

1  
2 THE OFFICE OF SECRETARY OF STATE  
3 STATE OF GEORGIA

4 IN THE MATTER OF:

5 STATE ELECTION BOARD MEETING

6  
7 Wednesday, December 20, 2023

8 Georgia State Capitol, Room 341

9 Atlanta, Georgia

10 9:30 a.m.

11 Day 2 of 2

12  
13  
14 **APPEARANCE OF THE PANEL**

15 Matt Mashburn, Acting Chair

16 Janice Johnston

17 Ed Lindsey

18  
19  
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22  
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Transcript Legend

[sic] - Exactly as said.

(ph) - Exact spelling unknown.

-- Break in speech continuity.

. . . Indicates halting speech, unfinished sentence or omission of word(s) when reading.

Quoted material is typed as spoken.

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1                                   **P R O C E E D I N G S**

2                   **MR. MASHBURN:** Ready to go ahead and get  
3 started. We've got a busy morning this morning  
4 ahead of us. So we'll call the meeting to order  
5 and I will go ahead and give an invocation. So  
6 pray with me, please.

7 (Invocation)

8                   **MR. MASHBURN:** We'll now do the Pledge of  
9 Allegiance. And I'll ask Mr. Lindsey to lead it  
10 if he'd like to.

11                   **MR. LINDSEY:** Please stand.

12 (Pledge of Allegiance)

13                   **MR. LINDSEY:** Thank you.

14                   **MR. MASHBURN:** Everybody please be seated.

15                   **Petition for Amendment of Rule of State**  
16                   **Election Board - Garland Favorito - Rule**  
17                   **183-1-12-.23 Storage of Returns**

18                   **MR. MASHBURN:** The first item on the agenda  
19 today is a petition for amendment of rule of  
20 state election board. Garland Favorito is the  
21 petitioner.

22                   Mr. Favorito, the floor is yours. You can  
23 present up here or from your chair, whichever is  
24 your -- your -- whichever is your pleasure.

25                   I had offered you up to thirty minutes and

1       you said that you didn't need that long. So  
2       we're not going to keep you on a strict timer.  
3       We'll just let you -- let you go as you will.

4               **MR. FAVORITO:** Thank you, Mr. Chairman.

5               **MR. MASHBURN:** You are on now.

6               **MR. FAVORITO:** All right. Thank you,  
7       Mr. Chairman. Are you -- I don't know, probably  
8       try to keep this to about fifteen minutes as  
9       possible.

10              I have a little handout. This is a very  
11      simple rule change. It's very straightforward.  
12      I've got a little handout that we can follow  
13      along for the presentation. It has to do with  
14      memory cards.

15              This handout is also available on our social  
16      media platforms, Telegram, if anybody's watching  
17      at home. And it'll be on our studies tab this  
18      afternoon.

19              This has to do with memory cards and the  
20      retention of memory cards. First of all, as you  
21      see on our diagram, you know, what does the  
22      memory card contain? We know that it contains  
23      in-person ballot image, cast vote records, and  
24      audit logs based on testimony and so on. And we  
25      also know that these are election records and

1 they're created automatically when ballots are  
2 scanned in order to tabulate votes.

3 So they are probably the most important  
4 election records other than the physical ballots  
5 because they can be used to reproduce the  
6 election results. And that's why they're so  
7 critical.

8 Under federal law, they are required to  
9 be -- our election records are required to be  
10 retained for 22 months and under state law for 24  
11 months. And that is -- I'm referring to  
12 52 USC 20701. It says: Every officer of  
13 election shall retain and preserve, for a period  
14 of twenty-two months, all records and papers  
15 which come into his possession relating to any  
16 act requisite to voting. That's 52 USC 20701.

17 In Georgia O.C.G.A. 21-2-273 says: All  
18 primary and/or election documents shall be  
19 preserved therein for a period of least 24  
20 months.

21 So it's pretty common and standard. I don't  
22 think that's a surprise to anyone here. But  
23 under state election board current rule  
24 183-112-.13, it says that the election  
25 superintendent may use the memory cards for

1 programming ballot scanner units for the next  
2 primary election or runoff.

3 Well, the next runoff could be within 30 to  
4 60 days. And according to federal and state law,  
5 they -- this has a two-year -- you know, election  
6 records have a two-year retention period. So  
7 what we're proposing to do here is very simply  
8 change that statement to say that the election  
9 superintendent shall retain the memory cards for  
10 a period of 24 months in accordance with Georgia  
11 law. So that's something similar to that. And  
12 then there's a couple of additional minor changes  
13 in there.

14 So I wanted to try to address what the  
15 arguments could possibly be against this. We've  
16 heard a couple of things. We said Senate Bill  
17 202 made ballot images public record in 2021, but  
18 that is really irrelevant because election  
19 records have always had a two-year retention  
20 period. So what happened in 2021 with Senate  
21 Bill 202 was a good thing, but it didn't -- it's  
22 not relevant to what we're discussing here.

23 The other issue that comes up is cost. The  
24 memory cards, we believe, cost about \$10 each,  
25 depending upon the storage capacity. And they

1 could be purchased as commercial off-the-shelf  
2 products from third parties and used. So you --  
3 cost is really not an issue, particularly when  
4 you consider the cost of this voting system.

5 There was a hundred and seven plus million  
6 dollar initial purchase. There's a seven to ten  
7 million additional total per year for all the  
8 counties to perform maintenance, testing,  
9 certification, licensing, storage, and logistics.  
10 There was a -- \$35 million in taxpayer-funded  
11 interest when they purchased the system. And  
12 this was done without any of the required fiscal  
13 notes either for the initial purchase or for  
14 ongoing expenses.

15 And then finally it was financed by a  
16 20-year bond for a system that had a 10-year  
17 shelf life. So we're going to be paying for this  
18 system 10 years after it's done. That -- so the  
19 \$10 for memory cards -- and you only have to buy  
20 those once because once you retain them, you can  
21 reuse them after two years. That's not a  
22 legitimate argument.

23 I want to just mention to you a couple of  
24 other things. We found that in our -- we did a  
25 survey about images statewide, all hundred and

1        fifty-nine counties. We found out that a couple  
2        of times counties have told us that the elections  
3        director and people in the elections office have  
4        actually told him they can go ahead and overwrite  
5        the memory cards. We have a letter -- e-mail  
6        here in my record there from former elections  
7        director Chris Harvey back in 2020 as well as one  
8        from Michael Barnes who's still on staff. And he  
9        said that you can clear used CF cards when you're  
10       ready. Well, that's not really true. That's not  
11       conforming to federal or state election law.

12                So just to wrap up, I mentioned in my letter  
13       that we had -- we did this ballot image analysis  
14       for open records requests, survey all the images  
15       statewide. We found out some really appalling  
16       information that 70 Georgia counties out of a  
17       hundred and fifty-nine could not actually produce  
18       the original 2020 ballot images which were  
19       required to be retained for two years based on  
20       our -- you know, the clear, plain text of federal  
21       and state law.

22                What we found was that there was a total of  
23       roughly 1,726,651 missing original ballot images  
24       from the 2020 election. That is across 70  
25       counties. Thirty-six of those counties are



1 missing all 100 percent of the original ballot  
2 images. Six of the counties had no recount or  
3 original ballot images. Seventeen counties only  
4 had recount images. And the reason why a recount  
5 image doesn't work is because the metadata is --  
6 you need the metadata from the original ballot  
7 images not from the recount. There's no original  
8 timestamp for audit purposes, no original  
9 metadata, and the image could've been replaced  
10 between the time of the recount and the time it  
11 was originally scanned. So recount images are  
12 basically worthless. You have to have the  
13 original ballot images.

14 Finally we found that another -- 34 of those  
15 counties were incomplete. And by incomplete we  
16 mean -- we don't mean that they were only missing  
17 a couple of ballot images. They were missing  
18 thousands of ballot images.

19 So in a nutshell -- finally one last thing  
20 is 13 counties just flat refused to comply with  
21 the open records requests. And you have all that  
22 information in the little presentation that I  
23 just left you.

24 So to wrap up here, what are we asking the  
25 board to do? Specifically is to make the rule

1 change that we are proposing here for  
2 183-1-12-.13 to conform to federal and state law,  
3 make that conform to federal and state law simply  
4 by proposing this rule change to retain the  
5 memory cards for -- for two years in accordance  
6 with existing law, which is not -- the rule is  
7 inconsistent with federal and state law.

8 Second thing, I think we should -- what I  
9 would ask the board to do is issue a letter of  
10 instruction to Michael Barnes since he's still on  
11 staff to prevent any further inappropriate advice  
12 he's given to counties in regards to the  
13 destruction of election records here in the state  
14 of Georgia.

15 And then finally what I would ask the board  
16 to do is to issue a request to the superior court  
17 judges in counties that for all the counties that  
18 could not produce the memory cards, which were  
19 records of the original ballot images -- ask the  
20 courts to release the corresponding ballots that  
21 are no longer under the two-year seal. The  
22 two-year seal has been up. These are 2020  
23 ballots. People still have not seen them, and  
24 they -- a lot of these counties have not  
25 destroyed them. They've kept them because of all

1 of the controversies in 2020.

2 So we believe that the board would -- is  
3 authorized and they could write that letter to  
4 the superior court judges in those counties and  
5 that the judges would listen to the board because  
6 the board has authority for elections in the  
7 state of Georgia.

8 So that is all I have and I'm happy to  
9 answer any questions if you -- if you have any.

10 **MR. MASHBURN:** Thank you for your  
11 presentation, Mr. Favorito.

12 Questions from the board? Okay, your mic is  
13 on.

14 **MR. LINDSEY:** Quite frankly as long as we  
15 are maintaining the paper ballots, I'm not  
16 convinced that we're in violation of the law, but  
17 I do -- I do respect your interpretation of it.  
18 And so I -- I am curious as to whether you've  
19 done any kind of analysis because other states  
20 utilize electronic voting as well, including  
21 memory cards. Do any of the other states have  
22 the same interpretation that you have in terms of  
23 the memory cards being something that needs to be  
24 retained under federal law?

25 **MR. FAVORITO:** I -- I'm sorry, Ed. I was

1       having trouble with the question. Do any other  
2       states have the -- I'm having trouble hearing  
3       you.

4               **MR. LINDSEY:** Have -- have accept -- agree  
5       with your interpretation of federal law that the  
6       memory cards are required to be retained?

7               **MR. FAVORITO:** As far as I know, there is a  
8       general consensus that the clear, plain text of  
9       federal law means what it says. Of course,  
10      Georgia law would not apply.

11              **MR. LINDSEY:** I understand that. But  
12      what -- I guess my question is is can you cite to  
13      me other states that have interpreted federal law  
14      the way you have in terms of the requirement to  
15      retain the memory cards? Because I'm not -- I'm  
16      not aware of any --

17              **MR. FAVORITO:** I guess I'm not a --

18              **MR. LINDSEY:** (indiscernible) they aren't.  
19      I'm just saying I don't know of any.

20              **MR. FAVORITO:** Uh-huh. Yeah, I'm not aware  
21      of any state that has interpreted the law  
22      differently than the way it's written --

23              **MR. LINDSEY:** Okay.

24              **MR. FAVORITO:** -- which is that the election  
25      records have to be retained. They, you know -- I

1 mean, in rec -- we're in the age of electronic  
2 election records. So I don't think there's any  
3 dispute, based on the national calls I've been  
4 on, that the election records -- that statute  
5 applies to electronic election records --

6 **MR. LINDSEY:** Yeah.

7 **MR. FAVORITO:** -- as well as the, you know,  
8 physical documents and so on.

9 **MR. LINDSEY:** Yeah. Well, certainly before  
10 we went to requiring the paper ballot to be  
11 printed and retained, the memory cards had a much  
12 higher importance. So let me ask you this  
13 question. What's the problem with trying to --  
14 stick with the memory cards. I hear you in terms  
15 of the problem that you were citing and I think  
16 that bears a different investigation for a  
17 different day in terms of counties retaining the  
18 paper ballots, which they're required to do under  
19 state law.

20 Put that aside for a minute and let's just  
21 sort of stick with this. Assuming that the  
22 counties are doing what they are required to do  
23 under state law, which is to retain the paper  
24 ballots for the time period that's required  
25 underneath the law, what's the problem that

1           you're trying to fix here?

2           **MR. FAVORITO:** Well, the first -- the  
3           first -- the first problem is that the physical  
4           ballots are under seal. The ballot images,  
5           according to Georgia law, are available to the  
6           public. As you might be familiar, we have spent  
7           three years trying to see the 2020 Fulton County  
8           ballots. We've actually won our case in the  
9           Georgia Supreme Court. They said that we did  
10          have standing. And through all this political  
11          manipulation and the lower court system, we have  
12          still yet to see the ballots from the 2020  
13          election after winning the case in the Georgia  
14          Supreme Court.

15          **MR. LINDSEY:** I understand your frustration.  
16          That has a lot to do with your ability and your  
17          interpretation of the law regarding the paper  
18          ballots. And I hear you and I respect what  
19          you've tried to do there.

20                 But I'm trying to figure out how does that  
21          fit with the -- how does that fit with retaining  
22          the memory cards? Assuming that people are  
23          following the law and your interpretation of the  
24          law in terms of the paper ballots is held up,  
25          which it was held up by the Georgia Supreme

1 Court, you know, what is the -- what is the  
2 problem that's going to be fixed by retaining the  
3 memory cards?

4 **MR. FAVORITO:** Well, the problem that's  
5 going to be fixed -- take the interpretation of  
6 the law completely away and then just the flat --  
7 isn't it common sense that you would want to  
8 retain the memory cards which contain ballot  
9 images, audit -- audit logs and cast vote records  
10 for a two-year period as all other election  
11 records? Regardless of what the law says, isn't  
12 that something that the board would want to do  
13 and want to request that the counties do just in  
14 case other problems come up regardless of what  
15 the law says?

16 **MR. LINDSEY:** Like I said, frankly, what I  
17 want to see is that the -- the state and the  
18 counties follow state law regarding the paper  
19 ballot.

20 I thank you for your time. Appreciate it.

21 **MR. MASHBURN:** Member Lindsey yields the  
22 floor. Dr. Johnston?

23 **DR. JOHNSTON:** Yes. Is the mic on?

24 **MR. MASHBURN:** You are on.

25 **DR. JOHNSTON:** I'm on? Can you hear me?

1           So I would share with my fellow board member  
2           that with regards to elections and election  
3           documents that the records have to be retained so  
4           that anyone can have access to the legal and  
5           properly documented record of who was eligible to  
6           vote, who voted, how many ballots were cast, and  
7           how many votes were counted. And those  
8           documents, whether they're electronic or paper  
9           have to be available in some way or form  
10          consistently for members of the public. It's  
11          just -- it's a -- it's an adherence to the Open  
12          Records Act. And I see that if there's  
13          difficulty with counties retaining the records,  
14          whether it's paper or electronic, there's an  
15          issue.

