

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

VASU ABHIRAMAN, TERESA K.
CRAWFORD, LORETTA MINANDOLA,
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

MOTION OF AMICI CURIAE ELBERT SOLOMON,

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2024, a true and correct copy of the foregoing **MOTION TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS' VERIFIED PETITION FOR DECLARATORY RELIEF** was electronically filed with the Court using the Court's eFileGA electronic filing system, which will automatically send an email notification of such filing to all attorneys of record, and was additionally served by emailing a copy to the currently known counsel of named parties and proposed intervenors as listed below:

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Exhibit A

accounting function into a discretionary political act. One new rule (the “Heekin Rule”) would require county elections administrators to conduct an “inquiry” into the election before certifying the results—a directive that conflicts with the statutory mandate to certify the vote totals after completing very specific, straightforward, and circumscribed verification procedures. Ga. Comp. R & Regs. 183-1-12-.02(1)(c.2). The second new rule (the “Grubbs Rule”) would allow any individual county election board member to “examine all election related documentation” before certification, allow county boards to devise their own “method[s]” for counting votes whenever they suspect “fraud,” and

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Amicus curiae Elbert Solomon is a resident and registered voter in Spalding County, Georgia. He is a Black man and active in local politics and a consistent voter for decades. As a teenager in Mississippi during the civil rights movement, Mr. Solomon understood that the ability to cast a vote and

president for the first time. Because of her experiences growing up in Cobb County, Ms. Bussey has always been aware and educated about racial gerrymandering and the dilution and suppression of Black votes in particular. She is very protective of her right to vote and believes we should all be working toward removing impediments to voting rather than installing more. She believes that voting is the only way to guarantee that your opinion is counted in the political process. She was very concerned when one of her county Board of Elections members voted not to certify results in recent elections. She is concerned about the risk of non-certification in the November election, which could mean that her ballot in her very first election year would not be counted. She is also worried that non-certification could result in the disenfranchisement of other Cobb County voters in the upcoming election. If she were disenfranchised based on her Board of Elections' failure to certify results, Ms. Bussey would lose confidence in our political system. .

Amicus curiae Bryan Nguyen is 18 years old and a registered Gwinnett County voter. Mr. Nguyen identifies as Vietnamese-American. He turned 18 years old last November year and became eligible to vote. He is excited to participate in his first presidential election and has been looking forward to voting since he learned about the right to vote in elementary school. Mr. Nguyen is active in his community and works to organize his peers around LGBTQ+ issues and climate change. He understands his protected right to vote includes both his right to cast a ballot and to have that ballot counted. He was very concerned that two of his county Board of Elections members voted not to certify results in recent elections, is concerned that Gwinnett County could fail to certify results in this November election, and believes he could be disenfranchised should his county fail to certify results. Mr. Nguyen comes from a family of irregular voters, but he intends to remain engaged and become a consistent voter. He would be disheartened if his ballot in his first election year was not counted, and it would lower his confidence in our political system.

Amicus curiae Raynard LaNier, Jr. is a resident and registered voter in Fulton County, Georgia, and has exercised his right to vote since turning 18. As a child, he would accompany his mother—who was Ralph David Abernathy’s personal assistant—to demonstrations, including activities related to protecting the right to vote. Mr. LaNier continues his family’s legacy in the civil rights movement by organizing and participating in voter registration and get-out-the-vote efforts. He believes that his right to vote includes both the right to cast a ballot and to have that ballot counted. He was very concerned that one of his county Board of Elections members voted not to certify results in recent elections. He is concerned about the risk of Fulton County failing to certify results of the November election. He believes that he is at risk of disenfranchisement and would be disappointed and discouraged if his ballot, including his votes for down-ballot races, was not counted. It would lower his confidence in our political system.

