IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION *et al.*, Petitioners v. STATE ELECTION BOARD *et al.*, Respondents	CIVIL ACTION 24CV012491

ORDER ON VARIOUS PENDING MOTIONS

In this case, Petitioner Cobb County Board of Elections and Registration (CCBOER) seeks a declaratory judgment pursuant to O.C.G.A. § 50-13-10 that six rules governing the conduct of Georgia's elections promulgated by Respondent State Election Board (SEB) on 20 September 2024 are invalid. The rules are set to take effect on 22 October 2024, seven days after early voting starts and fourteen days before the general election. Petitioner also seeks immediate relief as to the rule it deems most disruptive -- the Hand Count Rule, Ga. Comp. R. & Regs. r. 183-1-12-.12(a)(5) -- via an emergency temporary restraining order or interlocutory injunction enjoining the Hand Count Rule from taking effect and being enforced. Petitioner-Intervenors Teresa Crawford, Loretta Mirandola, Anita Tucker, Democratic National Committee, and Democratic Party of Georgia Inc. also filed an emergency motion for interlocutory injunction seeking the same relief as to the Hand Count Rule. On 15 October 2024 the Court held an expedited bench trial on both the emergency motions as well as the merits of Petitioners' claims. This non-final order addresses several pending motions in the case, including the request for interlocutory relief.

INTERVENTION

The aforementioned Petitioner-Intervenors and the Georgia Republican Party have all sought to intervene in this case (the latter as a Respondent-Intervenor). The CCBOER does not

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.

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[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 pending a final ruling on its validity and enforceability.[2] Petitioner's motion is supported by its verified petition, an affidavit of its Chairwoman, and exhibits admitted at the final hearing. Petitioner-Intervenors' motion is supported by their verified petition, four affidavits, and exhibits admitted at the hearing. The SEB presented oral argument and exhibits in opposition to the motions, as did Respondent-Intervenor.

The Hand Count Rule is an amendment of Ga. Comp. R. & Regs. r. 183-1-12-.12(a)(5). The amended language provides, among other things, that after the polls close, the poll manager and two poll officer witnesses at every precinct in every county shall unseal and open each scanner ballot box and remove the paper ballots. The ballots are then presented to three poll officers to "independently count the total number of ballots removed from the scanner, sorting into stacks of 50 ballots, continuing until all of the ballots have been counted separately by each of the three poll officers."[3] The poll officers each need to reach the same count.[4] When they are so aligned, they sign a "control document"[5] containing certain identifying information (polling place, ballot scanner serial number, etc.). If the number at which the three poll workers all ultimately arrive does not match the figures "recorded on the precinct poll pads, ballot marking devices [BMDs]

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[2] No Petitioner sought emergency injunctive relief as to any of the other five challenged SEB rules.

[3] Importantly, the poll workers are *not* counting votes, as in tabulating how many votes for candidate X versus how many for candidate Y. They are merely counting the total number of ballots contained in the scanner ballot boxes.

[4] The amended rule is silent as to what happens if the three counters persist in reaching different counts.

[5] The amended rule does not specify the origin of this "control document." The Secretary of State is tasked statutorily to create and furnish "all blank forms … for use in all elections and primaries." O.C.G.A. § 21-2-50(a)(5). The record before this Court is that the Secretary is not preparing such a form for this election cycle.

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 ballot box contains more than 750 ballots on Election Day, the poll manager is authorized to commence the hand count the next day and finish at any point during the week designated for county certification. If the hand counting does not occur on Election Day at the precinct, it must take place at the County election office.

Petitioner and Petitioner-Intervenors seek a declaration that the Hand Count Rule is invalid.[6] Declaratory judgment actions brought pursuant to O.C.G.A. § 50-13-10 track the procedure established by the Declaratory Judgment Act, O.C.G.A. § 9-4-1 *et seq.* That Act empowers courts to grant injunctive and other interlocutory relief in substantially the manner as and under the same rules applicable to equity cases. O.C.G.A. § 9-4-3(b). Whether to grant an injunction is a matter within the Court's discretion according to the circumstances of the case. O.C.G.A. § 9-5-8. "[T]he main purpose of an interlocutory injunction is to preserve the status quo temporarily to allow the parties and the court time to try the case in an orderly manner." *City of Waycross v. Pierce Cnty. Bd. of Commissioners*, 300 Ga. 109, 111 (2016). Put differently, an interlocutory injunction should "prevent one [party] from hurting the other whilst their respective rights are under adjudication." *Grossi Consulting, LLC v. Sterling Currency Grp., LLC*, 290 Ga. 386, 388 (2012).

[6] Respondent and Respondent-Intervenor raised several jurisdictional arguments that, if successful, would require dismissal of this case. A more thorough ruling will follow, but the Court finds provisionally that among the various Petitioners there exists both standing and capacity to sue.

In determining whether to impose an interlocutory injunction, the Court must consider whether the following four factors exist:

> (1) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted;
>
> (2) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined;
>
> (3) there is a substantial likelihood that the moving party will prevail on the merits of her claims at trial; and
>
> (4) granting the interlocutory injunction will not disserve the public interest.

State v. Fed. Def. Program, Inc., 315 Ga. 319, 345 (2022). A movant need not prove all four factors since the test for temporary injunctive relief is a balancing one. *Id.* The first factor -- threat of irreparable injury to the moving party -- is the most important. *Id.*

Today, the status quo is that there is no Hand Count Rule; it does not go into effect until 22 October 2024. Today is also the first day of early voting and only three weeks away from the general election. Should the Hand Count Rule take effect as scheduled, it would do so on the very fortnight of the election. As of today, there are no guidelines or training tools for the implementation of the Hand Count Rule. Nor will there be any forthcoming: the Secretary of State cautioned the SEB before it passed the Hand Count Rule that passage would be too close in time to the election for his office to provide meaningful training or support (Petitioner's Ex. 10); after passage and the unsurprising efflorescence of suits such as this one, the Secretary reaffirmed his inability to provide last-minute logistical support for the last-minute rule (Petitioner's Ex. 16).

The Court finds that Petitioner and Petitioner-Intervenors have made a sufficient showing of a substantial threat of irreparable harm. Our Boards of Election and Superintendents are statutorily obligated to ensure that elections are "honestly, efficiently, and uniformly conducted." O.C.G.A. § 21-2-70(8). Failure to comply with statutory obligations such as these can result in

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 11$^{\text{th-and-one-half}}$ 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:

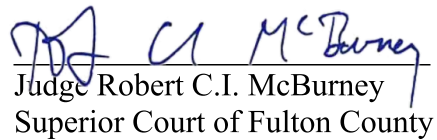
> [S]tate and local election officials need substantial time to plan for elections. Running elections state-wide is extraordinarily complicated and difficult. Those elections require enormous advance preparations by state and local officials and pose significant logistical challenges. [Implementing the 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

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