

July 16, 2024

Georgia State Election Board
2 MLK Dr.
Suite 802 Floyd West Tower
Atlanta Ga. 30334

PETITION FOR AMENDMENT TO ELECTION RULES

(Reconciliation)

Mr. John Fervier,
Mrs. Sara Tindall Ghazal,
Dr. Janice Johnston,
Mr. Rick Jeffares,
Mrs. Janelle King

This petition for an amendment to two election rules is submitted to help secure future Georgia elections. Simple rule changes are needed to help identify known counting errors in Georgia's Dominion Democracy Suite 5.5 software that resulted in Tennessee's recent discontinuance of the nearly identical Dominion Democracy Suite 5.5 system used in Georgia. The current reconciliation rules for early in-person voting and Election Day voting must be enhanced to require poll location managers to reconcile tabulation tapes to detect these known Dominion software malfunctions. It is incumbent upon the board to adopt such a rule to ensure the integrity of the electronic vote count in the 2024 election.

I am filing this notarized petition for the proposed rule amendment in a good faith attempt to prevent further Dominion system counting errors that threaten the integrity of the 2024 elections as documented in SEB2022-348. The intent of this rule is to improve accuracy of Georgia elections on behalf of all Georgia voters. I urge your prompt attention to this matter submitted in accordance with the provisions of Rule 183-1-1-.01(3):

1. The name and post office address of the Petitioner is:

Garland Favorito,
P.O. Box 8058 Roswell, Ga. 30076
garlandf@voterga.org

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2. The full text of the rule requested to be amended and desired to promulgate

Rule 183-1-12-.12 Tabulating Results

(a)1. Immediately after the polls close and the last voter has voted, the poll manager and two witnesses who have been previously sworn as poll officers as provided in O.C.G.A. §§ 21-2-94 and 21-2-95 shall begin the closing procedure on each ballot scanner so that no further votes are cast and record the number of scanned ballots from every ballot scanner used in the polling place. The poll manager and the two witnesses shall record the number of scanned ballots from each scanner on a recap form to be developed by the Secretary of State. The poll manager and the two witnesses shall cause each ballot scanner to print three tapes of the tabulated results and shall sign each tape indicating that it is a true and correct copy of the tape produced by the ballot scanner. **The poll manager and two witnesses shall record the count of ballots from the tabulation tape on the recap form.** If the poll manager or the witnesses have reason to believe that printed tapes are not a true and correct tabulation of the ballots scanned by that ballot scanner, the poll manager or witness shall document the reasons and evidence for that belief and inform the election superintendent, who shall take appropriate action, in his or her discretion, so that the ballots in the ballot box associated with the ballot scanner are accurately tabulated.

Rule 183-1-14-.02 Advanced Voting

(15) After verifying the seal number and the integrity of the seal on each ballot scanner, the election superintendent or tabulating center personnel shall open each ballot scanner and turn on the power. The election superintendent or tabulating center personnel shall then compare the numbers shown on the election counters of the ballot scanners with the numbered list of absentee electors and the absentee ballot recap form to verify that there are no discrepancies. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent. The election superintendent or tabulating center personnel shall cause each ballot scanner to print a minimum of three tapes showing the vote totals as cast on that ballot scanner. **The election superintendent or tabulating center personnel shall then record the count of the ballots cast from the scanner tabulation tapes and reconcile 1) the count of the ballots cast on the scanner tabulation tapes, 2) the numbers shown on the election counters of the ballot scanners, 3) the numbered list of absentee electors and 4) the absentee ballot recap form. If there is a discrepancy, no further action shall be taken until the reason for the discrepancy has been determined to the satisfaction of the election superintendent.** Three witnesses shall sign each of the tapes or shall write on the tapes the reason why they will not sign the tapes. One copy of the results tape for each ballot scanner shall be made available for the information of the public. One tape shall be placed into an envelope (or reusable document storage container suitable for the same purpose), provided by the election superintendent along with "poll worker" memory cards from the ballot scanner. The envelope shall be sealed by the poll manager and the same two witnesses who signed the tape such that the envelope cannot be opened without breaking such seal. The envelope shall be initialed by the poll manager and the two witnesses indicating that it contains the correct tape and memory card from the indicated ballot scanner. The envelope shall be labelled with the name of the polling place, the serial number of the ballot scanner, and the number assigned to the ballot scanner for that election. The third tape shall be placed into another envelope with the absentee ballot recap form.

