

June 18, 2024

Georgia State Election Board
2 MLK Jr. Drive
Suite 802 Floyd West Tower
Atlanta, GA 30334
(via hand delivery)

Re: Petition for Amendment of Recount Rule 183-1-15-.03

Dear Election Board Members:

As discussed at the May 8, State Election Board Meeting, Coalition for Good Governance is resubmitting our Proposed Amendment for the Recount Rule. We have slightly modified the proposal and have highlighted those proposed text changes in gray highlight on the attached Exhibit. Specifically we made these changes after we observed the discretionary hand count in the Coffee County the May primary and noted issues that might recur.

We received the Board's letter declining the previous petition presented in May and wish to address a few of those topics:

- 1) Concern About Accuracy of Hand Counts. We are CGG believe that generally ballots should be counted in the original count by scanner/tabulator and audited with hand counts. A primary goal of a recount is to detect any discrepancies in the machine count. If erroneous programming is affecting the accuracy in some machines or some ballot styles, recounting by machine ***will fail to meet the primary goal of the recount—achieving an accurate count.***
- 2) Manual recounts of the human readable text are legally required. As stated in our previous letter that follows below, the recount method is required by statute to be the as the post-election audit method—a manual count of the printed text. If the official results of a recount are required to be the machine count, there is no legally permitted method to achieve an accurate tabulation if there are programming problems or electronic manipulation. It is quite feasible for the scanner to “pass” the limited Recount L&A and still generate outcome-changing errors if the system

has been improperly programmed.

The problem is further underscored by Georgia's unusual post-election audit law that does not provide for an official manual recount in the event that the post-election audit determines that the wrong winner has been declared because of machine errors. Unlike other states, Georgia law does not require or permit a correction of a wrongly determined outcome detected by audit other than through expensive litigation after certification. Permitting a discretionary recount conducted manually before final certification could resolve most such issues. But requiring the recount to be machine-based will just repeat the machine error and still achieve the wrong official outcome.

3) Training personnel for manual recounts. The state has conducted multiple post-election batch audits in every county. Manual counting of hundreds of thousands of ballots is required. The counties are accustomed to organizing such hand counts.

We appreciate your willingness to reconsider our proposed rule.

Our April 17 letter:

Coalition for Good Governance respectfully submits the attached proposed amendments to the State Election Board Rules under the provisions Rule 183-1-01. We respectfully request that the proposed Rule amendments to the Recount Rules be heard at the next SEB meeting as required by Rule 183-1-1.01(4).

Requirements of Rule 183-1-1-.01(3)

(a) The name and post office address of the petitioner;

Mailing address:

Coalition for Good Governance

Attention: A. Nakamura

PO Box 28097

Atlanta, GA 30358

Email:

Marilyn@uscgg.org

Official corporate address:

Coalition for Good Governance

P.O. Box 754

Crestone, CO 81311

(b) The full text of the rule requested to be amended or repealed, or the full text of the rule desired to be promulgated;

Exhibit 1 attached.

(c) The reason(s) such rule should be amended, repealed, or promulgated;

Purpose of Proposed Rule

The purpose of the proposed rule amendment is to bring the election recount method into compliance with Georgia's recount statute, which requires hand counts for official recounts. The current State Election Board Recount Rule provides for machine tabulation as the default method of recounts which conflicts with O.C.G.A. §21-2-379.23 (d) for BMD ballots. The statute requires:

(d) The paper ballot marked and printed by the electronic ballot marker shall constitute the official ballot and shall be used for, and govern the result in, any recount conducted pursuant to Code Section 21-2-495 and any audit conducted pursuant to Code Section 21-2-498.

It is clear that the statutory intent is that the BMD ballot printed text constitute the vote for a recount, not the QR code. The vote to be counted in a recount is intended to be consistent with the vote to be counted in an audit. Audit Rule 183-1-15-.04 (2)-4 requires:

For ballots marked by electronic ballot markers, the auditors shall rely on the printed text on the ballot to determine the voter's selection. For ballots marked by

hand, the auditors shall rely on the choices indicated by the voter by filling in the oval adjacent to the candidate or question.

As noted below, the Curling court, the State Election Board itself in its proposed court findings, and the existing SEB Rule concerning what constitutes a vote, all interpret the recount requirement to require manually tabulated recounts.