16                 And more importantly if there's any question  
17          of the conclusion of an election, you -- one must  
18          have the records available and accessible for  
19          review, whether it's from an election official's  
20          viewpoint or from a member of the public, so that  
21          all can agree that the results are what they are  
22          purported to be.

23                 So I think this is -- you know, just follows  
24          with basic good recordkeeping and legal  
25          recordkeeping. And the Attorney General of



1 Georgia, he addresses compliance with the  
2 requirements for records, pertaining to O.C.G.A.  
3 50-18-70 through 77, that the records include not  
4 only documents and papers but photographs which  
5 are on -- on the memory cards and computer-based  
6 or -generated information. Well, information  
7 includes all metadata.

8 So I think that this is a great amendment  
9 to -- to our rule to include the requirement of  
10 the retention of the memory cards.

11 And I did a little research and I find the  
12 cost of a memory card today, a 16-gigabyte memory  
13 card is fourteen to twenty-six dollars. And --  
14 but Dominion, I believe, sells the memory cards  
15 and rather than getting a volume discount, I  
16 think it's a volume upmark in price to \$46.

17 So if -- and if you calculate that for  
18 Fulton County for the number of scanners that  
19 they have, it would cost -- \$46 for a memory card  
20 would cost \$3600 for Fulton County. And for all  
21 the memory cards used in scanners on election  
22 day, it would cost \$32,000. But they have a  
23 budget of 40 million, what's \$32,000? And if you  
24 extrapolate that to the entire state, it would be  
25 \$300,000 spread out over a hundred and fifty-nine

1 counties.

2 So I don't think it's too great of a  
3 financial burden. And, of course, the memory  
4 cards can be reused after two years. So you  
5 can -- you can apply the old business standard of  
6 a grandfather, father, and son. You can have one  
7 set of memory cards available for emergencies,  
8 have the set that you're using for the current  
9 election, and have the retained set in the  
10 records.

11 So I would -- I would fully support this and  
12 would make a motion to accept the amendment to  
13 this rule.

14 **MR. MASHBURN:** Okay. There's been a motion  
15 made to accept the rule. Is there a second? Is  
16 there a second? Okay, without a second the  
17 motion cannot be considered.

18 I have a couple questions and Dr. Johnston  
19 might have the answers for these. But, Garland,  
20 you can chime in as well. And everybody who  
21 knows me and as long as I've been on the board,  
22 you know that I'm always worried about unfunded  
23 mandates.

24 And so what I want to do is kind of  
25 quantify. Dr. Johnston was doing a good job of

1           this already. So she might've already done this  
2           work. But tell me how many cards do we use  
3           statewide for an average presidential election?  
4           Do we know?

5           **MR. FAVORITO:** I would have to be  
6           speculating. I would have to just guess. And my  
7           guess would be around 30,000. I'm -- I'm not  
8           sure.

9           **DR. JOHNSTON:** You're close.

10          **MR. MASHBURN:** 30,000? Dr. Johnston?

11          **DR. JOHNSTON:** I would say that's close.

12          **MR. MASHBURN:** Okay. So thirty -- we're  
13          doing -- 30,000. Okay. And how many memory  
14          cards are used in an average off-year election?  
15          Do we know?

16          **DR. JOHNSTON:** Don't know.

17          **MR. MASHBURN:** Ballpark estimate?

18          **DR. JOHNSTON:** Don't know.

19          **MR. MASHBURN:** Probably less.

20          **MR. FAVORITO:** Not -- not very many.

21          **MR. MASHBURN:** Probably less or maybe the  
22          same. So --

23          **MR. FAVORITO:** No. It'd be dramatically  
24          less.

25          **MR. MASHBURN:** Okay. And so, Dr. Johnston,

1 is your 300,000 based on that 30,000? Or ...

2 **DR. JOHNSTON:** Yes.

3 **MR. MASHBURN:** That would be -- that would  
4 be ten apiece, right?

5 **DR. JOHNSTON:** That would be \$46, Dominion  
6 price. Dominion markup.

7 Now, one should know that the next  
8 generation of scanners that Dominion plans to use  
9 will use SD cards and not compact flashcards.  
10 And they currently use 16-gigabyte compact  
11 flashcards which is -- it's hard to find one  
12 because flashcards today and SD cards are vastly  
13 larger, more -- more capable of storing much more  
14 information and are faster.

15 So I think we should expect better  
16 performance. It depends on the performance of  
17 the host device also. So the quality of the host  
18 device makes a difference on the scanning  
19 properties.

20 **MR. MASHBURN:** Okay. Thank you. Thank you  
21 for that. So there's been a motion made to  
22 accept the rule. It was not seconded so it could  
23 not be considered. Is there a counter?

24 **MR. LINDSEY:** Well, let me first explain  
25 why -- I do understand your point and it sounds

1 to me, Mr. Favorito, like most of your complaint  
2 is regarding the retention of the paper ballots  
3 in the proper following of Georgia law. And that  
4 needs to be our focus rather than a duplicate  
5 document -- a duplicate source of the memory  
6 cards. And so that's -- that's where I think  
7 that really the focus could be. So therefore I  
8 would move that -- that this -- this rule change  
9 be -- be denied at this time.

10 **UNIDENTIFIED SPEAKER:** Chairman, point of  
11 order. I'm not able to hear (indiscernible).

12 **MR. LINDSEY:** I'm sorry. I'm sorry, sir.  
13 I'm a little too relaxed here. My apologies. My  
14 apologies.

15 I'm going to vote to deny --

16 **MR. MASHBURN:** I think there's going to  
17 be --

18 **MR. LINDSEY:** -- because I think that the  
19 issue here as raised by Mr. Favorito that needs  
20 to be looked at is the following of state law  
21 regarding the paper ballots. That's the problem  
22 if there is a problem.

23 And so I think this is sort of an end  
24 around, but if folks are having a difficult time  
25 retaining paper ballots, they're going to

1           probably do the same problem with electronic. So  
2           let's try to clean up this -- if a problem does  
3           exist, that we focus on the retention issue with  
4           the paper ballots which we have made such a hard  
5           effort to get to in 2020.

6           **MR. MASHBURN:** Okay. There's -- there's  
7           been a motion to reject the petition. I second  
8           the motion. Is there discussion?

9           **DR. JOHNSTON:** Yes. I would like to make a  
10          point that election documents must be available  
11          for review by anyone. And the paper ballots are  
12          not available for review. So one must rely on  
13          the electronic documents that should be retained  
14          and made available, and they just have not been.  
15          The election offices are failing in saving what  
16          is legally required for them to retain.

17          **MR. LINDSEY:** I understand your point, but  
18          that gets back to mine, which is the problem is  
19          the -- is what to do with the paper ballots.

20          **MR. MASHBURN:** Any further discussion?  
21          Okay, we'll vote in, again, reverse chronological  
22          order of seniority. So Dr. Johnston gets to go  
23          first.

24          Dr. Johnston? On the motion to reject the  
25          petition.

1           **DR. JOHNSTON:** I vote nay.

2           **MR. MASHBURN:** Dr. Johnston votes nay.

3           On the motion to reject the petition, how  
4 say you, Mr. Lindsey?

5           **MR. LINDSEY:** Aye.

6           **MR. MASHBURN:** Mr. Lindsey votes aye.

7           I vote aye. The motion to reject carries 2  
8 to 1.

9           Thank you for your presentation,  
10 Mr. Garland -- Favorito.

11          **MR. FAVORITO:** Thank you for the time.

12          **MR. MASHBURN:** We appreciate you, all the  
13 hard work that you do.

14           **Petition for Amendment of Rule of State**

15           **Election Board - Marilyn Marks -**

16           **183-1-12-.11 Conducting Elections**

17          **MR. MASHBURN:** Okay. The next -- order  
18 please. The next matter we have for  
19 consideration are petitions for amendment to the  
20 rule from Marilyn Marks. You gave me an order  
21 that you wanted to present them in. I don't know  
22 if it's the same as on my agenda or not.

23          **MS. MARKS:** The agenda is better to me.  
24 Whatever the board would prefer.

25          **MR. MASHBURN:** Okay. So whatever is your

1 pleasure.

2 **MS. MARKS:** Okay, great.

3 **MR. MASHBURN:** Dealer's -- dealer's choice.

4 We'll let you -- we'll let you pick which one.

5 **MS. MARKS:** We'll start with -- well, I  
6 don't know whether it's the hard one but maybe  
7 the most repetitive one -- ballot secrecy. Let's  
8 do that.

9 And I'm splitting my time today with  
10 Ms. Jeanne Dufort --

11 **MR. MASHBURN:** Okay. Just for the --

12 **MS. MARKS:** -- our co-petitioner.

13 **MR. MASHBURN:** Just -- just for the board's  
14 record, that one is going to be on tab 50. We  
15 have labeled it on the agenda as conducting  
16 elections.

17 Okay. Is the board -- everybody -- the  
18 board ready?

19 **DR. JOHNSTON:** Uh-huh.

20 **MR. MASHBURN:** Okay. Board ready?

21 **MR. LINDSEY:** Yeah.

22 **MR. MASHBURN:** Okay. Thank you.

23 Please proceed.

24 **MS. MARKS:** Thank you, Mr. Chair and members  
25 of the board. Thank you so much for letting us



1 present today. I'm Marilyn Marks, director of  
2 Coalition for Good Governance.

3 You're familiar with both petitions that we  
4 will be presenting today: ballot secrecy as well  
5 as logic and accuracy, compliance, rulemaking  
6 petitions. We've been here before. We've  
7 tweaked slightly the last rulemaking petition  
8 that we put before you at the October meeting.  
9 So I won't go through all of the rationale for  
10 why we need secret ballots, why we have a  
11 violation today. You all are very familiar with  
12 that.

13 But as we start this discussion again, we  
14 should remind ourselves that across all modern  
15 democracies in the world, the right to vote a  
16 secret ballot is considered a human right in  
17 international treaties. Our nation's foreign  
18 relations laws say that governments that are  
19 elected without protected ballot secrecy are not  
20 to be considered democratic nations.

21 We all know it is a hard-won right to  
22 protect every voter in the country, every voter  
23 in Georgia. But Georgia has stripped away that  
24 right not by law, but by permitting the Secretary  
25 of State to adopt and deploy a voting system that

1 violates a host of laws.

2 But this board has not felt compelled to  
3 return that right to Georgia voters by simply  
4 making rules to enforce Georgia and federal laws.

5 The U.S. Supreme Court has recognized the  
6 right to a secret ballot as a fundamental right.  
7 Federal HAVA laws require secret ballots and the  
8 state constitution requires it. Your own rules  
9 acknowledge the importance of the secret ballot.  
10 In fact, your own rules state that it is a  
11 constitutional right. But somehow the board  
12 seems to be taking the view: Never mind all those  
13 superior laws or the Constitution or what the  
14 Georgia statutes require in absolute ballot  
15 secrecy; we want to merely comply with a small  
16 portion of 21 -- 21-2-300, requiring BMD ballots  
17 and ignoring the conditions of that law.

18 That BMD use law is certainly not  
19 unconditional, but it is in the way it's being  
20 interpreted by -- interpreted by this board.  
21 Ballot secrecy is an urgent matter that needs to  
22 be taken up right away as -- and voters need to  
23 be protected. As we head into probably the most  
24 contentious election in our lifetimes, we all  
25 know voters who don't really like one candidate

1 or the other of the likely presidential  
2 candidates in 2024, but they feel pressured by  
3 family or bosses at work or their pastor or their  
4 landlord to vote for a particular candidate. But  
5 they cannot vote their conscience in Georgia  
6 because of the unconstitutional voting process  
7 that essentially requires them to publicly  
8 display their votes where their pastor, their  
9 boss, their controlling spouse may see it.

10 There's no doubt that some authority figures  
11 are abusing the illegal system of voting in  
12 Georgia right now. This board is duty-bound to  
13 stop the illegal voting method because -- not  
14 only because it's illegal, but it is immoral to  
15 force people to vote in public.

16 At the October 3rd board meeting, you told  
17 us that the board needed to study this ballot  
18 secrecy issue some more. That was also the  
19 board's response in February 2020 when we asked  
20 you to make the same rule changes. Any study  
21 would've revealed that four years of voting  
22 experience has found no method of effectively  
23 shielding voters' votes on the touch screen.

24 At the last meeting you said there are other  
25 ways to ensure ballot secrecy. Whatever they

1 are, they need to be adopted today. We implore  
2 you to act to adopt those methods before the 2024  
3 election cycle. You've acknowledged your  
4 const -- the constitutional right to vote a  
5 secret ballot in adopted rules as recently as  
6 2021 when you were adopting rules for the early  
7 processing of mail ballots. Yet the board  
8 continues to deny our repeated petitions for  
9 rules to vindicate and protect that  
10 constitutional right.

11 And the board's position seems to be that it  
12 cannot adopt regulations counter to the statute.  
13 But the statute certainly requires ballot  
14 secrecy. The rationale seems to be: We will  
15 allow unconstitutional conditions to exist on  
16 voting because the Secretary of State chose a  
17 system that violates Georgia Constitution,  
18 federal law, and Georgia statutes; we will just  
19 adopt whatever he chose to buy.

20 The Dominion touch screens certainly failed  
21 to meet the conditions of law. The law  
22 authorizing the BMD touch screens is conditional.  
23 They have to meet a host of mandatory statutory  
24 conditions, ballot secrecy being one. But the  
25 system does not meet those laws. We beg you to

1 stop this anti-democratic violation of Georgia  
2 law.

3 At the October meeting, you expressed that  
4 you only had two options with our proposed rule:  
5 to accept it word for word, comma for comma, or  
6 decline to adopt that rule for rule into -- or to  
7 decline to adopt that rule for rulemaking  
8 process.

9 We thought we were clear at the last board  
10 meeting in encouraging this board to suggest  
11 amendments if there were any amendments that you  
12 thought were appropriate that could certainly be  
13 proposed. We are here, ready to take live  
14 amendments and are, you know, ready to agree with  
15 them if they're friendly amendments.

16 So we don't say that you need to adopt our  
17 rule as proposed, word by word, comma by comma.  
18 We're looking to protect the voter's right to  
19 ballot secrecy. And it cries out for resolution  
20 before this contentious 2024 election cycle  
21 begins. Not more study, not more deflection of  
22 the problem with the false notion that current  
23 law requires touch screens regardless of their  
24 violation of a host of federal and state laws.

25 So from there if you have some questions

1 about our proposed rule on ballot secrecy, I'm --  
2 I'm happy to take that now. We tried to -- we  
3 tried to modify it just a bit to address the  
4 questions that you had last time in taking  
5 decision-making about ballot secrecy out of the  
6 emergency realm.