Amicus curiae Georgia State Conference of the NAACP (“Georgia NAACP”) is a non-partisan, interracial, nonprofit membership organization that was founded in 1941. Its mission is to eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans. A core part of the Georgia NAACP’s mission is protecting the right to vote, and the organization dedicates substantial resources to voter registration, voter education, and get out the vote (“GOTV”) efforts, including Sunday early voting events such as “Souls to the Polls.” The Georgia NAACP has approximately 10,000 members across Georgia. The Georgia NAACP has an interest in preventing the disenfranchisement of its members and other eligible voters, including those it may have supported in exercising their right to vote. As such, the organization’s mission and voter engagement efforts would be undermined by any attempt by a county board of elections to disenfranchise voters by delaying or denying the certification of election results. Moreover, the

unconstrained implementation of the SEB rules risks forcing the Georgia NAACP to divert its limited resources away from its standard activities toward advocating for duly cast ballots to be properly counted by boards of elections across the state.

BACKGROUND

(emphasis added), 21-2-497 (emphasis added). These duties are nondiscretionary, as demonstrated by the appearance of the word “shall.”³ Indeed, the Georgia Supreme Court has long deemed certification duties as “ministerial.” , , , 201 Ga. 867, 876 (Ga. 1947) (“[A]ny and all persons who are merely authorized to canvass” were not “exercising or authorized to exercise any discretion, but were simply performing the ministerial act of disclosing to the public the official election returns”); , 73 Ga. App. 663, 663 (App. Ct. 1947)

Timing is especially important in presidential elections, lest the state miss deadlines set out under federal law. 3 U.S.C. § 5.

Thus, county-level certification is an early and crucial step in ensuring that Georgia voters are heard at the local, state, and federal levels. Any

(f)(5), the Grubbs Rule added two sentences that distort the statutory command that, even if error or fraud is suspected, the “superintendent shall (c) 1/10/2012 10:45 AM (P:\a4\m)4 (nt)

subjective, extremist, partisan perspective.”¹⁶

Of the more than 1,000 written comments submitted by voters, an overwhelming majority also opposed the Grubbs Rule. A Fulton County voter and “retired naval officer who serve[d] with pride to help protect the freedoms we hold so dear” warned that “[a]llowing a single election board member to scrutinize every document . . . whether there is evidence of irregularity or not[,] is a needless delay and ultimately undermines the integrity of elections.”¹⁷ An Athens-Clarke voter who attends every meeting of her local Board of Elections and has served as an elections administrator wrote: “This rule change horrifies me. It will allow for obstruction of county election certification by willful, frivolous . . . members of county boards . . . to sabotage democratic elections.”¹⁸ Another voter predicted that, “taken together with Rule 183-1-12-.02, the logical

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That is because certification is just one step in a comprehensive statutory scheme that safeguards election integrity and a

and deny the results of the election, disempowering Georgia voters and

investigates an apparent discrepancy between the number of ballots and number of voters. The Grubbs Rule thus fashions an entirely new benchmark that will result in obstruction and delay.

Third, the Grubbs Rule invites individual “[b]oard members” to delay certification until

day after election day, and the Governor must certify Georgia’s slate of presidential electors by 5:00 PM on the 18th day. O.C.G.A. § 21-2-499(b). The federal safe harbor date for Georgia to submit its slate of presidential electors in the upcoming election is December 11, 2024.²⁷ Failure of the counties to timely and faithfully certify their results could embroil the Secretary in unnecessary and time-consuming confrontations with local officials, risk compliance with important deadlines set out under state and federal law, and potentially nullify the will of the people—this year and in every subsequent election.

These are not hypothetical concerns. Since 2020, an alarming number of other Georgia officials have refused to perform their statutorily mandated certification duties and demanded burdensome document production as a condition of certification, without offering any actual reason to doubt the returns.²⁸ That includes elections officials in each and every county where the individual amici live and are registered to vote. This past March, the sponsor of the Heekin Rule opposed a motion to certify the results of the presidential preference primary in Fulton County—despite acknowledging that the statements of votes cast were “all in order”—because he considers “chain of custody” to be “the weakest link” in elections even “predating the American Revolution.”²⁹ He did not offer evidence that the chain of custody was actually broken in Fulton or offer any other reason that the results should not be certified.³⁰ To date, none of the Georgia officials who have recently opposed certification have had any legal authority to do so, but the

²⁷ 3 U.S.C. § 5(a)(1); National Archives, <https://www.archives.gov/electoral-college/key-dates> (last visited Sept. 9, 2024).