3. The reason such rule should be amended, repealed or promulgated

Rules **183-1-12-.12**, Tabulating Results, and **183-1-14-.02**, Advanced Voting, must be amended to reconcile tabulator tape ballot counts with scanner ballot counts so as to ensure that Georgia's Dominion Democracy Suite 5.5 voting system is counting correctly and to help detect errors when it does not. The SEB2022-348 complaint shows that the QR code ballot count rejection error was found in 65 of 67 counties surveyed. This error causes scanned ballots to not be tabulated even though they are accepted. There is no current reconciliation procedure detects this error. The same error caused the Tennessee Secretary of State to recommend discontinuance of the Dominion Democracy Suite 5.5 voting system in Williamson County, Tennessee

In the May 24, 2022 DeKalb County District 2 Democratic primary Georgia's voting system declared the wrong winners. Candidate Michelle Long Spears received no votes in the precinct where she and her family lived and voted. A machine recount produced the same erroneous results. A full hand count determined that the voting system shorted her about 3,000 of 4,000 actual votes.

The voting system error was attributed to a ballot alignment problem, however, that did not explain why over 1,800 votes were not counted. Audit logs indicate that the QR code rejection error occurred during that primary. Had the proposed rule change been adopted prior that time, there is a chance that the erroneous results may have been detected prior to results publication.

No other May 24, 2022 primary race was ever audited including the one where Secretary of State Brad Raffensperger declared himself the winner when he received a miraculous 51% of the vote after polling between 18% and 31% up until the day of the election.

It is imperative for the Georgia State Election Board to do its part in protecting Georgia voters from this error that could cause their votes not to count.

4. Any and all pertinent facts as to the Petitioner's interest in the matter

In 2022, Petitioners David Cross and Kevin Moncla who work closely with VoterGA's team of volunteers, filed the SEB2023-025 complaint to show Georgia's State Election Board that that Georgia's voting system was not counting correctly. Mr. Favorito has filed this proposed rule change on behalf of all VoterGA members and all Georgia voters because they deserve accurate elections. He believes that these rule changes may help detect current vote count failures since the Secretary of State's office failed to properly investigate this critical error when the complaint was brought to their attention.

5. Any and all facts known to the Petitioner that might influence the decision of the Board to initiate or not initiate rulemaking, including identification of any parties who it is known will or may be affected by the amended rule

This board heard the SEB2022-348 complaint on February 13, 2024 without the complainants being allowed to present their evidence as required under O.C.G.A. § 50-13-13. The board heard lone testimony from Deputy Director Michael Barnes ignoring Mr. Favorito's February 11, 2024 letter to the board. In that letter he explained Mr. Barnes had admitted in the *Curling v.*

Raffensperger trial he was unqualified to provide any type of technical commentary on electronic voting system matters such as those alleged in SEB2022-348 complaint.

When the board asked Mr. Barnes to provide an assessment on the complaint at its February 13 meeting, it was obvious that he had not read it, did not understand it, had not talked with complainants and could not answer basic questions about it.

It is also important that the board not be deceived by a false claim at that meeting from Mr. Michael Barnes who implied the QR code error only appears when the ballot is rejected. The complaint provides irrefutable evidence that the error also occurred when ballots are accepted.

More details showing that the QR code ballot rejection problem has never been properly investigated are explained in Mr Favorito's April 12, 2024 letter to the board which is shown in the Appendix.

6. **Citations of legal authorities that require the action requested by Petitioner**
O.C.G.A. 21-2-368, 379.24 and other statutes require Georgia's voting system to count accurately. The **Help America Vote Act** provides tolerances for counting errors, which Georgia's voting system has far exceeded

I, Garland Favorito personally appeared before the undersigned officer duly authorized to administer oaths, and on oath deposes that the facts stated in the Petition therein are true and accurate to the best of my knowledge.

Respectfully submitted this the 17 day July, 2024.

Garland Favorito

Garland Favorito

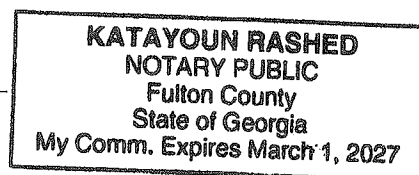
SUBSCRIBED AND SWORN BEFORE ME

this the 17 day of July, 2024
to certify and witness my hand
and official seal.

Notary Public in and for
Fulton County, Georgia.

Katayoun Rashed

[AFFIX NOTARIAL SEAL]



APPENDIX

April 12, 2024

To:

John Fervier, Chairman	jfervier.seb@gmail.com
Sara Tindall Ghazal	saraghazal.seb@gmail.com
Ed Lindsey	edwardlindsey.seb@gmail.com
Dr. Jan Johnston	jjohnstonmd.seb@gmail.com
Rick Jeffares	rjeffares.seb@gmail.com

Subject: SEB2022-348

Dear State Election Board Members,

I am writing to seek a reopening and true investigation of SEB2022-348. Most of you voted to dismiss it at the February 13, 2024 SEB meeting apparently without reading my February 11 letter attempting to alert you to evidence presented in the Curling v. Raffensperger case about the complaint.