7 And that was a concern, I believe, Chairman  
8 Mashburn, you -- you had last time. You were  
9 concerned that somebody would be trying to do  
10 that at the polling place.

11 **MR. MASHBURN:** Yeah, and indeed that was  
12 what I was about to ask is can you take us  
13 through the changes that you've made? Can you  
14 highlight those for us, please?

15 **MS. MARKS:** Okay. We -- we got rid of the  
16 notion in 2(c) -- we got rid of the notion of  
17 emergency situation. And we're just saying  
18 that -- and, of course, emergency situation is  
19 the creation -- it's a creature of this board's  
20 rulemaking. It doesn't exist in the statute.

21 The statute that -- that speaks to when you  
22 have an impossible or impracticable situation is  
23 not at all related to an emergency. And, in  
24 fact, the very example given in the statute is  
25 one that wasn't an emergency at all. And that is

1       when there were more candidates that would --  
2       than would fit on the ballot, the mechanical  
3       ballot. And they said, Okay, you've got to go to  
4       a hand-marked paper ballot. And, you know, that  
5       was well understood long before -- long before  
6       the election.

7               The other -- a change that we also made in  
8       (c) is to make it clear that if a -- if it is  
9       legally impossible or impracticable to use the  
10      touch screen or the voting system, that -- that  
11      that clearly is permitted to -- as an  
12      impossibility so that you do go to hand-marked  
13      paper ballots.

14             I know that some members of this board  
15      previously have taken the position that you must  
16      use touch screens so long as they are physically  
17      operating. Doesn't matter if they're operating  
18      accurately but so long as they're physically  
19      operating, you've got to use them. That --  
20      that's really -- that ends up with an absurd  
21      result, of course.

22             And we're saying let's make it clear. If  
23      they're legally, functionally, or physically  
24      impossible for use, go to hand-marked paper  
25      ballots; that the determination of an emergency

1       should be at the discretion of the board, the  
2       election superintendent as we talked about  
3       before, or you had asked previously about the  
4       word "official designee."

5             I think we're consistent in saying --  
6       consistent with other rulemaking in saying that  
7       the official designee of the county board should  
8       be someone like an election supervisor, an  
9       official, not the random guy that wandered out of  
10      the bar last night and into the polling place.

11            **MR. MASHBURN:** I don't mean to interrupt you  
12      but just to have a dialogue with you, what about  
13      a poll manager?

14            **MS. MARKS:** I think the -- a poll manager in  
15      an emergency situation makes sense but probably  
16      not in a nonemergency situation. That's the way  
17      we've tried to write it. Generally, Mr. Chair,  
18      what we've seen is when the rules require a  
19      designee, it's often -- it's a typical use that  
20      this county election board's designee is the  
21      election supervisor for a host of things, whether  
22      it's accepting a complaint that comes in and  
23      signing for the board or conducting the logic and  
24      accuracy test that the official designee is doing  
25      it, while the statutes themselves tend to call



1 for the superintendent to do it. But we don't  
2 expect the superintendent to be the hands-on  
3 manager.

4 **MR. MASHBURN:** Because I remember the  
5 dialogue that we had previously and I appreciate  
6 you addressing it. And the issue still in my  
7 mind is one of the worst things you could  
8 possibly have in an election is for something to  
9 change while the election's going on.

10 And so I've always been concerned and I'm  
11 always concerned that we -- that everybody  
12 thought that this is the way it was going to be  
13 the day before the election, and on the day of  
14 the election something changes. And that's just  
15 catastrophic. So tell me how your --

16 **MS. MARKS:** Well, that's not what we're --

17 **MR. MASHBURN:** Tell me -- tell me how your  
18 proposal does not create a problem where I've got  
19 different precincts all throughout the state of  
20 Georgia making decisions.

21 **MS. MARKS:** Because again we're having --  
22 we're asking the superintendent, which is  
23 generally going to be the election board, right?  
24 They're meeting in public session. They don't  
25 meet suddenly, you know, at a precinct at

1 10:00 on election day. They are making their  
2 decisions ahead of time. And -- but generally  
3 they have an official designee to handle a lot of  
4 the managerial decision-making. And that's --

5 **MR. MASHBURN:** So --

6 **MS. MARKS:** And that is their election  
7 supervisor.

8 **MR. MASHBURN:** So under your proposal today,  
9 what's the last day before the election that this  
10 decision can be made? What's the -- what's the  
11 final cutoff for making this decision?

12 **MS. MARKS:** We certainly don't have a magic  
13 date because boards meet at different intervals,  
14 but presumably it would be the last board meeting  
15 of that county board before voting goes into  
16 place where -- goes into effect where this might  
17 be effective, whether that's early voting or  
18 election day voting.

19 Yeah? You want ...

20 Yeah. Jeanne says that she has an answer.

21 **MR. MASHBURN:** Okay, sure.

22 **MS. DUFORT:** It's addressed in my remarks  
23 which I haven't delivered yet.

24 **MR. MASHBURN:** Either --

25 **MS. DUFORT:** But I have watched a lot of the

1 practical cycle of --

2 **MR. MASHBURN:** Let's -- let's let you get to  
3 a microphone --

4 **MS. MARKS:** Here.

5 **MR. MASHBURN:** -- one way or the other so  
6 that the court reporter can take it down.

7 **MS. DUFORT:** So I'll come back to my  
8 prepared remarks later.

9 **MR. MASHBURN:** I get -- I get -- I get  
10 yelled at if somebody talks without a microphone,  
11 so ...

12 **MS. DUFORT:** Okay. And I'm Jeanne Dufort,  
13 the first vice chair of the Morgan County  
14 Democratic Committee, and I have been engaged in  
15 the local cycle of how you prepare for elections.

16 So your question about what the last day is  
17 is a useful but not practical question. In fact,  
18 being ready for election day is -- is not an  
19 impulse based set of activities. It is a  
20 planning based set of activities.

21 So the process of determining polling setup  
22 happens well in advance. The -- a large number  
23 of counties rely on actual planograms. They may  
24 be informal, sketched out on paper. Sometimes  
25 those papers don't exist if a polling place has

1       been used for enough time that, quote, everybody  
2       knows how it's going to be set up. But when a  
3       piece of equipment is designated to go to a  
4       polling place -- Right? -- there's a lot of  
5       process behind that.

6               So in order to put this rule into place,  
7       which we're recommending, it requires a local  
8       understanding of all of the twenty-two-odd  
9       hundred different shapes and sizes, from those  
10      cinderblock buildings in south Georgia -- that,  
11      you know, that -- you know, that they are, right?  
12      You've visit them -- to State Farm arena.

13             There is not a one-size-fits-all when it  
14      comes to polling places. So local knowledge --  
15      what I can do, what are my sight lines? Where  
16      are my doors and windows -- all these things go  
17      into preserving ballot secrecy as you've seen  
18      from the pictures we provided to you, right?

19             So it is literally not the case you can make  
20      a one-size-fits-all rule that has to be. And our  
21      rule designates that to the local person who  
22      knows their polling places.

23             So here's what they have to do. They have  
24      to assess it for each and every polling place.  
25      How many of these can I set up, protecting

1 absolute ballot secrecy, considering windows,  
2 shape, size, number of polling stations I'm  
3 required to have? Right? And they make  
4 decisions.

5 The -- practically speaking, it will not be  
6 the knowledge of the local election board, it  
7 will be the knowledge of the local election  
8 superintendent. They're the ones -- the  
9 administrator -- who makes those decisions --  
10 supervisor -- in consultation in a big county  
11 with their team.

12 So, for example, Athens, with a hundred  
13 thousandish voters, they've got Lisa who's been  
14 doing this for a while. She isn't their election  
15 director but she's the person who does all this  
16 stuff, figures out how it's going to be set up  
17 for each and every polling place. So there's a  
18 plan.

19 Now, once you have the plan, you've got to  
20 figure out what machines have to be logic and  
21 accuracy tested for which ballot styles, right?  
22 That's part of the plan. How many ballots do I  
23 have to order? Right now they have to order  
24 enough for mail ballots plus to meet your  
25 10 percent rule for emergency paper ballots. So

1       now they're going to have to look at the order.  
2       If this -- XYZ precincts need stations set up for  
3       hand-marked paper ballots, they're going to need  
4       more ballots, right? So there's a series of  
5       plans. This will not be an impulse decision.

6               But I can tell you an anecdote that I  
7       personally observed of why a poll manager should  
8       not be prohibited from responding to the absolute  
9       requirement of preserving ballot secrecy.

10              I arrived to poll watch at one of our fairly  
11       small polling places. The station setup for  
12       people who need wheelchair access -- Right? --  
13       the accessibility station, was sitting there  
14       facing the three chairs allocated for poll  
15       watchers. The only place available in the room  
16       for us to sit.

17              So we were sitting where we were told to sit  
18       and where we were supposed to sit. The station  
19       was mostly not being used and then a voter came  
20       in. And we looked with horror -- I mean, this  
21       BMD screen was closer to me than Dr. Johnston is  
22       close to me, staring straight at the three of us.  
23       The three of us looked at one another and we're,  
24       like, horrified. We're like this (indicating),  
25       whatever. The poll manager observed it.

1           Okay, voter leaves. She turns around and  
2 immediately comes and turns it in another  
3 direction. There were only two possible ways to  
4 turn it and retain wheelchair access, right? So  
5 she turned it. We couldn't see it anymore. But  
6 she stepped back and realized every voter  
7 standing in line to enter the room could now see  
8 it. So she turned it back and told us, Don't  
9 look.

10           But -- but that is both an example of how  
11 difficult it is in practice to protect ballot  
12 secrecy. But why you would want a poll manager  
13 who walks in a room and decides despite what we  
14 planned on paper, this isn't working, to be  
15 further instructed to do her best to protect  
16 ballot secrecy because that is the only rule that  
17 is covered by the state constitution and the  
18 federal Constitution and the law, right? That  
19 cannot be subrogated to other things.

20           Does that -- that makes -- it's a  
21 long-winded answer, but does that make sense?

22           **MR. MASHBURN:** I appreciate your answer.

23           **MS. MARKS:** And I just -- I just want to  
24 make the point about the -- we definitely need to  
25 keep emergency decision-making related to other

1 issues. The poll manager comes in and -- and the  
2 pipes have bursts and the touch screens are  
3 flooded. She doesn't need to have to convene a  
4 board meeting to try to deal with that.

5 So you do need emergency operations to be  
6 done on the spot, live when something happens.  
7 We were trying not to get rid of that, but at the  
8 same time, permit hand-marked paper ballots to be  
9 used under that same statute for ballot secrecy.  
10 Hope -- hopefully that's clear.

11 **MR. MASHBURN:** Thank you. I appreciate  
12 that. Are you -- did I interrupt your  
13 presentation? So you're still going?

14 **MS. MARKS:** No, no --

15 **MR. MASHBURN:** Or we ready --

16 **MS. MARKS:** -- you asked --

17 **MR. MASHBURN:** -- for board questions?

18 **MS. MARKS:** No, no. I was done with the  
19 presentation.

20 **MR. MASHBURN:** Okay.

21 **MS. MARKS:** And I asked you for questions.

22 **MR. MASHBURN:** Very good.

23 **MS. MARKS:** And you asked me about the --  
24 the rule here. So --

25 **MR. MASHBURN:** Very good. Wanted to give



1       you a chance to finish before I turned it over to  
2       the board.

3               **MS. MARKS:**   Okay.   Are any other -- any  
4       other questions for me?

5               **MR. MASHBURN:**   Exactly.   Questions from the  
6       board?

7               **DR. JOHNSTON:**   Yes.

8               **MR. MASHBURN:**   Dr. --

9               **MS. MARKS:**   Was that a yes or a no?

10              **DR. JOHNSTON:**   Go ahead.   Go ahead.

11              **MR. MASHBURN:**   Dr. Johnston has the floor.

12              **DR. JOHNSTON:**   Thank you.

13              **MS. MARKS:**   Okay.

14              **DR. JOHNSTON:**   So, Ms. Marks or Ms. Dufort,  
15       either one, I like the dedication to ballot  
16       secrecy and the positioning of the BMDs.   In  
17       looking at your proposal, the -- the distance  
18       requirements between one BMD touch screen and  
19       another of 8 feet would automatically disqualify  
20       anyone using the Runbeck hubs that are used  
21       throughout many of the counties now because they  
22       have two or four BMDs that are less than 8 feet  
23       between.   So some consideration of that would be  
24       an automatic disqualification or a reversion to  
25       hand-marked paper ballots if you followed this

1 rule.

2 MS. MARKS: May I address that?

3 DR. JOHNSTON: Sure.

4 MS. MARKS: Okay. What we were trying to  
5 say -- no, we don't love those hubs for lots of  
6 reasons. You're talking about what Fulton County  
7 and Cobb County have, the big rectangular boxes.

8 DR. JOHNSTON: Right.

9 MS. MARKS: Right? Okay.

10 DR. JOHNSTON: I am.

11 MS. MARKS: And, you know, what we were  
12 saying was 8 feet between the center of adjacent  
13 touch screens. And I'm not sure that we would  
14 think of -- you know how they are on each side?  
15 That we were thinking of those as adjacent touch  
16 screens.

17 DR. JOHNSTON: Right. Well, what -- the  
18 larger hub that is made by Runbeck -- that's used  
19 in Fulton County -- has two BMD screens next to  
20 each other --

21 MS. MARKS: And in that --

22 DR. JOHNSTON: -- probably not 4 feet apart.  
23 So it would be an automatic --

24 MS. MARKS: Correct.

25 DR. JOHNSTON: -- automatic

1           disqualification.

2           **MS. MARKS:**   Correct.   One of those -- one of  
3           those would be down one.   But the two -- the two  
4           on -- one of these would be -- yeah.

5           **DR. JOHNSTON:**   Okay.   The other issue --  
6           question, not issue but question, is the  
7           restriction of 30 feet for an individual to -- to  
8           walk in front of a BMD while someone is voting?  
9           Positioning --

10          **MS. MARKS:**   I guess you would call it  
11          behind.

12          **DR. JOHNSTON:**   Behind?   Or behind?

13          **MS. MARKS:**   Yeah.

14          **DR. JOHNSTON:**   Yes?   There are polling  
15          places that are -- that are contained in a room  
16          that is less than 30 feet.

17          **MS. MARKS:**   Exactly.   And it's a problem we  
18          need to acknowledge.

19          **DR. JOHNSTON:**   So the entire polling place  
20          would be disqualified for use.

21          **MS. MARKS:**   I don't think so.   No, no.  
22          We're talking about we don't -- we're suggesting  
23          that no one be able to walk behind the voter  
24          voting, right?   But within 30 feet.

