

August 16, 2024

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

Hand-Delivered and by Mail

Dear Governor Kemp:

I know that you are deeply committed to maintaining the integrity of our State's elections. As a former Georgia elected official as well as former chair of the Fulton County Board of Elections, I share that commitment. That is why I feel compelled, again, to write to express my grave concerns about the conduct of three members of the State Election Board (the "Board"): Rick Jeffares, Janice Johnston, and Janelle King. Since the appointment of Member King in May, these three members have made significant changes to the rules governing Georgia's elections even though the election is just months away. They have also knowingly and willfully violated state law in pursuing those ends, and have repeatedly disregarded the advice of the Attorney General's office, turning instead to outside parties for both legal counsel and the substance of proposed rules.

Their conduct raises concerns that the Board members are not fulfilling their duty to ensure the "fair, legal, and orderly conduct" of Georgia elections. On the contrary, they have created, at minimum, the appearance that their actions are intended to advance their own political preferences. The members have done nothing to dispel that appearance of impropriety, instead receiving a standing ovation at a Trump rally and openly discussing a position in the Trump administration. Taken together, these actions pose a serious risk of creating confusion about the rules governing the rapidly approaching election and undermining voter confidence in the integrity of Georgia's elections.

To that end, this letter serves as a formal complaint under O.C.G.A. § 45-10-4 against Members Jeffares, Johnston, and King. Each of these members has engaged in conduct that violates the Georgia Code of Ethics for Members of Boards, Commissions, and Authorities found at O.C.G.A. § 45-10-3. Specifically, Members Jeffares, Johnston, and King have knowingly and willfully (1) failed to uphold the laws and regulations of the State of Georgia, in violation of O.C.G.A. § 45-10-3(1), and (2) engaged in conduct that amounts to a breach of the public trust, in violation of O.C.G.A. § 45-10-3(8).

This complaint is directed to you solely in your capacity as the official responsible for receiving formal ethics complaints and resolving them under state law. As in previous ethics

cases, I ask you to order the Office of State Administrative Hearings to conduct a hearing on the charges set forth below. Due to the significant public interest in resolving the charges prior to the general election in November, I ask you to order that the hearing be held promptly—if possible, within 30 days of the date of the order.

I. Background

The State Election Board is responsible for, among other things, promulgating rules and taking such other actions as are “conducive to the fair, legal, and orderly conduct” of elections in Georgia.¹ The Board is also responsible for conducting investigations into alleged fraud, irregularities, and other election administration issues “when necessary or advisable” to do so. The Board thus plays an essential role in maintaining the integrity of Georgia’s elections and voters’ confidence in the election process—but only if Board members approach their duties fairly and ethically, without seeking to advantage one political party or candidate.

The composition of the Board has changed significantly this year. The Senate appointed Rick Jeffares, a former state senator, on January 11, 2024, and the Speaker of the House appointed Janelle King on May 17, 2024.² Josh McKoon, the chair of the Georgia Republican Party, viewed King as the final vote the party needed to ensure Trump’s victory in Georgia. He stated at the time: “I believe when we look back on November 5, 2024, we’re going to say getting to that 3-2 election integrity-minded majority on the state election board made sure that we had the level playing field to win this election.”³ The third member referenced is Janice Johnston, who has served as the Republican Party’s appointee on the Board since 2022.

Since May, Members Jeffares, Johnston, and King have passed a number of controversial election rules, including changes to the rules governing the process of certifying election results and the return of absentee ballots. Many of these rules have been criticized both as inconsistent with state and federal law and as likely to generate significant confusion heading into this year’s election. This letter, however, is not based on any substantive disagreements with the Members’ policy decisions, their past political affiliation, or their private political preferences. Instead, it is the circumstances surrounding their actions that raise serious questions about their willingness to disregard the law for partisan ends.

The first regularly scheduled Board meeting after Member King’s appointment took place on July 9. McKoon, the Georgia Republican Party chair, privately emailed the text of two

1 O.C.G.A. 21-2-31(2), (10).

O.C.G.A. 21-2-31(5).