I planned to alert you again to this evidence with my public comments during the February 13 meeting, however, the former SEB chair removed public comments from the meeting agenda for one of the first times in the last 20 years since I have been attending SEB meetings.

Here is a quick chronology of recent board activity for this complaint which documents that a severe QR Code Signature Mismatch error found in Tennessee also exists in 65 of 67 counties surveyed in Georgia:

- At the December 19, 2023 SEB meeting, SEB2022-348 was scheduled to be heard but postponed due to unavailability of Michael Barnes to speak to the technical details of the complaint;
- At the January 11, 2024 Curling v. Raffensperger hearing, Deputy Director Barnes testified under oath that he is *"by no means an expert"* in voting system applications;
- At the January 26 Curling v. Raffensperger hearing, State Election Director Blake Evans admitted in cross examination that he had not investigated SEB2022-348 and he has no knowledge of why Georgia's Dominion Democracy Suite 5.5 A system would behave differently than the 5.5. B system supposedly used in Williamson Co. Tennessee where the error was first found;
- In my February 11, letter, I attempted to alert you to their testimony so that the board would conduct a true investigation independently of the voting system vendor and the SOS office;
- At the February 13, SEB meeting the board voted 3-1 to dismiss this critical complaint based on statements made about the voting system by SOS Deputy Director Michael Barnes.

The significance of this complaint is that the Dominion Democracy Suite 5.5 voting system used in Tennessee **failed to count votes on ballots it accepted and there is no means to detect the failure with Georgia's current reconciliation** of total scanner ballots cast and total voters who voted. This problem was **confirmed** by the Election Assistance Commission and Dominion Voting Systems. The severe nature of the error caused the **Tennessee Secretary of State to recommend discontinuance of the Dominion Democracy Suite 5.5. system, which had already been rejected by Texas for other security reasons.**

It is clear from Mr. Barnes comments in the February SEB meeting that he had not read the complaint, did not have a clear understanding of the complaint, had not spoken with the complainants, Mr. Cross and Mr. Moncla, and did not perform a serious investigation to ensure that Georgia's Dominion Democracy Suite 5.5. system is not failing to count ballots statewide. To illustrate these points:

- Mr. Barnes could not answer the question, *"How many counties were reported to have this (QR Code signature mismatch) anomaly in Georgia?"*;
- Mr. Barnes replied, *"I would have to know which those cases were"* when asked about anomalies cited in the complaint for Gwinnett Co., Floyd Co. and DeKalb Co. where the voting system declared the wrong winners and still inexplicably failed to count 1805 votes;
- When asked: *"Do you know if a root cause for whatever they described has been found?"*, Mr. Barnes replied: *"I do not know."*;
- When asked: *"Has the EAC been asked to review the claims of Mr. Cross and Mr. Moncla about this signature mismatch?"*, Mr. Barnes replied: *"I do not know."*;
- When asked: *"Has the source code been evaluated to check for this anomaly?"*, Mr. Barnes replied: *"That is not a question that I can answer."*

Other answers were deceptive or misleading **excuses** to cover the lack of investigation. For example:

- Although audit logs have **no means to identify specific ballots**, Mr. Barnes stated, *"And In most circumstances when you go back and look at the logs **the second inserting of the ballot creates the ballot being read properly and then scanned.**"*
- Although numbers for reconciliation **would not be off** when the QR code error occurs, Mr. Barnes stated: *"I am not aware of any circumstances where we have had issues where the number counts **have been off** that have forced us to go into the logs to see if there is an issue of that nature."*
- Although the complaint explains the scanner **accepts** the ballot when generating the QR code error, Mr. Barnes stated that: *"It (QR code mismatch) only pops up if the ballot style that is represented on the BMD ballot is not present within the scanner that it is being inserted into."*, which causes the ballot to be rejected.

When asked: if it would it be prudent to count the physical ballots in the ballot box to make sure this error has not occurred, Mr. Barnes did not tell the board that Mr. Evans recently issued communications to county elections supervisors telling them *"...this is not something*

your poll workers should do." That effectively helped cover up the QR code error that led to removal of the Dominion system in Tennessee.

It is important for the board to understand that the **voting system vendor and the SOS office have vested interests in not revealing the serious nature of this vote count failure to the board.** It is frustrating to see only one board member attempting to get to the bottom of the problem while the others just accept anything they are told as though it were true. Therefore, it is incumbent for the board to **reopen this case and conduct a legitimate, independent investigation** with its own investigator, allowing the complainants and respondents to be **present** at the hearing in the same manner that the board has conducted previous hearings since the SOS Inspector General's office was set up in 2007.

Sincerely,
Garland Favorito
Co-founder
404 664-4044