25          So in -- take those small polling places,

1 many in rural areas, what we would envision is  
2 that you would have one touch screen facing every  
3 corner so that you would have at least four touch  
4 screens there. The voter would have his back to  
5 the corner and then you're right, it's impossible  
6 to put any more.

7 That's why we would say then the -- most of  
8 your voting stations would be hand-marked  
9 voting -- a hand-marked paper ballot. But the  
10 idea would be nobody could walk behind me if I'm  
11 the voter, have my back to the corner.

12 **DR. JOHNSTON:** I see. And the third  
13 distance parameter that's -- that you've added is  
14 no such officer may -- may not stand within  
15 6 feet of the polling place scanner during  
16 operation by a voter.

17 I'm going to say that practically speaking,  
18 Ms. Dufort, so many voters need assistance or  
19 questions or have difficulty or think they will  
20 have difficulty inserting their ballot into a  
21 scanner, that it would automatically disqualify  
22 this rule.

23 **MS. MARKS:** Two -- well, there are two  
24 answers to that. One, your person who's  
25 stationed to watch the scanner, have them stay

1 more than 6 feet away and only approach when a  
2 voter needs it. But the other thing that -- that  
3 most states do for scanners -- and, in fact,  
4 we've got some counties in Georgia that do it,  
5 and that is create a ballot secrecy folder,  
6 envelope and --

7 **DR. JOHNSTON:** Exactly.

8 **MS. MARKS:** -- all it is if you think about  
9 it is a manila folder cut -- with a little inch  
10 of it cut off. You put your ballot in that. You  
11 hold that folder that's -- with the tab of the  
12 ballot sticking out at the top and -- and it  
13 feeds it into the scanner.

14 **DR. JOHNSTON:** I like that suggestion.  
15 Florida uses that and it's very effective. And  
16 --

17 **MS. MARKS:** Very typical.

18 **DR. JOHNSTON:** -- and acknowledges the  
19 respect that a ballot deserves for secret ballot  
20 voting.

21 **MS. MARKS:** Right.

22 **DR. JOHNSTON:** All right. Another question.  
23 Just a logistics question. So you have the  
24 ballot secrecy rearranged voting hubs or BMDs and  
25 now the line is too long. It's 30 minutes and

1       there's a -- there is a desire to resort to or  
2       revert to hand-marked paper ballots.

3               In early voting in Fulton County that has  
4       360 precincts thereabouts and over -- and a  
5       thousand ballot styles, in early voting I have a  
6       hard time imagining the logistics of having that  
7       many ballots, paper ballots, available for use.  
8       So it would require at least a ballot-on-demand  
9       printer in every early voting site or packs of  
10      preprinted ballots because you have to maintain  
11      the proper precinct for each person that's  
12      voting.

13              **MS. MARKS:** Correct. Okay. So thank you  
14      for -- for both of those questions. What we  
15      would envision, going back to -- we would -- we  
16      don't want to see the lines back up and say, Oh,  
17      okay, now we have to go to -- to paper ballots.

18              We would want to see the setup with voting  
19      stations anticipate that -- that the majority of  
20      voting is going to take place with hand-marked  
21      paper ballots. And so it would all be set up a  
22      head of time. We wouldn't wait until the lines  
23      backed up.

24              But in terms of the paper ballot style  
25      management, absolutely. You are going to need to

1 be able to have ballots available for every  
2 ballot style. And Fulton County would be the  
3 biggest challenge. But states and municipalities  
4 do this all over the nation.

5 But when you look at -- it's been a while  
6 since we've done it, but we did some quick and  
7 dirty numbers on Fulton and looked at the various  
8 early voting locations in Fulton. We determined  
9 that basically in almost all of them, with 20  
10 ballot styles, you could take care of 70 percent  
11 of your voters because people tend to vote at the  
12 same voting location in early voting year after  
13 year, either where they work, where they live.  
14 It's quite predictable that the top 20 ballot  
15 styles, about 70 percent of your voters then have  
16 ballot-on-demand printers, which are not nearly  
17 as fancy as they sound like, for your one-off if  
18 you've got an Alpharetta voter that's voting down  
19 near the airport, which is going to be rare, but  
20 you still need to accommodate them.

21 And Dominion has a laptop ballot-on-demand  
22 application that can just be hooked up to a cheap  
23 Office Depot printer and create ballot-on-demand  
24 with an official ballot created by the Dominion  
25 program on the spot. This is not new technology.

1 This is already purchased by the state and it's  
2 in the system.

3 **DR. JOHNSTON:** Correct. They use an HP  
4 printer that's about this big now (indicating)  
5 for ballot-on-demand printing. I think it costs  
6 about 900 --

7 **MS. MARKS:** With the Dominion markup --

8 **DR. JOHNSTON:** It may -- oh, maybe 3,000 for  
9 the Dominion markup. And it would require for a  
10 county like Fulton County to have probably 35,  
11 one for each early voting site and other counties  
12 that have fewer voting sites, but they would need  
13 a ballot-on-demand printer and they would need --  
14 and that would be an additional recordkeeping and  
15 accounting of how many ballots are printed off of  
16 those ballot-on-demand printers. There has to be  
17 documentation --

18 **MS. MARKS:** Yes.

19 **DR. JOHNSTON:** -- and recording of -- of  
20 such actions.

21 **MS. MARKS:** Right. And -- and -- and  
22 that's -- you know, other states have learned how  
23 to do that long ago. But not only that, but the  
24 amount of money you would save by not having the  
25 plethora -- the 35,000 very much more expensive



1 touch screens to set up, test, transport, secure,  
2 et cetera. You would end up saving so much more  
3 money. You could -- you could buy a new HP  
4 printer for every election and toss the old one  
5 in the landfill and still save money.

6 **DR. JOHNSTON:** Okay. I yield the floor.

7 **MR. MASHBURN:** Dr. Johnston yields the  
8 floor.

9 Board member Lindsey?

10 **MR. LINDSEY:** Just a -- just a couple of  
11 quick. In addition to the practical --

12 **MS. MARKS:** Mr. Lindsey? Mr. Lindsey, we  
13 can't quite hear you.

14 **MR. LINDSEY:** In addition to the practical  
15 concerns that Dr. Johnston raised, just a couple  
16 of points of clarification. Number one, the  
17 argument that we have or that we ever have  
18 ignored the right to a secret ballot because of  
19 electronic voting is patently false.

20 We have a strict rule that requires  
21 private -- that -- of secret ballots. We have a  
22 state law that requires secret ballots. We have  
23 admonished counties when we -- when a complaint  
24 has been raised about secret ballots, about the  
25 positioning of electronic machines not affording

1 people with secret ballots. As a matter of fact,  
2 y'all were at the last hearing when we did just  
3 that.

4 **MS. MARKS:** But it didn't work. That was  
5 the problem.

6 **MR. LINDSEY:** And -- well, it didn't in that  
7 situation. And we took corrective action,  
8 telling them to stop.

9 **MS. MARKS:** Then the corrective action  
10 didn't work.

11 **MR. LINDSEY:** No. Well, we don't know that  
12 yet. We don't know that.

13 **MS. MARKS:** We do.

14 **MR. LINDSEY:** Well, we -- they haven't had a  
15 vote since then. So we don't know that. So  
16 right now what we have is a strict law to -- a  
17 strict law that requires secret ballots.

18 We also have a requirement by the state that  
19 you -- that you have -- that you conduct your  
20 votes by electronic. That sets a clear mandate  
21 to the local governments -- to the county  
22 governments to -- to operate your electric  
23 ballots, electronic ballots, in a way that  
24 protects people's secrecy.

25 You -- you made a point of going, well, we'd

1 take -- take a look and see whether or not other  
2 things need to be done. I have taken a look.  
3 Quite frankly I like that strict prohibition.  
4 There is no exceptions. There's no way to get  
5 out of the use of electronic ballots by using a,  
6 Well, we've got to do privacy.

7 No. If you've got to -- if you -- the state  
8 has mandated electronic. The state has mandated  
9 private, secret ballot. So you've got to conform  
10 to that, period. And they've got time to do so.  
11 So for that reason, I think that that clear line  
12 of demarcation, which I believe is being watered  
13 down by your proposed rule change, is -- is  
14 something that -- that is disappointing.

15 And so that's why I have some concerns with  
16 that from a policy standpoint, in addition to  
17 some of the practical concerns raised by  
18 Dr. Johnston. And please feel free to respond.

19 **MS. MARKS:** So, Mr. Lindsey, we don't -- we  
20 don't understand how you can do both. We have  
21 never seen it work in Georgia. We've gone  
22 through four years now. No one, no county has  
23 been able to both protect ballots secrecy and use  
24 the touch screens.

25 And, you know, I would respectfully

1 disagree. The law does not say you will  
2 conditionally use touch screens.

3 **MR. LINDSEY:** I didn't say that.

4 **MS. MARKS:** Because you will -- you will use  
5 touch screens that protect the absolute secrecy  
6 of the ballot --

7 **MR. LINDSEY:** And I agree with you.

8 **MS. MARKS:** -- when we don't have those.

9 **MR. LINDSEY:** And I agree with you. And  
10 that's -- and that's something for the Secretary  
11 of State to deal with and something for the local  
12 counties to deal with. But right now we've got a  
13 strict rule that -- involving both and you're  
14 absolutely right.

15 But right now it's up to them to come up  
16 with the -- we've given them discretion on how  
17 they do it because different counties are  
18 different, different configurations, and  
19 precincts are different. And so we've got to  
20 give folks a certain amount of leeway as long as  
21 they recognize the importance of --

22 **MS. MARKS:** We -- we would re --

23 **MR. LINDSEY:** -- a secret -- hold on. As  
24 long as they recognize a secret ballot. Now,  
25 please.

1           **MS. MARKS:** We would respectfully disagree  
2           that people have got leeway on whether or not to  
3           protect the constitutional right to ballot  
4           secrecy.

5           **MR. LINDSEY:** Actually, I've said just the  
6           opposite. They don't have any leeway.

7           **MS. MARKS:** Right. But they -- if they  
8           absolutely, physically cannot use the touch  
9           screens, and that is -- in most situations the  
10          rooms are not big enough, they can't do it, then  
11          it is impossible, impracticable, and --

12          **MR. LINDSEY:** Then they need to get another  
13          room or they need to get another precinct. Then  
14          they need to change --

15          **MS. MARKS:** Not everybody can -- can use a  
16          State Farm arena.

17          **MR. LINDSEY:** (indiscernible)

18          **MS. MARKS:** It is impract -- I mean, the  
19          idea of saying we're going to take -- make these  
20          counties go get enormous gymnasiums for every  
21          precinct in order to accommodate our noncompliant  
22          touch screens is -- is not what the law presumes.  
23          And so --

24          **MR. LINDSEY:** No. What the law presumes is  
25          that -- is that you find a location that also

1 meets the requirements of --

2 **MS. MARKS:** It is -- no. No.

3 **MR. LINDSEY:** -- of a secret ballot.

4 **MS. MARKS:** It certainly --

5 **MR. LINDSEY:** I'm sorry, but that's --  
6 that's what the law presently requires. And if a  
7 county is not doing that, that's another issue  
8 altogether.

9 **MS. MARKS:** That -- that would seem to take  
10 things to an extreme and absurd place. There are  
11 many counties that don't have a single public  
12 building that would accommodate. And we've -- we  
13 go to rural counties all the time and see their  
14 precinct facilities. And many of the counties  
15 wouldn't even have a single building that would  
16 accommodate a number of voters and the machines.  
17 And to say, Well, you need to build new buildings  
18 to accommodate these machines because they don't  
19 comply with basic rules ...

20 Now, I -- you know, Ms. Dufort and I were --  
21 were sharing the presentation time. And we  
22 haven't let her do her presentation. Shall I  
23 stand aside a minute and --

24 **MR. LINDSEY:** Please do. Please do. I'm  
25 sorry, I didn't realize that -- I wouldn't have

1 even started if you hadn't -- hadn't --

2 **UNIDENTIFIED SPEAKER:** Sit right here.

3 **MR. LINDSEY:** My apologies.

4 **MR. MASHBURN:** Absolutely. Make yourself  
5 comfortable.

6 **MS. DUFORT:** That's okay. And although  
7 Marilyn and I are good friends, I am standing  
8 here before you representing the Morgan County  
9 Democratic Committee.

10 Thank you, George.

11 All right. I just have to say, wishing  
12 something is so does not make it so. So you are  
13 right. There are absolutely clear laws about  
14 protecting ballot secrecy. And you are right,  
15 there is a law that says use these ballot-marking  
16 devices for in-person voting as long as they  
17 comply with all other laws.

18 In your -- in your October letter declining  
19 it, you said, point two, we already have rules,  
20 no addition rules are necessary. I'm guessing  
21 maybe you were the draftee of that because that  
22 is the position you're taking today. But there  
23 is a trove of evidence before you in our  
24 petition, in the filings in federal court that  
25 violations of ballot secrecy are routine across

1 the state and continuing, right?

2 Because I represent a rural Georgia county,  
3 I am going to take the position that we don't  
4 have lawbreakers as our election directors across  
5 the state. We have seen them try hard. We have  
6 seen counties like Fulton spend millions of  
7 dollars in this effort to figure out how to meet  
8 the rule -- Right? -- these rules that are out  
9 here.

10 They have not -- it's not because they have  
11 not tried, but there is a part of this for which  
12 this board -- I'll say this board because you are  
13 the -- you are the current caretakers of the  
14 board, right? You're not the people who always  
15 sat before you. In 2020 when this board  
16 responded to Athens-Clarke County, Athens-Clarke  
17 County was the first board to really try to meet  
18 the three standards that have to coexist: protect  
19 ballot secrecy, deploy one voting station for 250  
20 voters, and keep the equipment available for view  
21 to be sure there's no hacking or malfeasance  
22 going on. Those are three rules that coexist.

23 They tried so hard. They had meeting after  
24 meeting, planogram after planogram. They really  
25 worked it and came to the conclusion it was



1 impossible to meet that standard. And they took  
2 action.

3 This board showed up in Athens within a week  
4 of that, threatening them with large fines. The  
5 message that the State Election Board sent that  
6 day was heard all across the state.

7 The message was the State Election Board  
8 will punish any county that does not comply with  
9 universal use BMDs, but will not punish a county  
10 that fails to protect ballot secrecy. Prioritize  
11 universal use over ballot secrecy, that was the  
12 message sent by action of the State Election  
13 Board that day. I was at that meeting. I was at  
14 many of the election board meetings that led up  
15 to that meeting and saw how hard they tried.

16 And the finding of that board was not that  
17 you could protect it. The board did not figure  
18 out a way to solve it. The board said try  
19 harder. So here we are, almost four years later.  
20 And all across the state, people have been trying  
21 harder.