Given the widespread concerns of the accuracy of the QR code vote, public confidence in election outcomes would increase with the count of human readable text for recounts.

(d) Any and all pertinent existing facts as to the petitioner's interest in the matter;

The petitioner, Coalition for Good Governance, represents its Georgia-based members who are voters with an interest in the accuracy of elections and in public confidence in elections as well as in election administration compliance with state and federal law.

(e) Any and all facts known to the petitioner which 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, repealed, or promulgated rule;

All Georgia voters and candidates likely benefit by adoption of a proposed rule requiring compliance with the recount statute, and tabulation of close vote counts by a method independent of the machine QR code tabulation.

In its March 1, 2024 proposed Findings of Facts and Conclusions of Law in the Curling case, the State Election Board proposed that the Court make a finding that its expert, Dr. Juan Gilbert testified that, “Recounts and audits should be conducted by human inspection of the human-readable portion of the paper ballots,” and that the BMD system conforms with this recommendation. (Doc. 1821 at 108)

Additionally, SEB rule on the definition of a vote 183-1-15-.02(2) includes the following provision, referencing the recount (§21-2-495) and audit (§21-2-498) provisions of the statute.

(j) If, in reviewing an optical scan ballot marked by an electronic ballot marker in accordance with O.C.G.A. §§ 21-2-495 or 21-2-498, a discrepancy is found between the voter's choice indicated by the printed text on the ballot and the result tabulated by the ballot scanner, the printed text shall control and be counted. Nothing herein shall be deemed to disallow the use of ballot scanners for tabulation of ballots.

The use of the printed text is intended to control in a recount. A “discrepancy” in a recount between the printed text tally and the QR code machine tally would not be known without a hand count recount.

(f) Citations of legal authorities, if any, which authorize, support, or require the action requested by the petitioner.

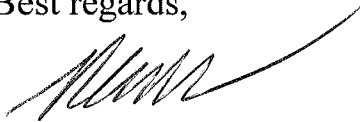
The Court in the Curling v Raffensperger case in which the CGG is a plaintiff and State Election Board members are defendants, has interpreted O.C.G.A. §21-2-379.23 to require manual recounts of votes using the human readable text. The Court’s order notes as follows:

While the scanners count the in-person votes based on the QR codes, in the event of a recount (conducted pursuant to O.C.G.A. § 21-2-495) or an audit (conducted pursuant to O.C.G.A. § 21-2-498), the human-readable text governs instead of the QR code tabulation. O.C.G.A. § 21-2-379.23(d). (Doc.1705 at 31)

Citations of applicable law: O.C.G.A. § 21–2–379.23; O.C.G.A. § 21–2–495

Please contact me if we may provide more information that would be helpful to the Board.

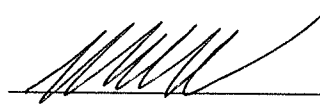
Best regards,



Marilyn Marks
Executive Director
Coalition for Good Governance
Marilyn@uscgg.org
704 292 9802

I, Marilyn Marks, personally appeared before the undersigned public notary, duly authorized to administer oaths, and state under oath that every fact alleged in the Petition for Adoption of Rules dated April 17, 2023 attached hereto is true and correct. The attached petition is submitted under the provisions of Rule 183-1-1-.01.

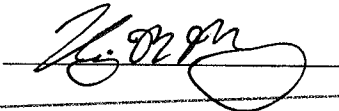
Dated this 18 day of June 18, 2024.



Marilyn Marks

Sworn to and subscribed before me

This 18 day of June 2024.