2 <https://sos.ga.gov/page/about-state-election-board>

3 <https://www.theguardian.com/us-news/article/2024/jun/03/georgia-republican-janelle-king-trump-election>

The remaining two Board members are Chair John Fervier, appointed by you in January 2024, and Sara Tindall Ghazal, appointed as the Democratic Party’s representative in June 2021.

proposed rules to Member Jeffares the day before the meeting, along with accompanying talking points.⁴ One proposal required county election boards to post daily ballot counts online, and the other increased the number of partisan monitors during the vote-counting process.⁵ Neither proposal was addressed at the July 9 meeting. Rather than waiting to discuss the proposals at the Board’s next properly scheduled meeting, Members Jeffares, Johnston, and King orchestrated a private meeting at which the two rules suggested by McKoon could be considered without public participation and without the remaining Board members’ input. This meeting took place on July 12 and is discussed in greater detail below. Notably, on the date of the meeting, prominent Trump ally Cleta Mitchell posted the following on Twitter: “There are now 3 great members of the GA State Election Board – support them. They are fighting hard for us!!! The Dems + Kemp + Raffensperger + Carr are fighting our great SEB Members. Fight back!”

Since the July meeting, questions have continued to arise about the coordination between Members Jeffares, Johnston, and King and Trump and the Republican Party. At a rally in Atlanta on August 3, Trump called out the three members by name in his speech, describing them as “pit bulls fighting for honesty, transparency, and victory.”⁶ He specifically praised one of the rules the Members had passed at their unlawful July 12 meeting, and he repeated his frequently debunked claim that he had won the 2020 election in Georgia. Member Johnston attended the rally, sat in the second row, and stood for applause while Trump repeatedly thanked her.⁷ Member King later stated she was “grateful for [Trump’s] encouragement and support.”⁸

The next regularly scheduled Board meetings took place on August 6 and 7, shortly after the Trump rally. On August 6, the Board passed a particularly controversial rule that allows local election officials to conduct a “reasonable inquiry” into the accuracy of the vote count before voting to certify election results.⁹ This type of regulation is unprecedented nationally, but it is consistent with a broader strategy among Trump allies to lay the groundwork for refusing to certify presidential election results if he loses in November.¹⁰

On August 7, Member Johnston moved to reopen a complaint into the administration of the 2020 election in Fulton County. As explained further below, that complaint had been

4 <https://www.ajc.com/politics/election/emails-show-republican-leaders-involvement-in-georgia-election-rules/BHUKJ6LZI5ENDLU5BPALXJ24ZY/>

5 *Id.*

<https://twitter.com/CletaMitchell/status/1811865618762940906>

6 <https://www.washingtonpost.com/politics/2024/08/08/trump-georgia-election-board-interference/>

7 https://www.washingtonpost.com/politics/2024/08/07/georgia-2020-election-fulton-county-trump-investigation/23ceddea-5513-11ef-9a60-5b6e8b4da7c0_story.html; <https://www.washingtonpost.com/politics/2024/08/08/trump-georgia-election-board-interference/>

8 <https://www.washingtonpost.com/politics/2024/08/08/trump-georgia-election-board-interference/>

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<https://sos.ga.gov/sites/default/files/2024-07/Notice%20of%20Proposed%20Rulemaking%20-%20183-1-12-.02.pdf>

10 https://www.nytimes.com/2024/07/13/us/politics/republican-election-campaign-2024.html?utm_source=substack&utm_medium=email; <https://www.theguardian.com/us-news/article/2024/aug/12/trump-overturn-result-presidential-election-vote>

formally closed by a 2-1 vote in May 7¹¹—ten days before Member King’s appointment. The Board did not point to any new facts that justified reversing course, and the Attorney General’s office had advised that it would be improper to reopen the fully adjudicated complaint. The Members proceeded to do so anyway, based partly on advice that Member Johnson improperly received from an outside lawyer for the Georgia Republican Party. Trump reposted a video of the meeting on Truth Social and called for the Attorney General to take action on the reopened complaint into Fulton County. He wrote: “We can’t let this happen again. WE MUST WIN GEORGIA IN 2024!!!”¹²

These circumstances raise serious questions about the Members’ willingness to disregard state law for partisan ends—and potentially for personal gain as well. Member Jeffares has admitted that he is positioning himself as a candidate for a position in a second Trump administration. He recently described telling a former Trump campaign adviser, “[I]f y’all can’t figure out who you want to be the EPA director for the south-east, I’d like to have it.”¹³

II. The Members Have Failed to Uphold the Laws and Regulations of the State of Georgia

The Georgia Code of Ethics mandates that members of state boards, including the State Elections Board, uphold all Georgia state laws and regulations. O.C.G.A. § 45-10-3(1). Members Jeffares, Johnston, and King violated this provision by willfully and knowingly violating the Open Meetings Act on July 12—conduct that amounts to a criminal offense under state law. These members acted directly against the advice of the Attorney General’s Office, both in proceeding with the July 12 meeting and in reopening the complaint into Fulton County’s administration of the 2020 election, further illustrating their disregard for state law. Finally, last week’s meeting confirmed that at least one member, Member Johnston, is taking advice from outside counsel—yet another direct violation of state law.