22 But do you know what I hear that they will  
23 not tell you? I have heard from many election  
24 directors. We heard the message of Athens. We  
25 don't want to be "athened." They call it that in

1 private conversations -- election directors. We  
2 can't raise this issue with you or we'll be  
3 "athened." They're scared of you.

4 And that is why you have an obligation to  
5 take an affirmative action to send a different  
6 message to contradict the message that you put  
7 out into the universe on that day with that  
8 decision in Athens-Clarke County.

9 You know, I was going to talk to you about  
10 why it matters. It really doesn't matter why --  
11 why ballot secrecy matters because it's the law,  
12 right? There isn't any other area where when we  
13 talk about the law, we say, Well, if it's too  
14 hard, we can just break the law. If it's going  
15 to cost too much, we can just break the law. It  
16 is not a conditional right, the right to ballot  
17 secrecy.

18 And you created the circumstance right now  
19 where the counties have a clear direction from  
20 the State Election Board, whether you like it or  
21 not. Your predecessors created that condition.  
22 That, more than anything else, is why you have an  
23 obligation to act right now so that you're not  
24 burdening those local election officials with  
25 being law breakers.

1           By the way, SB202, let's talk about that.  
2           SB202 says it subjects all of us -- me as a poll  
3           watcher, election workers, subjects us to the  
4           charge, to felony charges. We can be accused of  
5           intentionally observing a voter in a manner that  
6           allows them to see votes.

7           On that day -- that anecdote I told you  
8           earlier -- I could've walked out of there with  
9           felony charges because everyone knew that that  
10          screen was in front of me. We couldn't not see  
11          it without turning away and not doing what we  
12          were there to do, which was observe elections and  
13          observe activity and observe voters, right?

14          That cannot be the standard that you allow  
15          to rule. You have to protect election workers.  
16          You have to protect citizens that are walking  
17          into the polling places. And you have to protect  
18          voters, right? We -- we say where I come from  
19          everybody knows your name. But they're not  
20          supposed to know how you voted unless you tell  
21          them. It's not okay.

22          But it's also just not the law that says  
23          it's okay. And you have to undo what you did,  
24          you the board, your predecessors, what you did in  
25          2020 or things won't change. Thank you.

1           **MR. MASHBURN:** Thank you. Yeah. I was the  
2 only member of the board who was there in Athens  
3 that day, so ...

4           **MS. DUFORT:** That was a day, wasn't it?

5           **MR. MASHBURN:** Dr. Johnston and -- and board  
6 member Lindsey are exonerated and absolved from  
7 that, but I -- I remember at the time examining  
8 the meetings of the Athens-Clarke County Board of  
9 Elections and they couldn't even approve their  
10 minutes. They couldn't even get a vote to  
11 approve the board's minutes.

12           So that board was in a lot of dysfunction.  
13 The -- the chair and the election director had  
14 major dysfunction and trust issues. So there was  
15 a lot of dysfunction going on in that -- in that  
16 board of elections at that time. So we'll just  
17 let the transcript from that hearing speak --  
18 speak to that.

19           I do want to ask -- this is probably for  
20 Ms. Marks, but just to correct the record.  
21 Ms. Dufort brought up the rejection letter that  
22 was sent from the October meeting. And in your  
23 presentation on the first page, it stated that  
24 the understanding that the previous petition was  
25 denied because the board determined that they had

1 had not enough time to study the problem.

2 And so I -- I took no offense from that. We  
3 had a lovely conversation before the meeting  
4 started. So no, I'm not mad or anything, but I  
5 went back and reviewed my letter that I sent,  
6 denying the petition. And I don't recall that  
7 being one of the rationales listed at all.

8 **MS. MARKS:** It did.

9 **MR. MASHBURN:** And it's the only one listed  
10 here. So you and I are not going to be the only  
11 one reading this document. So I just wanted to  
12 correct for the record --

13 **MS. MARKS:** Right. Well, I -- I -- my  
14 comments related to what -- what the board  
15 decided in the meeting. I think if we went back  
16 to the transcript of the meeting, that that was  
17 the rationale, the primary rationale, that --  
18 that you needed more time to study.

19 **MR. MASHBURN:** Okay. So I just wanted to  
20 correct -- correct that on the record. And  
21 the -- and then me personally, just speaking for  
22 my own self, the petition was over -- if I recall  
23 correctly, over 300 pages. So I spent hours and  
24 hours and hours and hours and hours and hours  
25 upon hours studying it. So -- and I know the

1 board is very conscientious in their work and so  
2 they studied it as well.

3 But I'd like to go back to Ms. Dufort and  
4 just be real clear with each other. And I  
5 appreciate your candor. I absolute -- totally  
6 appreciate your candor because it would be easy  
7 just to try and say this isn't -- this problem  
8 doesn't exist, but I think we owe ourselves the  
9 respect to have a dialogue about it and discuss  
10 it and if it's a problem, it's a problem.

11 And so let's go back to the example that you  
12 gave us where the poll watchers were in a poll on  
13 election day and they came across this problem.  
14 And so am I correct or incorrect that under this  
15 proposal, the poll manager or the election  
16 superintendent would decide on election day that  
17 ballots secrecy cannot be met and therefore we're  
18 switching to paper ballots on election day?

19 **MS. DUFORT:** No. I would say you're  
20 incorrect.

21 **MR. MASHBURN:** Okay. Explain --

22 **MS. DUFORT:** Because under these --

23 **MR. MASHBURN:** Explain it to me.

24 **MS. DUFORT:** Under these proposed rules,  
25 that polling place would never have been set up

1 the way it was. Understand, it was set up to the  
2 best of our election director's ability to follow  
3 one voting station for 250 voters -- Right? --  
4 set up in a manner that they could be observed  
5 against hacking and protect ballot secrecy,  
6 right? And she had a given space.

7 So she set it up to the best of her ability.  
8 Under this proposal, she would make that -- and  
9 she doesn't want to be "athened," that's a fact.  
10 I've had that conversation, right?

11 Under this proposal, that polling place  
12 would never have been set up that way to begin  
13 with because that condition would've been  
14 recognized. She would have had the direct charge  
15 to protect ballot secrecy absolutely and set her  
16 polling place up with a mix of stations, however  
17 many ballot-marking stations she can possibly set  
18 up.

19 I don't disagree that that is a priority,  
20 right? But she would then stop to the extent --  
21 because, see, you don't need eight foot apart  
22 when you're voting -- marking a ballot by hand.  
23 So she would have the flexibility to push more  
24 stations close together, separate the ones that  
25 needed protection because the big screen needs

1 protecting. And we would never have been in that  
2 position.

3 But I'm just saying to you also,  
4 practically, I never ever want to take away the  
5 authority of the poll manager to respond to  
6 actual on-the-ground conditions to make voting  
7 better and more legally compliant for all voters.

8 **MR. MASHBURN:** Okay. And so back to  
9 Ms. Marks now.

10 So are -- are you and I clear, Ms. Marks,  
11 that your proposal is that the deadline for this  
12 determination to be made is the last board  
13 meeting before the election whenever that board  
14 meets?

15 **MS. MARKS:** As a practical matter, you know,  
16 I -- I would certainly look to the judgment of  
17 the board, but generally I would say that the  
18 deadline would be when they are doing their final  
19 approval of the layouts of the precincts and that  
20 sort of thing.

21 You know, if it -- if their board meeting's  
22 five minutes before early voting starts, no.  
23 It's going to need to be before that. I would  
24 leave it to their judgment as to making this  
25 decision at the time that they are setting up



1       their polling places, approving the setups,  
2       approving the hours and that sort of thing and  
3       not try to nail it down to the last -- well, say,  
4       Oh, it's the very last meeting. They may need to  
5       have an emergency meeting about something else.  
6       We don't want to wait that long.

7               But they understand what their problems are  
8       here. They -- they know. The example that Jean  
9       just was using, I'm sure that it was  
10      well-recognized that if they tried to cram all of  
11      the machines in the voting place that there were  
12      going to be problems, when the poll manager and  
13      the superintendent could have said, Okay, our  
14      accessible voting station is going to be facing  
15      the corner. We're going to have wheelchair --  
16      plenty of access to have wheelchair access into  
17      here. And then the rest of the voting stations  
18      that we need will be hand-marked stations other  
19      than in the corners.

20             They would have that concept in mind well  
21      ahead of the time the poll watchers show up.

22             **MR. MASHBURN:** Okay, thank you.

23             **MS. MARKS:** Certainly.

24             **MR. MASHBURN:** Other comments from the  
25      board?

1           **MR. LINDSEY:** Just an ask. And I have  
2 talked to a lot of different counties. We go out  
3 and visit with them and we chat with them.  
4 Has -- has anyone joined in your petition from a  
5 county election board?

6           **MS. MARKS:** We haven't asked them to. And,  
7 I mean, we could have, but what -- when we do  
8 talk to election supervisors and superintendents,  
9 board members, they tell us, We completely --  
10 many of them tell us, We completely support what  
11 you are doing, but we are not about to speak up  
12 and be fined by the State Election Board for  
13 saying that we need to do this.

14           We get a -- we have a lot of silent support  
15 about this, but I'm not coming to you, saying,  
16 trust me, they're all behind us.

17           **MR. LINDSEY:** Yeah.

18           **MS. MARKS:** They know that they will be  
19 punished if they speak up on this.

20           **MR. LINDSEY:** Because frankly that's just  
21 patently false.

22           **MS. MARKS:** Well, they feel -- it may be --

23           **MR. LINDSEY:** Hold on. Let me finish. Let  
24 me finish. You've had your moment --

25           **MS. MARKS:** It may be, but they feel --

1           **MR. LINDSEY:** Let me finish my --

2           **MS. MARKS:** They feel that way.

3           **MR. LINDSEY:** Let me finish my -- because I  
4 have talked to them. And I made a point and  
5 others on the board have made a point that we are  
6 in a collaborative phase, that we've worked well  
7 with them, we've worked well with the county that  
8 was out of -- out of compliance before and have  
9 worked with them in terms of working at a  
10 solution rather than fining.

11           **UNIDENTIFIED SPEAKER:** We can't hear you.

12           **MR. LINDSEY:** We are --

13           **MS. MARKS:** They can't hear you.

14           **MR. LINDSEY:** I'm sorry, guys. And that we  
15 have been in a collaborative phase and we have  
16 asked, and -- and with other folks. And I  
17 haven't had folks -- and I -- you know, a lot of  
18 what we do is going, Okay, guys, the law is not  
19 working, what needs to work? Because our job is  
20 to then go back to the legislature and then, you  
21 know, be your mouthpiece with the legislature.  
22 And we have sat down and sat with many -- many  
23 supervisors.

24           And in terms of simply coming to us and  
25 saying the present thing doesn't work and

1           therefore we'll fine, I think it's just patently  
2           false. I'll tell you that much right now.

3           **MS. MARKS:** Well --

4           **MR. LINDSEY:** For one thing, there's no --  
5           there's no ability for us to do that, and, number  
6           two, there's no incentive for us to do that. So  
7           that's just my comment.

8           **MS. MARKS:** But, you know, the legislature  
9           has addressed this. That's the problem here. It  
10          is only the State Election Board that has not  
11          addressed it. The legislature's been incredibly  
12          clear about it. They say the touch screens that  
13          are to be purchased must provide absolute secrecy  
14          of the ballot.

15          **MR. LINDSEY:** I agree.

16          **MS. MARKS:** And so they've done their job.  
17          The problem is that the -- what they ordered in  
18          the law is not being enforced by this board. And  
19          the rules don't comply with what the state and  
20          federal authorities ordered.

21                 And you talk about how you had one county  
22          who you've talked to and they began to try to  
23          address it. But we know enough about the little  
24          shields that they are going to use in the set up  
25          to know that that may be a nice try, but it will

1 not be effective. You know, it -- just the  
2 physical properties are going to keep that from  
3 being effective. So we shouldn't pretend that  
4 it's going to be effective and we shouldn't  
5 pretend this is a legislative problem. And we  
6 shouldn't say, Well, we'll just wait until the  
7 Secretary recognizes that he's out of compliance  
8 with the law.

9 It is really this board's duty,  
10 responsibility, particularly as we're facing  
11 2024, to say, Okay, we must act and recognize the  
12 Secretary's out of compliance, the equipment's  
13 out of compliance with all of the laws. It's up  
14 to us.

15 **MR. LINDSEY:** I'll -- I'll let you have the  
16 last word.

17 **MR. MASHBURN:** Dr. Johnston?

18 **DR. JOHNSTON:** Just a few comments. Indeed,  
19 ballot secrecy is a priority and it is a  
20 requirement and it is the law. And it can be a  
21 problem, especially with the large touch screens.  
22 It could be a problem with paper ballots too, if  
23 they're not protected for privacy also.

24 Just to -- for the people here and those  
25 that are listening to know, 44 states use

1 hand-marked ballot -- paper ballots and that's  
2 kind of the elephant in the room. I mean, I know  
3 this -- this petition for this rule amendment is  
4 about secrecy, but it's the elephant in the room  
5 because the consequence of not meeting the ballot  
6 secrecy standard is to revert to hand-marked  
7 paper ballots.

8 So, you know, I think we just all should  
9 acknowledge that. It can be done. This petition  
10 led me to -- or required me to start visiting  
11 places that were using hand-marked paper ballots.  
12 There's nothing to be afraid about with  
13 hand-marked paper ballots.

14 I traveled to Orange County, Florida and  
15 witnessed the use of -- Orlando, Florida in using  
16 hand-marked paper ballots. And in fact the  
17 entire state of Florida requires such.

18 So to -- I mean, it's not that it's  
19 dangerous to use hand-marked paper ballots. It's  
20 feasible to use hand-marked paper ballots. With  
21 that comes the additional requirements of  
22 security of that method of voting.

23 I will -- if -- if we had that, I wouldn't  
24 lose as much sleep over the issue of security of  
25 paper ballots as I do over the issue of using BMD

1 big screens.

2 So that being said, the conflict is with the  
3 Secretary of State who decides what voter system  
4 the state uses. And so -- so whether -- so  
5 that's the issue here is it's -- it's the  
6 Secretary of State's decision and it's -- the  
7 question really goes to either the legislature or  
8 the Secretary of State as to whether they would  
9 allow the use of paper ballots like you're  
10 proposing in this rule.

11 So it's -- they're -- it's all tied together  
12 and I don't think we as a board could implement  
13 this rule because of the affect that it would  
14 have on the manner of voting that is the decision  
15 of the Secretary of State. And I really have no  
16 issues other than some of those distance  
17 requirements. I'm not afraid of hand-marked  
18 paper ballots. I think we could certainly use  
19 them, but it's -- it's in the hands of the  
20 Secretary of State in my opinion.

21 **MS. MARKS:** Dr. Johnston, could I address  
22 that for a moment?

