation and accusations of fraud, ignoring the many existing safeguards and procedures that keep Georgia's elections safe and accurate. *See, e.g.*, O.C.G.A. §§ 21-2-495 (authorizing recount and recanvass under certain circumstances); 21-2-498 (establishing precertification risk-limiting audits) 21-2-520 to 529 (establishing procedure for election contests); Ga. Comp. R. & Regs. 183-1-15-.03 (setting procedure for recounts) and 183-1-15-.04 (setting procedure for audits).

Furthermore, requiring county board members to "determine a method to compute the votes justly as required in GA Code § 21-2-493(i)" poses additional legal risk. If counties adopt different methods of counting ballots, such that whether a voter's ballot is counted varies arbitrarily by what county they reside in, this may

² https://sos.ga.gov/sites/default/files/2024-07/notice_of_proposed_rulemaking_183_1_12_12_1_v2.pdf

³ Georgia Sec'y of State, *Raffensperger Defends Georgia's Election Integrity Act from Last Minute Changes Delaying Election Results*, <https://sos.ga.gov/news/raffensperger-defends-georgias-election-integrity-act-last-minute-changes-delaying-election> (Aug. 15, 2024).

violate the Equal Protection Clause of the 14th Amendment. *See Bush v. Gore*, 531 U.S. 98, 104-105 (2000) (“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”). The Board should reject this invitation to inject inconsistency and unnecessary complication and confusion into Georgia’s election processes, especially at this late stage.

II. The Grubbs Proposal Also Risks Disenfranchising Eligible Georgians in Violation of State and Federal Law

Under the Grubbs proposal, county boards would also be required to complete the canvass before the end of the statutory period ballot curing and provisional ballot verification⁴. In addition to the administrative burdens and voter confusion concerns highlighted in Section I above, adopting this proposal risks disenfranchisement of eligible Georgians by denying them a meaningful opportunity to cure their ballots or verify a provisional ballot as provided by state law.

This proposed rule would require counties to hold a meeting to complete the canvass prior to the close of the period during which eligible voters can cure their ballots, denying them the full opportunity afforded to them by Georgia law to ensure that their validly cast ballots are counted and included in the canvass.

Georgia law allows eligible voters to cure a ballot “up to three days following the primary or election[.]” O.C.G.A. § 21-2-419(c). The Board has no legal authority to shorten that statutory cure period by requiring the county boards to conduct their canvass before it has concluded. *See Mulligan v. Selective HR Solutions, Inc.* 289 Ga. 753 (2011) (recognizing that an agency rule that conflicts with statute is invalid). Denying an eligible registered Georgian the full period provided by law to cure their ballot may also violate the Due Process Clause of the 14th Amendment. *See Martin v. Kemp* 341 F.Supp.3d 1326, 1338 (N.D. Ga. 2018) (recognizing that the right to vote is a liberty interest protected by the Due Process Clause).

Moreover, eligible Georgians have a right to vote, which includes the right to have their ballots counted. *See* 52 U.S.C. § 10101(e) (For purposes of federal law, “the word ‘vote’ includes all action necessary to make a vote effective including, but not limited to . . . having [a voter’s] ballot counted and included in the appropriate totals of votes cast.”); *see also* Ga. Const. Art. 2 § 1, ¶ II (guaranteeing the right to vote to all eligible Georgians).

Rather than risk violating state and federal law by unconstitutionally denying eligible Georgians the full opportunity provided to them by statute to ensure their validly cast ballots are counted, the Board should reject the Grubbs proposal.

⁴ *See supra* n.2.

III. The Alexander Proposal Will Impose Significant and Unnecessary Administrative Burdens on Georgia’s Election Workers.

The Alexander Proposal’s requirement to unseal and count paper and scanned ballots will add significant time and complexity to poll workers’ workload. Standard election procedures maximize the security of election ballots by minimizing the time in which they are transferred to from ballot boxes and voting machines to sealed containers. By contrast, the Proposal would introduce multiple interim steps that require physical handling of every voted ballot by a minimum of four people between when the ballots are removed from their boxes and when they are sealed for transport to the office of the election superintendent.⁶ By mandating that multiple poll workers effectively pass all the ballots back and forth between themselves multiple times at the end of a long Election Day, this proposal would increase the risk of ballots being damaged or misplaced, would undermine standard chain-of-custody procedures, and would increase the likelihood of administrative errors that can have a cascading effect and result in greater delays in the post-election process.

In addition to the disruption this proposal may cause to the administration of the November election, these requirements could also lead to increased costs for county election boards that will have no choice but to extend working hours for poll workers and staff in order to comply. And the proposal’s micromanagement of closing procedures—mandating not only redundant hand-counting, but even the exact size of each “stack” of ballots—overrides each county’s and each polling place’s longstanding expertise in how to efficiently and securely transmit its ballots.

The Alexander Proposal introduces additional unnecessary steps into the election process, further complicating the existing protocols for handling and securing ballots that already balance security concerns with the need for efficiency. Election authorities have affirmed that “there was no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised” during the 2020 election,⁷ and the Proposal’s reliance on a single ballot getting stuck “due to static electricity” can hardly justify massive increases in ballot handling at polling places. This proposed rule will not provide sufficient additional benefits to justify this late-stage disruption of existing practices, and, in fact, may increase the risk of accidental or intentional tampering by increasing the frequency of handling and unsealing of ballots.

* * *

⁶ http://sos.ga.gov/sites/default/files/forms/Petition%20-%20Alexander_Redacted.pdf

⁷ Cybersecurity & Infrastructure Security Agency, *Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees*, <https://www.cisa.gov/news-events/news/joint-statement-elections-infrastructure-government-coordinating-council-election> (Nov. 12, 2020).

For the reasons outlined above, we urge the Board not to adopt the Grubbs proposal or the Alexander proposal.

Pursuant to O.C.G.A. § 50-13-4(a)(2), we request that the Board include this comment in the rulemaking record and, if the Board ultimately adopts the Proposed Rule, we request that it “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.

Sincerely,

/s/ Jonathan Diaz

Jonathan Diaz

Director, Voting Advocacy & Partnerships

Shilpa Jindia

Legal Fellow

Campaign Legal Center

1101 14th Street NW, Suite 400

Washington, DC 20005

(202) 736-2200