A. Willful and Knowing Violation of the Open Meetings Act

As discussed in depth below, Members Jeffares, Johnston, and King went to great lengths to conduct an official Board meeting in private without the participation of the general public, knowing that the other two Board members would be unable to attend. These Members knowingly and willfully disregarded a clear instruction from the Attorney General’s office that the meeting would likely violate the Open Meetings Act. The Members forged ahead anyway, passing two controversial election rules at their unlawful meeting. Their conduct violates both the letter and the spirit of the Open Meetings Act, which aims to “protect the public . . . from ‘closed door’ politics and the potential abuse of individuals and the misuse of power such

11 <https://georgiarecorder.com/2024/08/08/georgia-election-boards-right-wing-faction-revisits-fultons-2020-presidential-election/>

12 <https://truthsocial.com/@realDonaldTrump/posts/112922807055677257>

13 <https://www.theguardian.com/us-news/article/2024/aug/13/sara-tindall-ghazal-georgia-state-election-board>

policies entail.”¹⁴ That conduct is also a criminal offense under the Open Meetings Act, and, as relevant here, a clear violation of the Code of Ethics.

The Open Meetings Act mandates that, with few exceptions, “all meetings shall be open to the public.” O.C.G.A. § 50-14-1(b)(1). It further specifies that “all votes at any meeting shall be taken in public after due notice of the meeting and compliance with the posting and agenda requirements of this chapter.” *Id.* To ensure appropriate public access to meetings, the Act sets forth various procedural requirements, including notice, agenda, quorum, and teleconference protocols.

The unlawful July 12 meeting did not comply with any of these procedural requirements. As background, the Board had held a regularly scheduled meeting on July 9. Notice for the July 9 meeting was provided by email to the notifications@sos.ga.gov email listserv and posted to the Board’s website. The Board provided a livestream link for the July 9 meeting for members of the public who were unable to attend in-person, and the entire meeting was transcribed by a court reporter. The agenda for the July 9 meeting was circulated to the email listserv the day before the meeting. Each of these procedures is standard practice for SEB meetings.

At the July 9 meeting, the Board was unable to attend to all agenda items. Chair Fervier recessed the meeting and announced that the Board would reconvene the following day. Members Jeffares and Johnston indicated they had conflicts and would not be able to attend the July 10 meeting, but Chair Fervier and Members Tindall Ghazal and King did not note any conflicts. Thus, on July 9 at 5:18 pm, a Continued Meeting notice was sent to the email listserv confirming the July 9 meeting would be continued on July 10 at 9:00 am. The notice provided that the continued meeting would be livestreamed.

Before the meeting could begin on July 10, Chair Fervier was notified by text message that Member King would be unable to attend the meeting due to a conflict. The Board therefore lacked a quorum for the Continued Meeting and could not convene. Chair Fervier informed meeting attendees that the meeting would be rescheduled. According to public reports, Chair Fervier then “sought and received oral guidance from the Attorney General’s office about how to properly reschedule the meeting – and was told he would need to provide seven days’ notice and that the meeting would need to be available to the public (i.e., via livestream).”

On July 11, Member Jeffares asked Chair Fervier and Tindall Ghazal if they would be available to convene the next day, July 12. Neither was available. Also on July 11, all five Board members received an email from an attorney at the Attorney General’s office advising that the

¹⁴ *EarthResources, LLC v. Morgan County*, 281 Ga. 396, 399 (2006) (citing *Atlanta Journal v. Hill*, 257 Ga. 398, 399 (1987)).