23 **DR. JOHNSTON:** Yes.

24 **MS. MARKS:** I would respectfully disagree  
25 that it is in the hands of the Secretary. The

1 law is pretty clear, is quite clear, that the  
2 Secretary can only certified a system in Georgia  
3 that meets all of the Georgia statutes.

4 The Secretary certified 5.5A Dominion  
5 system, where it violates Georgia law in a number  
6 of places, including ballots secrecy. The role  
7 of this board is to enforce the law. That is  
8 really clear in the statute, in its mission.  
9 This board must enforce the law. It is not up to  
10 the Secretary to make up any ol' system that  
11 violates the law and then we all have to live  
12 with it just because the Secretary violated the  
13 law in certifying the equipment.

14 **DR. JOHNSTON:** Well, Ms. Marks, the question  
15 today is whether to accept the petition for the  
16 rule amendment. It's not a decision on the  
17 Dominican Voting System which is a debate for  
18 another day. The issue here today is whether to  
19 accept these rule changes, and I think we need to  
20 keep the focus on -- on the petition.

21 **MR. MASHBURN:** And if you're -- if the board  
22 is ready to make a motion, the chair's inclined  
23 to hear it. Is there a motion?

24 Y'all have made your presentations? Okay.

25 Is there -- is there a motion?



1           **MR. LINDSEY:** (inaudible)

2           **MR. MASHBURN:** Okay. Is there a motion?

3           I'll make a motion. I move to reject this

4           petition. Is there a second?

5           **DR. JOHNSTON:** Second.

6           **MR. MASHBURN:** It's motioned and seconded.

7           Is there any discussion? Hearing no discussion,

8           we're ready to vote.

9           Dr. Johnston, on the question to reject the

10          petition how say you?

11          **DR. JOHNSTON:** Aye.

12          **MR. MASHBURN:** Dr. Johnston says aye.

13          Mr. Lindsey?

14          **MR. LINDSEY:** Aye.

15          **MR. MASHBURN:** Mr. Lindsey says aye. I say

16          aye. So the motion to reject the petition

17          carries unanimously.

18          We'll now move to the second question and

19          that is logic and accuracy testing, right?

20          **MS. MARKS:** I'm sorry, what was -- you

21          say --

22          Petition for Amendment of Rule of State

23          Election Board - Marilyn Marks -

24          183-1-12-.08 Logic and Accuracy Testing

25          **MR. MASHBURN:** We're up for logic and

1 accuracy testing?

2 MS. MARKS: Yes.

3 MR. MASHBURN: Okay.

4 MS. MARKS: Logic and accuracy.

5 MR. MASHBURN: And so that is tab 51 in the  
6 board's packages.

7 And whichever of the two would like to  
8 begin. And, again, y'all have not requested the  
9 full 30 minutes --

10 MS. MARKS: No. I think you were --

11 MR. MASHBURN: -- we'll have as long as you  
12 want.

13 MS. MARKS: -- going to do, like, four  
14 minutes. Do you want to go first -- do you want  
15 to go first because I have a passout --

16 MR. MASHBURN: The passout.

17 MS. MARKS: -- as we talked about.

18 MR. MASHBURN: But don't pass out.

19 MS. MARKS: Yes. We have an insider joke  
20 about passing out.

21 MS. DUFORT: Okay.

22 MR. MASHBURN: Ms. Dufort --

23 MS. DUFORT: Again --

24 MR. MASHBURN: Ms. Dufort, the floor is  
25 yours.

1           **MS. DUFORT:** -- I'm here on behave of the  
2           Morgan County Democratic Committee. In  
3           preparation for this morning, again I read the  
4           transcript of the October meeting, discussion,  
5           and your letter of denial.

6           In light of no objections raised, it seems  
7           you might be prepared to adopt the provisions in  
8           our proposed rules that bring logic and accuracy  
9           testing into compliance with state law. That is  
10          the central point of our petition, that the  
11          General Assembly required comprehensive logic and  
12          accuracy testing, but the Secretary of State's  
13          procedures do not require it and no one is  
14          enforcing it.

15          And the recent election in North Hampton  
16          County, Pennsylvania delivered a chilling warning  
17          that LAT shortcuts present unacceptable risk.  
18          Election workers had to tell voters that ballots  
19          that did not reflect the choices they made, at  
20          least not in the human readable text, would be  
21          counted anyway because the barcode and the text  
22          did not match. Thorough logic and accuracy  
23          testing reduces the chances that programming  
24          errors like this will go unnoticed.

25          Your questions and concerns in your letter

1 of denial were focused on the second purpose of  
2 our rules, to ensure access to meaningful public  
3 observation. And as the representative of county  
4 committee, public observation is a big deal for  
5 us. We have lots of volunteers who engage in  
6 that. Observing logic and accuracy testing is  
7 very similar to observing tabulation and scan  
8 recounts.

9 And recently I was at the Fulton County  
10 recount, credentialed as a candidate observer.

11 Dr. Johnson[sic], you were there. So please  
12 have some patience with my retelling of it.

13 It was a very large room with a plexiglass  
14 room in the center with the scanner set up inside  
15 of that. The general public was confined to an  
16 area from which you could see things were  
17 happening but you couldn't tell what was  
18 happening. But as credentialed observers, we  
19 were allowed much closer but not inside that  
20 plexiglass room. But from our vantage point, I  
21 was about half the distance to the scanner as I  
22 am to Dr. Johnson. So I could read the monitor  
23 that was set up at the scanner, and I could tell,  
24 in fact, a lot of what was happening. I could  
25 not hear. And really audio -- hearing what

1 election workers are -- are talking about as they  
2 solve problems would really, really help.

3 In my home county, with credentials I'm  
4 allowed into the room with the scanner. Without  
5 credentials, again, I'm outside, looking through  
6 a thick plexiglass window at an angle that does  
7 not allow effective observation. And I fully  
8 understand that far too many people have beha --  
9 been behaving badly towards election workers.

10 But the answer cannot be to reduce public  
11 observation. There has to be an answer to that  
12 but it can't be reducing the public's right to  
13 observe elections. The rule must allow for  
14 visual -- effective visual observation with the  
15 ability to hear discussions of poll workers so we  
16 can understand what's happening.

17 There must be reasonable access to  
18 supervisors so observers can report problems and  
19 ask questions. We were able to solve a few  
20 things by being able to talk to the Fulton  
21 County -- new Fulton County board election  
22 director, Dr. Patrise, for example, right?

23 Observers must be held to a reasonable  
24 standard of behavior, similar to what we use for  
25 poll watchers. Don't interfere with the work,

1 direct questions to the supervisor not the  
2 workers, and don't disrupt the work.  
3 Transgression should result in removal. Control  
4 the behavior not the access.

5 The logic and accuracy tests have been  
6 modified to address the concerns you raised.  
7 Testing for the 2024 presidential preference  
8 primary begins in about eight weeks. So the time  
9 to act is now. There will be a high cost if you  
10 defer this decision. Democracy dies in the dark.  
11 Thank you.

12 **MR. MASHBURN:** Ms. Marks, you have the  
13 floor.

14 **MS. MARKS:** Great. Have a seat.

15 Yes. Thank you again. As you know, HB316  
16 requires that logic and accuracy testing be done  
17 on the BMD voting system. It's fairly standard  
18 across the nation, the type of language in the  
19 logic and accuracy testing HB316 language.

20 However, in October 2020, in our *Curling v.*  
21 *Raffensperger* case, the court found that the  
22 procedures used by the Secretary of State in  
23 ordering the counties to conduct their LAT fall  
24 far short of what is required by Georgia law or  
25 common sense. And the court asked that this

1 board specifically address the failure to comply  
2 with logic and accuracy testing statutes before  
3 the January 2021 runoffs.

4 That's been some time ago and this board  
5 still has not acted, although we are facing again  
6 a contentious, will be high turnout, 2024  
7 election cycle. Still hasn't been addressed.  
8 We're asking you at this meeting to address it.

9 At the last meeting, the discussion was, as  
10 you declined our petition, that more study was  
11 needed. We hope you've, indeed, studied the  
12 situation and learned that the shortcuts that the  
13 counties are taking with the Secretary's  
14 permission and instruction are dangerous and  
15 result in Georgia's logic and accuracy testing  
16 falling far short of the minimum standards. It  
17 permits both human errors in the ballot  
18 definition files as well as undetectable hacking  
19 to occur.

20 I want to try to give a couple of examples  
21 that might bring home the issue that -- and urge  
22 the action of this board. We sent you materials  
23 in -- Ms. Dufort just mentioned -- the BMD  
24 election problem that happened in North -- North  
25 Hampton, Pennsylvania last month when human

1 error, no hacking, happened in creating the  
2 ballot definition files. It wasn't caught in  
3 LAT, but what happened was that the barcode was  
4 accurate. It reflected what the voter was  
5 putting into the machine, touching the machine,  
6 but the face of the printed ballot was incorrect.

7 We all know that that is certainly  
8 physically, mechanically, electronically  
9 possible. And it is a perfect example of why we  
10 don't believe that computers should be marking  
11 ballots and recording the vote.

12 There were numerous opportunities for the  
13 North Hampton officials to catch this error in  
14 the logic and accuracy testing on the touch  
15 screens. However, LAT on touch screens is super  
16 complicated. It is complex; it's tedious; it's  
17 error-prone. And even with hundreds of tests,  
18 they did not detect the error.

19 But what happened shows the danger of ballot  
20 marking devices because once those marking  
21 devices were out in the field with the error, the  
22 voters could not print a ballot that reflected  
23 their choices on a particular judge retention  
24 issue. If they chose yes, no was printed on the  
25 face of the ballot. They could -- they could do



1 ballot after ballot and still would get the wrong  
2 answer.

3 It could happen in Georgia. And in Georgia  
4 it says in an audit -- and just as in  
5 Pennsylvania, in an audit what's on the face of  
6 the ballot counts. So an audit would have in --  
7 if the margins had -- had been such in  
8 Pennsylvania, an audit would actually reverse a  
9 correct outcome. A hand recount would've  
10 reversed a correct outcome. It's -- so the  
11 importance of logic and accuracy testing as well  
12 as a hand-marked paper ballot is hard to quite  
13 imagine.

14 So I brought -- I brought some examples with  
15 me. Let's -- the first -- first one is a Fulton  
16 County ballot. Let's just go -- move right past  
17 that one and go to --

18 **MR. MASHBURN:** And just for the court  
19 reporter to note, the board has these that --  
20 passouts, handouts that you've given us. Each  
21 board member has one. It's --

22 **MS. MARKS:** Yeah.

23 **MR. MASHBURN:** Begins Fulton County official  
24 ballot at the top.

25 **MS. MARKS:** Right.

1           **MR. MASHBURN:**   So this --

2           **MS. MARKS:**   And I'm -- I'm asking to set  
3           that one aside for the moment and let's go to the  
4           next one that says the Chatham County official  
5           ballot for November 3, 2020.  And -- and it's got  
6           a --

7           **MR. MASHBURN:**  Okay.  Third -- third --  
8           third page?

9           **MS. MARKS:**   It's says -- on the front of it,  
10          it says, "Correctly interpreted," in a little box  
11          up at the top on the left-hand --

12          **MR. MASHBURN:**  Yeah, third page --

13          **MS. MARKS:**   -- side.

14          **MR. MASHBURN:**  Got it.

15          **MS. MARKS:**   The one I want to look at is  
16          "Correctly interpreted."  Let's -- and I want to  
17          say before we panic, this was the machine  
18          recount.  And this was only counting at this  
19          time -- this was only counting the presidential  
20          election.  But I just want to give you an example  
21          of what can -- what can happen.

22          **MR. MASHBURN:**  Okay.

23          **MS. MARKS:**   Okay.  So let's look at the  
24          constitutional amendments at the very end.  
25          Constitutional Amendment 1, the vote says it was

1 for yes. Constitutional Amendment 2, the vote  
2 for yes. Statewide referendum, vote for yes.  
3 Are you with me on the front page?

4 **MR. MASHBURN:** Yep.

5 **MS. MARKS:** And then we go to the next page  
6 which the Dominion System calls the audit mark  
7 page that tells us how the barcode was  
8 interpreted. And we get the same thing in those  
9 constitutional amendments, right? Yes, yes, and  
10 statewide referendum, yes. Everything is  
11 correctly interpreted, it appears. The printed  
12 text that the voter saw is the same as what the  
13 cast vote record tells us was voted, right?

14 **UNIDENTIFIED SPEAKER:** (inaudible) the  
15 barcode.

16 **MS. MARKS:** Yeah. The -- what -- what's in  
17 the barcode. So I'm saying there's no exception  
18 here. This is fine, right?

19 **MR. MASHBURN:** I'm with you.

20 **MS. MARKS:** Okay. Now -- and this is  
21 nothing I have altered -- this is -- this is a  
22 ballot image. There are hundreds of these that  
23 were printed like this. Okay. The voter saw  
24 yes, yes, yes.

25 **UNIDENTIFIED SPEAKER:** (inaudible)

1           **MS. MARKS:** Wait. Well, we're not there  
2 yet. No, we're on the next Chatham County  
3 ballot, right?

4           **MS. DUFORT:** The one that does not say  
5 corrected. Look at the second Chatham ballot.

6           **MR. MASHBURN:** Pages four -- well, pages 5  
7 and 6.

8           **MS. MARKS:** Okay. So it's -- it's the  
9 Chatham County ballot that has no text box on it,  
10 okay? So it says -- what the voter saw here is  
11 those last three yes-or-no questions. Yes, yes,  
12 yes. With me? On the front page?

13           **MR. MASHBURN:** I'm with you.

14           **MS. MARKS:** That's what the voter saw.  
15 Well, let's look at what the machine counted.  
16 The machine says no, no, no. Okay. So -- so  
17 what the machine ended up doing -- now, again  
18 this -- this was a recount, so that's -- these  
19 particular races were not being recounted. But  
20 what this shows is that these glitches can happen  
21 in the database and have happened in the database  
22 where --

23           **MR. MASHBURN:** Sorry to interrupt you but  
24 just for the record, we don't put people making  
25 presentations under oath, so you're not under

1 oath, but tell us for the record where these  
2 images came from, how they were obtained, the  
3 chain of custody, et cetera.

4 **MS. MARKS:** I don't know that I can tell you  
5 the chain of custody, it's been so long. But I  
6 will -- I will go back and find it and send it to  
7 you by e-mail. But these came from Chatham  
8 County's databases after the November 2020  
9 election. And these are ballot images from the  
10 original count and the recount.

11 **MR. MASHBURN:** Okay. So I'm just going  
12 to -- I don't want -- I'm -- I'm not intending to  
13 put you on the spot here. So what I'm going to  
14 do is I'm going to leave the record open and let  
15 you submit that and we'll just append that into  
16 the record.