O'Hagi M. McGriff
Notary Public
Mecklenburg County, NC
My Commission Exp 05/01/2028

183-1-15-.03 Recount Procedure

~~(1) Recount by Electronic Tabulation~~

~~(a) Recounts of primaries and elections conducted using an optical scanning voting system shall be in accordance with this rule.~~

~~(b) The recount shall be conducted by tabulating all ballots utilizing ballot scanners.~~

~~(c) Prior to conducting a recount, the election superintendent shall test each ballot scanner to be used in the recount. A test deck shall be prepared to include at least 75 ballots marked by an electronic ballot marker and 25 absentee ballots marked by hand that were cast in the election to be recounted. The ballots shall be selected from at least 3 different precincts, if available. The selection of individual ballots from a precinct's ballot container shall be conducted in a manner that selects ballots from throughout the ballot container. The test deck shall be tabulated by the ballot scanner or scanners to be used in the recount using one or more batches. A manual hand count of the test deck shall be made and compared to the electronic tabulation of the test deck. If the two counts do not match, the discrepancy shall be researched and additional tests may be run. If the discrepancy cannot be resolved so that the manual hand count and electronic tabulation of the test deck matches, the ballot scanner shall not be used in the recount. If, after testing all available ballot scanners, there are no ballot scanners authorized to be used in the recount, the recount shall be conducted by manual hand count. Upon completion of the test, the test deck ballots shall be returned to their original ballot containers.~~

~~(d) The recount shall be open to the view of the public, but no person except one designated by the superintendent or the superintendent's authorized deputy shall touch any ballot or ballot container. The superintendent may designate a viewing area by which members of the public are limited for the purpose of good order and maintaining the integrity of the recount.~~

~~(e) The tabulation of ballots must be completed through a precise, controlled process that ensures, for each ballot scanner used in the recount, no more than one ballot container is unsealed at any given time.~~

~~(f) A clear audit trail must be maintained at all times during the recount, including but not limited to, a log of the seal numbers on ballot containers before and after the recount.~~

~~(g) The ballot scanner shall be programmed to flag or reject ballots that contain an overvote for the contest to be recounted. One or more recount vote review panels shall be established, consistent with O.C.G.A. § 21-2-483(g), to manually review the overvoted ballots. The recount vote review panel shall determine by majority vote the~~

~~elector's intent, as described in O.C.G.A. § 21-2-438(c), a duplicate ballot shall be created consistent with the elector's intent for the contest to be recounted, labeled "RECOUNT DUPLICATE", and used in the recount. The original overvoted ballot shall be retained.~~

~~(h) All ballots that required a duplicate ballot to be created in the original primary or election, as allowed by law, shall be reviewed by a recount vote review panel to determine that the votes marked in the contest to be recounted on the duplicated ballot are consistent with the elector's intent on the original ballot, as described in O.C.G.A. § 21-2-438(c). If a majority of the recount vote review panel determine that the duplicated ballot is not consistent with the elector's intent on the original ballot, a new true duplicate ballot shall be created consistent with the elector's intent for the contest to be recounted, labeled "RECOUNT DUPLICATE", and used in the recount. The original overvoted ballot and initial duplicated ballot shall be retained.~~

~~(i) If it appears that a ballot is so torn, bent, or otherwise defective that it cannot be processed by the ballot scanner, the recount vote review panel shall prepare a duplicate ballot for the contest to be recounted. All duplicate ballots created during the recount shall be clearly labeled by the word "RECOUNT DUPLICATE". The defective ballot shall be retained.~~

~~(j) After all of the valid ballots to be included in the recount have been tabulated, the superintendent shall cause a printout to be made of the results and shall compare the results to the results previously obtained. If upon completing the recount, it shall appear that the original vote count for the recounted contest was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.~~

(21) Recounts by Manual Hand Count

(a) A recount shall be conducted by manual hand count only:

- ~~1. As provided under Rule 183-1-15-.03(1)(c); or~~
- ~~2. Pursuant to a court order.~~

(b) Votes shall be counted by one or more recount teams consisting of at least three persons each. The superintendent shall select the persons for each recount team.

(c) In a recount of a partisan election, the recount team shall be composed of the election superintendent or designee thereof and one person selected by the election superintendent from a list provided by the county executive committee of each political party and body having candidates whose names appear on the ballot for such election, provided that, if there is no organized county executive committee for a political party or body, the person shall be selected from a list provided by the state executive committee of the political party or body. If a candidate whose name appears on the ballot, or who is a qualified write-in candidate, is unaffiliated with any political party or body, the candidate shall have the right to provide a list of proposed recount team members from which recount team members shall be selected. If, after the superintendent provides reasonable notice and a deadline to the executive committee, or unaffiliated candidates, a county executive committee or state executive committee

or candidate does not provide a sufficient number of names or does not timely delivery the list of names, the superintendent shall be permitted to select the persons to serve on the recount team on behalf of the political party or body or candidate as needed.