Compl. ¶ 40, *American Oversight v. Ga. State Election Bd.*, No. 24CV009124 (Ga. Sup. Ct.).

proposed July 12 meeting could violate Georgia’s Open Meetings Act. The Attorney General’s office advised the following:

- The Act generally requires a minimum of one week’s notice for non-emergency meetings or for meetings not arising under “special circumstances”;
- Even emergency or “special circumstances” meetings generally require 24 hours’ notice, as well as an ad placed in the county legal organ;
- Although the Open Meetings Act provides for members to attend a meeting by teleconference, any such meeting must otherwise comply with various statutory requirements—including, for example, notice requirements and ensuring that members of the public can fully participate by providing appropriate technological accommodations for those planning to participate by teleconference to ensure all participants can hear all meeting content; and
- A quorum must be present in person in order to comply with the Act, even if it is permissible for a member to otherwise participate by teleconference.¹⁵

The Attorney General’s office also expressed doubt as to whether emergency or special circumstances existed for this meeting and requested that the Board members advise the Attorney General’s office if there were in fact such circumstances.

Despite these warnings, Members Jeffares, Johnston, and King pushed forward with the July 12 meeting, without their colleagues. The only “notice” issued for the July 12 meeting was a perfunctory notice signed by Member Jeffares and placed outside the meeting room in the Georgia State Capitol Building. This notice was not posted on the Board’s website nor circulated via the email listserv, as is standard Board practice. The Board did not issue a full agenda ahead of the meeting, and it did not offer any livestream options for the general public. And on the day of the meeting, Member Johnston was not physically present and instead joined by teleconference. Thus, the Board lacked enough members physically present to establish a quorum.

At the July 12 meeting, Members Jeffares, Johnston, and King proceeded to pass two highly controversial election administration rules—without the participation of the full Board and without the participation of the general public. Indeed, one of the rules passed during the July 12 meeting had never been publicly noticed or disseminated, and thus had never been subject to public comment. The text of both rules had instead been privately sent to Member Jeffares by the chair of the Georgia Republican Party.

This series of events demonstrates that the Members intentionally engaged in conduct designed to exclude the public from fully participating in the July 12 meeting. This knowing and

¹⁵ Compl., *American Oversight v. Ga. State Election Bd.*, No. 24CV009124 (Ga. Sup. Ct.).
Compl., *American Oversight v. Ga. State Election Bd.*, No. 24CV009124 (Ga. Sup. Ct.).

willful violation of the Open Meetings Act is a criminal misdemeanor and can give rise to both criminal fines and civil penalties. It is also a clear breach of the Code of Ethics, as it shows an intentional disregard for the state law and procedure that Board members must agree to uphold.

B. Reopening the Investigation into the 2020 Election Against the Advice of the Attorney General

At the Board's August 7, 2024 meeting, Members Jeffares, Johnston, and King voted to resume an investigation into alleged irregularities in Fulton County during the 2020 presidential election. A complaint on that subject (SEB 2023-025) was resolved by a 2-1 vote of the Board in May 2024. The Board had resolved the complaint by sending Fulton County a letter of reprimand and requiring the Secretary of State, Fulton County, and the Board to agree on a monitor to oversee the county's administration of the upcoming presidential election.

Following its May 2024 meeting, the Board sought and received guidance from the Attorney General as to whether SEB 2023-025 was fully heard and properly closed. The Attorney General's office responded by letter advising that the complaint had been fully adjudicated and closed such that reopening the complaint would be improper.

Member Johnston nonetheless moved to reopen the complaint at the August 7 meeting, citing a letter from outside counsel. Chair Fervier ruled that Member Johnston's motion was out of order because, as the Attorney General's office had advised, the complaint had already been heard and adjudicated by the Board. Chair Fervier "caution[ed]" that voting to reopen the investigation would "put this board in legal jeopardy" based on the Attorney General's advice. Member Johnston moved to override the Chair's ruling, and Members Jeffares and King joined her in voting 3-2 to overturn the Chair's decision.

C. Improperly Consulting Private Outside Counsel in Direct Violation of Georgia Law

Georgia law unequivocally vests the Department of Law with "complete and exclusive authority and jurisdiction in all matters of law relating to the executive branch of the government and every . . . board . . . thereof." O.C.G.A. § 45-15-34; *see also id.* § 45-15-14 ("The Attorney General is vested with complete and exclusive authority and jurisdiction in all matters of law relating to state authorities . . ."). Accordingly, "no such state authority shall be authorized

After a lawsuit was filed under the Open Meetings Act, the Board voted to rescind the two rules adopted at the unlawful July 12 meeting and reconsider them at a later date. The rescission of the rules in response to outside pressure does not change the fact that the Members knowingly and willfully violated the Open Meetings Act by adopting them in the first place.

<https://www.usatoday.com/story/news/politics/elections/2024/08/08/donald-trump-georgia-election-reinvestigation/74715458007/>

without the approval of the Attorney General to employ other counsel in any matter whatsoever.” *Id.* § 45-15-14.