17 **MS. MARKS:** Okay.

18 **MR. MASHBURN:** Okay?

19 **MS. MARKS:** That's -- that's just fine.  
20 That's just fine. But I think what you will see  
21 is that in this glitch -- and again I'm not  
22 saying these were counted this way because it was  
23 a recount and this is not the race that was  
24 subject to being recounted. I'm showing the  
25 example of how glitches can occur that count the

1 ballot differently than what the voter is seeing.  
2 And this just underscores the need for logic and  
3 accuracy testing that is robust and fully  
4 compliant with state law.

5 Right now it is -- it is the most  
6 superficial kind of testing that is taking place  
7 where each machine is tested in a very, very,  
8 very limited way.

9 Here's another example that I think  
10 everybody can relate to. And that is that the  
11 system does not even require that they test to  
12 make sure that if a race is undervoted -- in  
13 other words, somebody skips a race, somebody  
14 doesn't vote at all, there is no test that will  
15 make sure that a vote's not counted there, that,  
16 you know, the vote doesn't show up for Sally even  
17 though nobody touched Sally or any other  
18 candidate on the screen.

19 There's -- there is no question, and as --  
20 as the court has held, that the measures that are  
21 un -- that are in process today are inadequate.  
22 They don't meet state law. And we are asking  
23 this board to -- to require that the counties  
24 meet the state law in the testing. It is  
25 tedious; it is complex; it is extremely hard to

1 do; it is expensive; it's time-consuming, but it  
2 needs to be done. And we're asking this board to  
3 insist that the -- the law be enforced and asking  
4 you to think about the example of Northampton,  
5 Pennsylvania which you are going hear again and  
6 again as when a voter is looking at his ballot  
7 and cannot trust the printed text, what do you  
8 do? There's nothing that can be done then.  
9 Okay? Any quest -- oh --

10 **MR. MASHBURN:** Well, I just thought of -- I  
11 just thought of a -- kind of a workaround. Have  
12 these been -- have these ballot images been  
13 admitted into evidence in the suit?

14 **MS. MARKS:** No.

15 **MR. MASHBURN:** Okay. I was -- if they  
16 were -- if they were admitted, I'd say, okay,  
17 this is Plaintiff's 1 (indiscernible) --

18 **MS. MARKS:** No, not that I -- no, they  
19 haven't.

20 **MR. MASHBURN:** Okay. I tried. I tried.

21 **MS. MARKS:** That's -- well --

22 **MR. MASHBURN:** I'll just leave the record  
23 open.

24 **MS. MARKS:** I beli -- okay. And I believe  
25 that what I'll find for you -- I think what I

1 will end up finding for you is that we obtained  
2 the images from the Secretary of State. But I  
3 don't want to swear to it right this moment.

4 **MR. MASHBURN:** And you're not under oath.

5 **MS. MARKS:** It's been so long. 2020's been  
6 a little while ago.

7 **MR. MASHBURN:** And you're -- and you're not  
8 under oath. But I'll just leave the record open.  
9 I thought I had a workaround for it, but we'll  
10 just leave --

11 **MS. MARKS:** Thank you.

12 **MR. MASHBURN:** -- the record open and let  
13 you get that to us.

14 **MS. MARKS:** We'll -- we will definitely get  
15 that to you.

16 **MR. MASHBURN:** Okay. Thank you.

17 **MS. MARKS:** But thank you for the question.

18 **MR. MASHBURN:** Thank you. Any questions  
19 from the --

20 Oh, do you want to go? You went first,  
21 Ms. Dufort.

22 **MS. DUFORT:** I went first.

23 **MR. MASHBURN:** You went first, okay.

24 **MS. DUFORT:** So if there's any question  
25 about the access side of it.



1           **MR. MASHBURN:** So here we are. Questions  
2 from the board. Dr. Johnston, you get to go  
3 first.

4           **DR. JOHNSTON:** Sure.

5           So, Ms. Marks, I'll -- I'll just say for  
6 the -- for the folks here and those listening  
7 that I'm in -- I was in favor of this amendment  
8 last time and I'm in favor of it now.

9           I do know that -- that this voting system  
10 is -- is enormous and the -- and the devices that  
11 are involved with the election process. It is  
12 time-consuming to -- to perform logic and  
13 accuracy. It's like setting up controls in the  
14 laboratory to make sure that your medical tests  
15 are accurate. You do a control every single  
16 day --

17          **MS. MARKS:** Right.

18          **DR. JOHNSTON:** -- every time you use the  
19 machine. So it's -- it's just doing that same --  
20 that same proper procedure and step to make sure  
21 that the machines are working properly and  
22 counting properly. With thousands of scanners in  
23 the state and tens of thousands of BMDs, every  
24 one of those pieces of equipment, those devices,  
25 must be checked and they must -- it must be

1 confirmed that they're accurate before the  
2 election begins.

3 We know -- and from -- and also from the  
4 Pennsylvania experience, but we know that if --  
5 once those machines have been checked for an  
6 accurate database, if there's any change made  
7 after that point, it has a consequence --

8 **MS. MARKS:** Uh-huh.

9 **DR. JOHNSTON:** -- and it can actually -- it  
10 actually change -- it could change the ballot.  
11 It may not, but it must be tested because if  
12 there's -- if it does change the ballot, the  
13 electronic ballot, it corrupts the ballot.  
14 You're dealing with a corrupted ballot and that  
15 can have an effect. It may not have an effect  
16 but it can.

17 It could have an effect that would change  
18 the results of an election. And it might change  
19 the results of an election and the candidate is  
20 the one that suffers the consequence of this  
21 because they don't know. They just say, Oh,  
22 darn, I just barely lost, and would never know  
23 unless it's a very obvious unexpected result.

24 So shortcuts have consequences, and I fully  
25 support complete logic and accuracy testing. And

1 the -- and the prohibition to not change the  
2 ballot database once that has been set and the  
3 election begins. If we had -- if one were using  
4 paper ballots as in our code -- it says if you  
5 have time, you may reprint the proper ballot.

6 Well, when you're changing the electronic  
7 database for a ballot, you're essentially  
8 thinking you're reprinting it. But you have to  
9 go through all the proper steps of logic and  
10 accuracy testing of every single piece of  
11 equipment to make sure that it is true and  
12 accurate. Thank you.

13 **MR. MASHBURN:** Dr. Johnston yields the  
14 floor.

15 Board member Lindsey?

16 **MR. LINDSEY:** Yeah, thank you.

17 Is -- in terms of your rule, is --

18 **MR. MASHBURN:** Speak close to the  
19 microphone.

20 **MR. LINDSEY:** Thank you. I'm sorry, guys.

21 In terms of the rule, do you define logic  
22 and accuracy in your rule? I don't see where  
23 it's -- where it's defined.

24 **MS. MARKS:** Well, the -- the rule itself is  
25 entitled and has been for decades, I guess, logic

1 and accuracy testing.

2 **MR. LINDSEY:** I'm saying -- but is there --

3 have you -- you're asking for us to add the terms

4 logic and -- logic and accuracy; correct?

5 **MS. MARKS:** No. We're -- no. We're not.

6 **MR. LINDSEY:** Well, I'm seeing it several

7 places where it looks like it's being --

8 **MS. MARKS:** I'm so sorry. Your -- your --

9 what's that now?

10 **MR. LINDSEY:** It's -- it looks like you're

11 adding -- oh, is logic and accuracy simply

12 something that you guy have highlighted in the

13 rule? I'm sorry. Maybe I misunder --

14 **MS. MARKS:** I think that's just the way it

15 printed straight from --

16 **MR. LINDSEY:** That's fine.

17 **MS. MARKS:** -- the (indiscernible) --

18 **MR. LINDSEY:** That's fine. That's fine. I

19 just wanted to know whether or not that was a

20 term that being added or --

21 **MS. MARKS:** No, no. No --

22 **MR. LINDSEY:** -- whether that's --

23 **MS. MARKS:** -- the -- the --

24 **MR. LINDSEY:** So the logic and accuracy

25 testing is already in the rules.

1           **MS. MARKS:** Correct. Correct.

2           **MR. LINDSEY:** Okay. That's good.

3           **MS. MARKS:** And I don't know whether yours

4 is a color printout.

5           **MR. LINDSEY:** It is. It is. I just --

6           **MS. MARKS:** Okay.

7           **MR. LINDSEY:** I just didn't understand the

8 bold and the under --

9           **MS. MARKS:** Right. Right. That's --

10          **MR. LINDSEY:** -- underline. Okay. My bad.

11          **MS. MARKS:** No problem.

12          **MR. LINDSEY:** Which relates back to O.C.G.A.

13 21-2-379.25(c); correct?

14          **MS. MARKS:** I believe that's correct.

15          **MR. LINDSEY:** Okay. And it's your

16 contention that -- that these -- that the

17 requirements -- in the requirements in that code

18 section, which we are required to enforce when a

19 complaint is raised, lays out in specifics a

20 sufficient level of testing required under --

21          **MS. MARKS:** For logic and accuracy.

22          **MR. LINDSEY:** So I -- well, I guess my first

23 question is do I need to go back to the

24 legislature and ask them to tighten up this?

25          **MS. MARKS:** No, no. The --

1           **MR. LINDSEY:**   So you're fine --

2           **MS. MARKS:**   What the --

3           **MR. LINDSEY:**   You're fine with (c).   I just  
4   want to make sure.   I'm just --

5           **MS. MARKS:**   Right.   No --

6           **MR. LINDSEY:**   -- checking the box here.

7           **MS. MARKS:**   We believe -- we believe that  
8   for purposes of preelection logic and accuracy,  
9   the legislature got it right.

10          **MR. LINDSEY:**   Okay.

11          **MS. MARKS:**   And they did what most states  
12   do.

13          **MR. LINDSEY:**   All right.   That's my first  
14   question.

15          **MS. MARKS:**   Okay.

16          **MR. LINDSEY:**   All right.   And so that's  
17   good.   Just one less thing I've got to go back  
18   and ask the legislature.   And we've got a few  
19   things we've already talked about.

20                 But it's your contention that several  
21   counties, and perhaps multiple counties, are  
22   not -- are not following (c); correct?

23          **MS. MARKS:**   Virtually all of the counties  
24   are not complying with the law.   But what they  
25   are doing is using the Secretary of State's

1 procedure manual, which is a -- far, far distant  
2 from the law. And Judge Totenberg had quite an  
3 extensive hearing in the finding on that.

4 **MR. LINDSEY:** Yeah, I understand that.  
5 Has -- you know, we've already had that  
6 discussion yesterday as -- in terms of our  
7 authority with the Secretary of State. Not going  
8 to go down that path again. But we have asked  
9 for clarity from the -- from the General Assembly  
10 in terms of our -- I'm just letting you know in  
11 case you weren't here yesterday --

12 **MS. MARKS:** Right, right, right.

13 **MR. LINDSEY:** -- for that part.

14 **MS. MARKS:** But our -- our request is you --  
15 your --

16 **MR. LINDSEY:** I know. I know. I know.

17 (Cross-talking)

18 **MS. MARKS:** -- (indiscernible) that the  
19 counties --

20 **MR. LINDSEY:** I'm sort of -- I'm just  
21 letting -- letting you and the audience know that  
22 we have requested that the General Assembly  
23 clarify what our authority is when it comes to  
24 the Secretary of State.

25 **MS. MARKS:** Right.

1           **MR. LINDSEY:** Has there been any specific  
2           complaints filed against any counties that have  
3           not complied with (c)? Because that's -- that's  
4           the clearest way for us to mandate something, is  
5           to -- is to say, hey, you're out of compliance.

6           **MS. MARKS:** Well, of course, it -- the  
7           public is not permitted to know the nature of the  
8           complaints that are in your backlog. And I think  
9           I read somewhere that there are 300 complaints in  
10          your backlog. And if any member of the public  
11          ever tries to find out, we are told no, that they  
12          are secret.

13          **MR. LINDSEY:** Yeah. That's another thing,  
14          quite frankly, we're working on because I agree  
15          with you. It shouldn't be secret.

16          **MS. MARKS:** So -- so we can --

17          **MR. LINDSEY:** I just wanted to let you know.

18          **MS. MARKS:** -- not answer your question.

19          **MR. LINDSEY:** As far as I know -- and I will  
20          say this, as far as I know, there isn't one, and  
21          I will also state for our greater audience and  
22          the people in this room --

23                 By the way, if your arms get tired, you can  
24          put it down and I can still see it. I promise.  
25          Or you can keep it up. Your call. I just wanted



1 to make sure you can understand that. I see it.

2 I just wanted to let you know that that's --  
3 that's -- this board is operating, trying --  
4 trying to clean that up as we get -- as we get  
5 proper administrative staff, as we get proper  
6 funding to move beyond that because I do agree  
7 with you, complaints should be a matter of public  
8 record.

9 **MS. MARKS:** And --

10 **MR. LINDSEY:** I'm just sort of giving you  
11 that background.

12 **MS. MARKS:** Right. But may -- if I could  
13 come back to the comment you made, though, that  
14 it -- it sounds like you're saying, well, it's  
15 easier, perhaps, for this board to deal with  
16 specific complaints than it is with promulgating  
17 rules.

18 **MR. LINDSEY:** I understand. I understand.

19 **MS. MARKS:** No --

20 **MR. LINDSEY:** Let me get to my point.

21 **MS. MARKS:** -- but if that is the way we  
22 need to come to you, to -- rather than asking you  
23 to enfor -- to promulgate rules and to create  
24 rules that support the law is to pile up the  
25 complaints about these things --

1           **MR. LINDSEY:** No, that's not what I'm  
2 saying.

3           **MS. MARKS:** Okay.

4           **MR. LINDSEY:** Hold on. That's not even  
5 remotely what I'm saying.

6           **MS. MARKS:** Okay.

7           **MR. LINDSEY:** What I'm saying is that the  
8 rules are there -- rules are put in place to  
9 supplement what the law mandates. Rules are not  
10 there to simply repeat what the law mandates.

11          **MS. MARKS:** Correct.

12          **MR. LINDSEY:** And in looking at (c) -- and  
13 this is my issue with this one is that (c) lays  
14 out pretty much in detail. A lot of times we get  
15 laws that sort of tell us in general terms what  
16 they want us to do, and it's up to us to come  
17 back with details.

18           But (c), by contrast, lays it out pretty  
19 much in detail. And if they -- and if the --  
20 if -- big "if" here because they're not here to  
21 respond, if the Secretary of State or the  
22 counties are not following the explicit  
23 requirements in (c), that's an issue that we'll  
24 have to deal with. And I'm not sure if simply  
25 repeating the rule is the way to go other than --

1 other than pushing on them to enforce that which  
2 is already laid out in great detail. I'm looking  
3 at it again, and I did look at it before. So  
4 anyway.