(d) In a recount of a nonpartisan election, the recount team shall be composed of the election superintendent or designee thereof and two electors of the county, in the case of a county election, or the municipality, in the case of a municipal election, selected from a list provided by the chief judge of the superior court of the county in which the election is held or, in the case of a municipality which is located in more than one county, of the county in which the city hall of the municipality is located. If, after the superintendent provides reasonable notice and a deadline to the chief judge, the chief judge fails to designate a sufficient number of persons for the recount or does not timely delivery the list of names, the superintendent shall be permitted to select the persons to serve on the recount team as needed.

(e) Ballots shall be manually counted by hand in batches of no more than ~~30~~ 50 to ensure that the number of ballots recounted matches the number originally counted. For ballots marked by electronic ballot markers, the recount teams shall rely on the printed text on the ballot to determine the voter's selection. For ballots marked by hand, the recount teams shall count the votes indicated by the voter by marks in the oval adjacent to the candidate or question, or other clear hand marked voter intent.

(f) The recount teams shall determine the elector's intended vote on each ballot, by majority vote, in accordance with Rule 183-1-15-.02 and O.C.G.A. §21-2-437(e). In the event of a tie vote by a review team, the vote of the election superintendent or designee thereof shall control.

(g) Recount teams shall compare the number of votes, overvotes, and undervotes to the number of ballots in the batch. If the numbers do not match, the batch shall be counted again.

(h) After all of the valid ballots to be included in the recount have been counted, the superintendent shall compare the results of the recount to the results previously obtained. If upon completing the recount, it shall appear that the original vote count for the recounted contest was incorrect, such returns and all papers being prepared by the superintendent shall be corrected accordingly.

(i) The number of ballots counted in the recount shall be reconciled to the number of voters casting a ballot, as recorded in the pollbooks and mail ballot receipt records. Differences shall be investigated and explained to the satisfaction of the superintendent. The reconciliation document shall be made publicly available for review prior to certification of the recount results. Any significant differences between the original machine counted results and the hand counted results shall be investigated and documented and made publicly available prior to certification of recount results.

(j) Electronic copies of ballot images created in the original machine count shall be made publicly available no later than 24 hours prior to the start of the recount.

(k) The supplemental use of the certified voting system scanner tabulator is permitted for purposes of assisting in the detection and investigation of discrepancies, so long as the accurate hand count of the ballots is used as the final recount results.

(l) Each candidate whose votes are subject to a recount shall be permitted to appoint one poll watcher to monitor each recount team. Candidates shall provide the list of appointed poll watchers to the superintendent no later than 3 hours prior to the start of the recount. Candidates' poll watchers shall have meaningful visual access that permits the watcher to see the votes as recorded on the ballots and the recount tallies as they are being made, and hear the discussions and calling of votes by the recount teams.

(m) In the event that a poll watcher observes a discrepancy during the counting, they may, in an orderly manner, call the discrepancy to the attention of the counters, and upon conferral, the counters shall immediately correct any discrepancy.

(n) The tally sheets and final tabulation documents shall be provided as public records not later than 24 hours prior to certification of the recount results.

(o) Disputes concerning the proper application of these recount provisions or relevant statutes may be promptly filed with the appropriate superior court under the provisions of O.C.G.A. §21-2-412.

(p) Upon the determination that a recount will be conducted, public notice shall be given no later than 24 hours prior to the start of the recount, and such notice shall be posted on the county website or equivalent electronic messaging page.

(2) Discretionary recounts under O.C.G.A. § 21-2-495 (a), (b), and (d)

(a) Recounts requested under O.C.G.A. §21-2-495 (a), (b), and (d) shall be conducted by manual count procedures provided in (a) above, unless each candidate subject to the recount agrees in writing to machine tabulation of the discretionary recount.

(b) All requests for discretionary recounts under O.C.G.A. § 21-2-495 (a) or (b) shall be considered in a properly noticed public meeting conducted by the superintendent, at which affected candidates or their appointed representatives shall be permitted to support or oppose the recount request and present documentation of their position.

Statutory Authority

O.C.G.A. §§ 21-2-31, 21-2-495.