²⁸ Citizens for Responsibility and Ethics in Washington, <https://perma.cc/UCD3-K2ZS>, 34–42 (Aug. 2024).

²⁹ Fulton Government Television, <https://perma.cc/ZK2L-YDC3>, 38:14–39:42, 44:54, YouTube (Mar. 18, 2024).

³⁰

Heekin-Grubbs rules could open the door for them to launch their own independent investigations, request voluminous documentation at will, or delay certification in defiance

Even if the results are timely and accurately certified, the rule changes create new reasons for local officials to deny the election results, fueling dangerous election denialism that could itself subvert the will of the people.

We have been here before. The smallest perceived discrepancies and glitches have sparked widespread misinformation campaigns and conspiracy theories that undermined the peaceful transfer of power. In 2020, the election board of Coffee County, Georgia, refused to certify the results of the presidential election after a recount on the basis of a 50-vote discrepancy.³¹ The board blamed voting machines for the difference, even though the elections director admitted she “was unsure whether she had scanned a batch of 50 ballots twice, which,” in the words of the Secretary of State, “would account for the 50-vote discrepancy.”³² One member of that elections board then illegally permitted presidential campaign affiliates to copy large troves of records and data to fuel an extra-judicial investigation into voting machines.³³ No evidence of interference with the machines was uncovered, but conspiracy theories related to those machines ballooned online and “reinforced the Stop the Steal movement, which ultimately led to violence.”³⁴ Former president Donald Trump cited Coffee County’s refusal to certify its election results in a draft executive order that he contemplated issuing after his 2020 election loss; the order would have

³¹ Office of Georgia Secretary of State Brad Raffensperger,
<https://sos.ga.gov/news/secretary-states-office-opens->

(Dec. 9, 2020),

ordered federal agents to seize voting machines and mobilize the National Guard.³⁵ In other words, one Georgia county's refusal to certify in defiance of state law nearly contributed to unprecedented proposed federal intervention into state electoral processes, even though no fraud was found. The new rules make similar or worse situations even more likely, threatening to unlawfully thwart the will of the people.

III. The Rule Changes Subject Georgians to Unequal Risks of Disenfranchisement

All of these potential disruptions to the certification process create intolerable risks of disenfranchisement for Georgia voters. They could also result in the selective disenfranchisement of voters according to the whims and political or other preferences of unelected county election board members.

If allowed to stand, the vagueness and ambiguity baked into the rule changes all but guarantee arbitrary and uneven enforcement. The new rules purport to give local officials unfettered discretion to conduct their own investigations and devise their own methods of computation in cases of purported fraud, “virtually guaranteeing a crazy quilt of” approaches to certification “from county to county.” *Grubbs v. Election Officials*, 915 F.3d 1312, 1320 (11th Cir. 2019). Election officials in some counties will readily comply with their mandatory certification duties while others will attempt to delay, block, or manipulate certification according to their own political preferences. Some county board members will invoke the Grubbs Rule to challenge only certain types of ballots or

who have already cast their ballots to rush into courts across the state to make sure their votes are counted. Amici have already been forced to take the extraordinary step of participating in this lawsuit to defend their fundamental right to vote. The prospect of bringing emergency lawsuits over certification in their counties is profoundly demoralizing and unfair. It will also subject voters to undue public attention and scrutiny during a hotly contested election cycle. Voters should not have their votes held ransom while they pursue burdensome and entirely unnecessary emergency litigation to force officials to do what the law already requires.

By granting Plaintiffs' requested relief, this Court will give amici and voters across the state the confidence in the democratic process that they deserve. The Court should reject the SEB's unlawful attempt to disrupt the Legislature's mandatory certification scheme and defend Georgians' fundamental right to vote and have their

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