5 I'll yield while I look at a couple things.

6 **MR. MASHBURN:** Okay. Mr. Lindsey yields the  
7 floor.

8 I have a couple of questions, please. And  
9 everybody by now knows when Mashburn starts  
10 talking, we're going to start talking about  
11 unfunded mandates. So here we go.

12 I want to make sure that I'm understanding  
13 your -- the way you've marked this -- just so I  
14 don't have any mistakes -- in that the copy that  
15 we have, there's a blue strike-through for what  
16 you're taking out and a red indication for that  
17 which you want to add; correct?

18 **MS. MARKS:** Correct.

19 **MR. MASHBURN:** Okay. So if we look to  
20 three -- if we look to 3(b) --

21 **MS. MARKS:** Correct.

22 **MR. MASHBURN:** -- you want to add this  
23 second sentence.

24 **MS. MARKS:** Right.

25 **MR. MASHBURN:** Okay. So I want to

1 address -- I want to find out what we're telling  
2 the counties they're going to have to do with  
3 regard to the second sentence. So let's -- let's  
4 kind of talk about that.

5 **MS. MARKS:** Okay. And this goes to  
6 Mr. Lindsey's comment actually. He's saying that  
7 the statute itself is pretty explicit already and  
8 specific. This just kind of adds a little bit  
9 more emphasis, saying, and what we mean by that  
10 is that each ballot-marking device shall be  
11 tested for accurate recording and printing of  
12 each candidate selection on each contest for each  
13 ballot style for which the BMD can be used for  
14 voting.

15 **MR. MASHBURN:** All right. And do you have  
16 an estimate of how long it takes to do this test  
17 for one ballot style on one machine? Do you  
18 know?

19 **MS. MARKS:** Certainly not --

20 **MR. MASHBURN:** I'm not -- this isn't a game  
21 of catch you. I'm just trying to quantify this.

22 **MS. MARKS:** Certainly not because we've  
23 never been -- had that kind of access, but do  
24 recall that that's going to be incredibly  
25 different if you've got a runoff race with two

1 candidates versus a May primary ballot with 47  
2 contests and --

3 **MR. MASHBURN:** Right.

4 **MS. MARKS:** -- a hundred and thirty  
5 candidates.

6 **MR. MASHBURN:** Okay, that makes sense.

7 **MS. MARKS:** So, yes, I don't think  
8 there's -- there's a uniform answer there.

9 **MR. MASHBURN:** Okay. Is there -- is there  
10 any estimate or idea on how many ballot styles  
11 that we use in Georgia? Ballpark?

12 **MS. MARKS:** It's going to be in the  
13 thousands.

14 **MR. MASHBURN:** Okay.

15 **MS. DUFORT:** (inaudible)

16 **MS. MARKS:** Yeah. Yeah. It -- there will  
17 be, as she was just saying, one per seat per  
18 precinct. But there're -- there are going to be  
19 more than that because let's take a primary. In  
20 every -- let's see, you're going to have  
21 Democratic, Republican, and nonpartisan for every  
22 race and every precinct.

23 So, no, there is no question this is an  
24 enormously complex, time-consuming, expensive ...  
25 But it was -- the legislature put it in for a

1 reason. The legislature also determined that  
2 there was no cost to doing this.

3 **UNIDENTIFIED SPEAKER:** (inaudible)

4 **MS. MARKS:** We challenged them on that at  
5 the time. So --

6 **MR. MASHBURN:** Do you agree or disagree with  
7 that?

8 **MS. MARKS:** Well, we disagreed --

9 **MR. MASHBURN:** That there's no cost?

10 **MS. MARKS:** -- at the time. And we -- and  
11 we strenuously disagree now, having watched it in  
12 process.

13 **MR. MASHBURN:** So do you have an estimate  
14 for us on how much that we can go to the  
15 counties -- how much -- an estimate on how much  
16 more time this is going to take them than what  
17 they're doing now, assuming the ones that are  
18 complying with the law -- how much more time are  
19 y'all asking them to put in?

20 **MS. MARKS:** It is not that we are asking  
21 them --

22 **MR. MASHBURN:** Or is your petition asking  
23 them to put --

24 **MS. MARKS:** We are -- our petition is not  
25 asking them to take more time than what they are

1       doing now. Our petition is to do what the law  
2       requires. Not -- not to say, well, what you're  
3       doing now is okay. We don't -- we don't want it  
4       to cost any more. We don't -- we don't want it  
5       to necessarily have to complete what the  
6       legislature said you need to.

7               But, Mr. Chair, it is -- it is substantial.  
8       It is quite substantial. It's thousands -- a  
9       county like Fulton, thousands of hours.

10              **MR. MASHBURN:** More.

11              **MS. MARKS:** Yeah. Because they're doing a  
12       major shortcut right now that is ineffective.  
13       I'd almost say don't even do -- I shouldn't --  
14       that would be an exaggeration for me to say don't  
15       even do what you're doing now. But the -- but  
16       they're spending a lot of time ineffectively  
17       today.

18              **MR. MASHBURN:** Yeah. Because when I talk to  
19       the counties, I don't hear that they're afraid of  
20       me, but I hear that they don't have the time or  
21       the staff to do what they're doing now. And  
22       they're always saying, Don't put more on us.

23              **MS. MARKS:** Right. Okay. But how do you  
24       say, Well, then you don't need to follow the law?

25              **MR. MASHBURN:** Right. Yeah, I get that.

1           **MS. MARKS:** Yeah. Yeah. Because we've  
2 given you -- Northampton has taught us all that  
3 this can and does happen in real life. Chatham  
4 is teaching us it can and does happen. We can't  
5 say, well, we'll hope for the best for election  
6 day because what happens on election day is there  
7 is no way to recover if such an error gets  
8 through the system.

9           And I think you all are the most aware of  
10 any -- anybody in Georgia of how hard it is for  
11 the counties to retain experienced election  
12 workers right now and the kind of the brain-drain  
13 from the election officials happening right now.  
14 Errors are going to occur more.

15           **MR. MASHBURN:** Okay. I appreciate it.  
16 Thank you.

17           More questions from the board? I think we  
18 were -- I think I took the floor while  
19 Mr. Lindsey was getting ready to have some  
20 further comment or question.

21           Are you ready?

22           **MR. LINDSEY:** No, I just -- well, you  
23 know --

24           **MR. MASHBURN:** Mr. Lindsey has the floor  
25 again.



1           **MR. LINDSEY:** You know, just -- you know,  
2           where you say shall test each race, they say all  
3           races. I'm still looking at the -- at the code  
4           section. So, you know, and that situation is --  
5           and -- and does require that all marker -- all  
6           ballot markers be tested accurately. I'm just --

7           **MS. MARKS:** I'm happy to say each, every,  
8           and all.

9           **MR. LINDSEY:** That's fine. I'm just simply  
10          pointing out that I think that that's covered by  
11          the code section. And -- and I agree that the  
12          proper testing is critically necessary. And I  
13          want them to follow the law because, as you and I  
14          have discussed, while, you know -- you know,  
15          every -- every system is -- is capable of having  
16          bad guys intervene, whether it be paper or  
17          electronic, it's always important to stay one  
18          step ahead of the bad guys and including the  
19          issue of upgrades and testing and everything  
20          else.

21          My only question here is whether (b) is  
22          sufficient notice to the -- to them on how to do  
23          it and whether or not yours is -- your additional  
24          language is necessary.

25          It kind of reminds me of the movie, A Few

1 Good Men, in which, you know, the defendants  
2 object, judge rules, and the -- one of the other  
3 lawyers gets up, But, Judge, I really, really,  
4 really object.

5 And, you know, we have here a rule already  
6 in place and we have here a code section that  
7 very much in detail lays out what should be done  
8 or what is -- not should, but what is required to  
9 be done. And our issue is getting the local  
10 counties to comply with the state law and with,  
11 for that matter, Secretary of State. And that's  
12 my comment.

13 **MR. MASHBURN:** Okay. We thank you for your  
14 presentation. We thank the board for their  
15 involvement and their questions. So at this time  
16 the -- the chair is ready to entertain a motion  
17 from a member of the board if there is a motion.

18 **DR. JOHNSTON:** I'd like to make a motion  
19 that we accept the amendments to the petition --  
20 the petition for amendments to rule 183-1-12.08,  
21 logic and accuracy testing, to be considered  
22 and -- and amended.

23 **MR. MASHBURN:** Okay. There's a motion to  
24 accept the logic and accuracy petition to enter  
25 into rulemaking. Is there a second? Is there a

1 second? Without a second, the motion cannot be  
2 entertained. Is there a counter -- is there  
3 another motion?

4 **MR. LINDSEY:** Move to reject. And after I  
5 make my motion, I'll explain why.

6 **MR. MASHBURN:** There's been a motion to  
7 reject the petition for logic and accuracy  
8 testing. I'll second that motion to reject.  
9 Discussion.

10 **MR. LINDSEY:** I want to make it very clear  
11 I'm not moving to reject logic and accuracy  
12 testing. Logic and accuracy testing is already  
13 required under Georgia law, under the code  
14 section O.C.G.A. 21-2-379.25(c) and underneath  
15 the existing rules.

16 And it would be incumbent upon us and the  
17 Secretary of State to push on the counties those  
18 methods that put them in compliance with this --  
19 with the existing rule and that I simply don't  
20 see anything to be added by this proposed rule.  
21 Gets back to my analogy on A Few Good Men.

22 **MR. MASHBURN:** Thank you. Further  
23 discussion? Dr. Johnston?

24 **DR. JOHNSTON:** No further discussion.

25 **MR. MASHBURN:** No further discussion. So

1 we'll be ready to vote. We'll vote in reverse  
2 chronological order of seniority.

3 Dr. Johnston, how say you on the motion to  
4 reject?

5 **DR. JOHNSTON:** Nay.

6 **MR. MASHBURN:** Dr. Johnston says nay.

7 Mr. Lindsey?

8 **MR. LINDSEY:** Yea.

9 **MR. MASHBURN:** Mr. Lindsey says aye. I'll  
10 say aye. The motion to reject passes 2 to 1.

11 Thank you --

12 **MS. MARKS:** Can we ask --

13 **MR. MASHBURN:** -- very much for your  
14 presentation.

15 **MS. MARKS:** -- a follow-up question? Could  
16 we ask a follow-up question?

17 **MR. MASHBURN:** Sure.

18 **MS. MARKS:** Thank you. Thank you.

19 Mr. Lindsey said that the role of this board  
20 would be to enforce, and we would absolutely  
21 welcome that.

22 If we were to submit a complaint this week  
23 yet, which you know we can do that pretty fast;  
24 we know how to complain -- that if we were to  
25 submit a complaint this week, could the board

1 address that complaint in the near term or is it  
2 going to end up in the backlog? Given that we've  
3 got 2024 elections --

4 **MR. LINDSEY:** I understand. And I do hear  
5 you. And the best way I can answer is I'll see  
6 what I can do because I do understand the  
7 importance of the testing. And it is something  
8 that is of great importance to me. And I know  
9 it's of great importance to the rest of the board  
10 members, particularly since certain upgrades were  
11 not able to be done prior to the '24 election.

12 And so our best backstop is accurate  
13 testing. And so let me see what we can do.

14 **MS. MARKS:** Thank you. So we have your  
15 e-mail addresses.

16 **MR. LINDSEY:** Oh, yeah.

17 **MS. MARKS:** You'll be hearing from us.

18 **MR. LINDSEY:** I get them. And I get all of  
19 theirs too (indicating).

20 **MR. MASHBURN:** Okay. Thank you so much for  
21 your present --

22 **MR. LINDSEY:** And for the record, I read  
23 them.

24 **MR. MASHBURN:** Thank you so much for your  
25 presentation. We appreciate your hard work.

1 Thank you.

2 Dr. Johnston requested the floor.

3 **DR. JOHNSTON:** Oh, just a point of order. A  
4 question would be if a complaint were submitted,  
5 Mr. Lindsey, who should it be submitted against?

6 **MR. LINDSEY:** To the respective counties  
7 that are not in compliance?

8 **MS. MARKS:** (inaudible) --

9 **MR. MASHBURN:** Okay.

10 **MR. LINDSEY:** I'll leave it up to your  
11 discretion.

12 **MS. MARKS:** Thank you. But you'll  
13 understand --

14 **MR. LINDSEY:** I do understand what you're  
15 trying to do.

16 **MS. MARKS:** -- (inaudible).

17 **MR. LINDSEY:** I understand.

18 **MS. MARKS:** Okay, thank you.

19 **MR. MASHBURN:** We appre --

20 **MS. DUFORT:** (off mic) (inaudible) county  
21 will be in front of you, saying, Here's the  
22 procedure for (indiscernible). Here's the law.  
23 You choose. So (inaudible) going to arrive at  
24 the same point --

25 **MR. LINDSEY:** And I'm going to say follow

1 the law. I'll tell you right now I'm going to  
2 tell them to follow the law.

3 **MS. DUFORT:** But --

4 **MR. LINDSEY:** I do understand where you're  
5 coming from. I'm going to tell them to follow  
6 the law.

7 **MS. DUFORT:** (indiscernible).

8 **MR. LINDSEY:** I hear you.

9 **MS. DUFORT:** (indiscernible) State Election  
10 Board (indiscernible) state law.

11 **MR. LINDSEY:** I hear you. (inaudible).

12 **MR. MASHBURN:** That completes all items on  
13 the board's agenda for today. I'd like to thank  
14 everyone's attendance -- thank everyone for their  
15 attendance and their participation in the  
16 important work of the board.

17 I thank the board members for all of their  
18 hard work in preparing for these meetings. And  
19 with that, I'll take a motion to adjourn.

20 **MR. LINDSEY:** So moved.

21 **MR. MASHBURN:** There's been a motion to  
22 adjourn.

23 **DR. JOHNSTON:** Second.

24 **MR. MASHBURN:** Seconded. All those in  
25 favor'll say aye.

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**THE BOARD MEMBERS:** Aye.

**MR. MASHBURN:** Anybody risk to being  
opposed? No one opposed. We are adjourned.  
Thank you very much.

(Concluded at 11:42 a.m.)



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CERTIFICATE

STATE OF GEORGIA

I hereby certify that the foregoing meeting was taken down, and was reduced to typewriting under my direction; that the foregoing transcript, pages 3 through 112, is a true and correct record given to the best of my ability.

The above certification is expressly withdrawn upon the disassembly or photocopying of the foregoing transcript, unless said disassembly or photocopying is done under the auspices of the undersigned and electronic signature is attached thereon.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties; nor am I financially interested in the action.

This, the 22nd day of January, 2024.

\*\*Mary K McMahan\*\*

Mary K McMahan, CCR, CVR, RPR, FPR  
Certified Court Reporter  
Certificate Number 2757