IN THE SUPERIOR COURT OF FULTON COUNTY

oppose the intervention of any of these parties. The SEB did not oppose the concept of intervention but did lodge an objection to the timing of the intervention -- ironically that the SEB should have more time to prepare for responding to the positions espoused and relief sought by the intervenors. The Court finds that all intervenors qualify for intervention as a matter of right in that each "claims an interest relating to … the subject matter of the action and … is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest" (and that those interests are not adequately represented by existing parties). O.C.G.A. § 9-11-24(a)(2). Consequently, the Court GRANTS the two requests for intervention. Counsel for SEB proved more than prepared for the arguments raised by Petitioner-Intervenors, which were parallel to or natural extensions of Petitioner's own arguments.

AMICI

The Muscogee County Board of Elections and Registration as well as a collection of concerned voters and non-profit organizations[1] seek to file amicus briefs in this case. Those motions are GRANTED and the two briefs are now deemed part of the record in this case.

CONSOLIDATION

The CCBOER filed an identical suit seeking the same declaratory judgments predicated on different jurisdictional authority (Paragraph V of Section Two of Article I of the Georgia Constitution). *See* Civil Action 24CV012560. When this case moved more quickly toward final hearing, the CCBOER filed a motion to consolidate the two cases pursuant to O.C.G.A. § 9-11-42(a), which authorizes a trial court to consolidate "actions involving a common question of law or fact" -- provided all parties consent. All parties did consent on the record at the final hearing and so the Court now ORDERS the consolidation of 24CV012560 with this case.

[1] Elbert Solomon, Porch'se Miller, Ava Bussey, Bryan Nguyen, Raynard Lanier Jr., The League of Women Voters of Georgia, New Georgia Project, Delta Sigma Theta Sorority Inc., and The Secure Families Initiative.

INTERLOCUTORY INJUNCTION

As mentioned, both Petitioner and Petitioner-Intervenors moved for a temporary restraining order or interlocutory injunction to halt implementation of the Hand Count Rule

and scanner recap forms," the poll manager must "immediately determine the reason for the inconsistency; correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken."

The decision about when to start this hand count rests with the poll manager or assistant poll manager. If a scanner ball

investigation by the SEB, suspension, and even criminal prosecution. (While the latter is far-fetched, it is not an impossibility in this charged political climate.) Petitioner and Petitioner-Intervenors have further demonstrated how the 11th-and-one-half hour implementation of the Hand Count Rule will make this coming election inefficient and non-uniform by the introduction of an entirely new process -- the precinct-level hand count -- that involves thousands of poll workers handling, sorting, and counting actual ballots in a manner unknown and untested in the era of ballot scanning devices. No training has been administered (let alone developed), no protocols for handling write-in ballots (which are handled separately from regular ballots; *see* O.C.G.A. § 21-2-483(e)) have been issued, and no allowances have been made in any county's election budget for additional personnel and other expenses required to implement the Hand Count Rule.[7] The administrative chaos that will -- not may -- ensue is entirely inconsistent with the obligations of our boards of elections (and the SEB) to ensure that our elections are fair, legal, and orderly.

The remainder of the factors similarly favor granting temporary injunctive relief. The SEB has articulated no injury to itself should implementation of its Hand Count Rule be delayed while the Court considers the merits of Petitioner's declaratory judgment action. Clearly the SEB believes that the Hand Count Rule is smart election policy -- and it may be right. But the timing of its passage make implementation now quite wrong. From the arguments made in court today, it also appears that Petitioner and Petitioner-Intervenors enjoy a substantial likelihood of success on the merits of their claim that the Hand Count Rule was adopted in violation of the Administrative Procedures Act, O.C.G.A. § 50-13-1 *et seq.*, that it was in derogation of the SEB's

[7] Superintendents are required to prepare their budgets annually, based upon the prior two years' actual expenditures and a forecast for the coming year. O.C.G.A. § 21-2-70(12). No superintendent (or board of elections) could have properly budgeted for a rule that was not passed until several weeks before a presidential general election and which would require extra hours (or days) of personnel, along with extra security and extra transportation of materials to the tabulating center.

limited rule-making authority, and that, at least when adopted, it was unreasonable to implement it.

Finally, the public interest is not disserved by pressing pause here. This election season is fraught; memories of January 6 have not faded away, regardless of one's view of that date's fame or infamy. Anything that adds uncertainty and disorder to the electoral process disserves the public. On paper, the Hand Count Rule -- if properly promulgated -- appears consistent with the SEB's mission of ensuring fair, legal, and orderly elections. It is, at base, simply a check of ballot counts, a human eyeball confirmation that the machine counts match reality. But that is not what confronts Georgians today, given the timing of the Rule's passage. A rule that introduces a new and substantive role on the eve of election for more than 7,500 poll workers who will not have received any formal, cohesive, or consistent training and that allows for our paper ballots -- the only tangible proof of who voted for whom -- to be handled multiple times by multiple people following an exhausting Election Day all *before* they are securely transported to the official tabulation center does not contribute to lessening the tension or boosting the confidence of the public for *this* election. Perhaps for a subsequent election, after the Secretary of State's Office and the 150+ local election boards have time to prepare, budget, and train -- but not for this one:

> [S]tate and local election officials need substantial time to plan for elections. Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials and pose significant logistical challenges. [Implementing the Hand Count Rule] would require heroic efforts by those state and local authorities in the next few weeks—and even heroic efforts likely would not be enough to avoid chaos and confusion

Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring)

* * *

Because the Hand Count Rule is too much, too late, its enforcement is hereby enjoined while the Court considers the merits of Petitioner and Petitioner-Intervenors' case. Ga. Comp. R. & Regs. r. 183-1-12-.12 as it is written today -- *i.e.*, the status quo -- shall remain in effect until the Court enters a final order in this case.

SO ORDERED this 15th day of October 2024.

Judge Robert C.I. McBurney
Superior Court of Fulton County

Filed and served electronically via eFileGA