By her own words, Member Johnston admitted to violating this provision and consulting outside counsel regarding the legality of reopening the Fulton County investigation. At the August 7 meeting, Johnston stated: “We have received a letter from the Attorney General’s office, and I have a letter from outside legal counsel that has a differing opinion that the case, in support of my belief, that the case is not closed.”¹⁶ It has been publicly reported that the outside counsel Member Johnston consulted is a lawyer for the Georgia Republican Party.¹⁷ Johnston had no justification for violating the state prohibition on employing other counsel. Although she claimed she did so due to a potential “conflict of interest” by the Attorney General’s office, it is unclear whether she raised those allegations to the Attorney General and sought approval to obtain separate counsel.

III. The Members Have Engaged in Conduct That Amounts to a Breach of the Public Trust

In Georgia, government officials are deemed to be “caretakers of the public trust.”¹⁸ As such, Georgia citizens have “a right to expect their government officials will be beyond reproach”—that is, that government officials will not act in a manner that is or could be perceived as intended to gain a benefit for themselves or someone else. This duty is enshrined in the Code of Ethics: Board members must “never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust.” O.C.G.A. § 45-10-3(8).

The conduct of Members Jeffares, Johnston, and King demonstrates not only their disregard for the laws they have sworn to uphold, but also the extent to which they have breached the public trust by creating an unacceptable appearance that their goal is to secure Trump’s victory in Georgia by any means necessary. As explained, the Members have repeatedly disregarded legal advice from the Attorney General’s office, *i.e.*, their exclusive counsel under Georgia law in most circumstances. They have violated the Open Meetings Act and held unlawful meetings to push through controversial election rules. They have improperly sought outside counsel on official matters. And as recounted above, the circumstances surrounding each of these incidents strongly suggest that they have engaged in this conduct for overtly partisan reasons. These actions, individually and collectively, erode the public’s faith in the Board and amount to a breach of the public trust.

IV. The Governor Should Order a Prompt Administrative Hearing on These Charges

¹⁶ <https://www.youtube.com/watch?v=KmH1BPefQts> at 6:28:55 – 6:29:52.

¹⁷ <https://www.fox5atlanta.com/news/state-election-board-asks-ag-carr-investigate-fulton-county-government>

¹⁸ <https://law.georgia.gov/public-corruption>.

Id.

This letter has charged Members Jeffares, Johnston, and King with violating the Code of Ethics in two ways: (1) by failing to uphold the laws and regulations of the State of Georgia, in violation of O.C.G.A. § 45-10-3(1), and (2) by engaging in conduct that amounts to a breach of the public trust, in violation of O.C.G.A. § 45-10-3(8).

The next steps under the statute are clear. Upon receiving formal charges of an ethics violation, “the Governor or his designated agent shall conduct a hearing” to receive evidence and evaluate the merits of the charges. O.C.G.A. § 45-10-4. As the word “shall” makes clear, the Governor’s obligation to order a hearing in these circumstances is mandatory. In prior cases, the Governor has designated the Office of State Administrative Hearings (OSAH) to hear and resolve ethics complaints.¹ The Governor should follow the same course of action here.

Under Georgia law, a hearing to investigate alleged ethics violations “shall be held in accordance with” the Georgia Administrative Procedure Act. O.C.G.A. § 45-10-4. The Office of State Administrative Hearings is the appropriate entity to conduct that proceeding. It is the agency “responsible for [the] impartial administration of administrative hearings” in Georgia. *Id.* § 50-13-40(a). An administrative law judge presiding over the hearing would have the authority to ensure a full investigation into the facts, including by taking testimony and issuing and enforcing subpoenas as needed. *Id.* § 50-13-41(b).

The Governor should direct that the Office of State Administrative Hearings schedule a hearing as promptly as possible. Georgia law only requires that Board members charged with ethics violations receive 30 days’ notice prior to a hearing on the charges. O.C.G.A. § 45-10-4. That notice period would be appropriate here and, critically, would allow the matter to be heard and resolved before the general election. The Members have already shown their willingness to disregard the law, and there is reason to believe their aim is to ensure Trump’s victory in Georgia by any means necessary. Georgia voters deserve to have confidence that the State Election Board will respect the will of the voters, whatever it may be.

Sincerely,

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¹ See *Roberts v. Deal*, 290 Ga. 705 (2012).