

David A. Cross



April 10, 2024

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

**PETITION FOR AMENDMENT TO ELECTION RULES
(Chain of Custody – Meaningful Observation)**

Mr. John Fervier, Chairman
Mrs. Sara Tindall Ghazal,
Mr. Edward Lindsey,
Dr. Janice W. Johnston,
Mr. Rick Jeffares,

This petition for an amendment to an election rule incorporates meaningful observation of ballot processes by poll watchers at polling places and central processing to enhance transparency and voter confidence in Georgia elections for the benefit of all Georgia voters.

I am filing this notarized petition for the proposed rule amendment in a good faith attempt to give concrete guidance and definitions to Elections Directors and staff regarding poll watcher access to observation of election processes during elections. I urge your prompt attention to this matter submitted in accordance with the provisions of Rule 183-1-1-.01(3):

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

David Cross



2. The full text of the rule requested to be amended and desired to promulgate: (new) Rule 183-1-11.03 MEANINGFUL OBSERVATION OF ELECTION PROCESSES

(1) Definitions. As used in this rule, unless otherwise noted, the term:

- (a) “Bipartisan team” refers to a person affiliated with each political party. The names of such persons (employees and appointees) shall be provided by each county party chairman to the election superintendent. There is no requirement that the same two-person bipartisan team shall be the same persons for any specified times or days if team members are provided to the superintendent in advance consistent with O.C.G.A. § 21-2-408.

- (b) “Meaningful observation” includes visual and auditory observation, witnessing, watching, verifying, and monitoring of election forms, numbered voter lists, opening and closing tapes, election system counters, electronic or digital poll book check in numbers, memory card labels, results tally reporting of vote counts, computer screens vote counts, consolidation forms, and reconciliation forms.

(2) Ballot Processes

- (a) Every election process shall be subject to meaningful observation, except for the act of an elector voting by secret ballot or viewing personal identifying information as required by law. Consistent with

O.C.G.A. § 21-2-90 and O.C.G.A. § 21-2-408, there shall be bipartisan teams assigned to perform or witness all election processes that involve ballots, the security and protection of ballots, equipment that holds voted paper ballots, devices that hold electronic ballots and ballot images, and electronic equipment that records, tabulates, or uploads votes.

- (b) Each process of election office ballot printing, processing, mailing, removing from envelopes, sorting, counting, scanning, reconciling, adjudicating, tabulating, canvassing, transferring, moving, transporting, duplication, storing, auditing, and sealing shall be performed or witnessed by a two-person bipartisan team. There shall be a required chain of custody recorded and signed for every action of the paper or electronic ballot life cycle.
- (c) Any election operation of any device that accumulates votes, ballot images or vote totals, including memory cards, flash drives, election management servers or other computers shall be performed by a two-person deputized employed bipartisan team or witnessed by an appointed bipartisan monitor team. Furthermore, each political party shall have the right to meaningful observation in a manner consistent with law. The bipartisan witnesses shall be allowed to visually see with his or her own eyes ballot scanning, tabulating, results tally reporting, election management server entries, uploads, and publishing, and reporting while it is occurring. There shall be required full chain of custody for all ballots and vote accumulating devices that is recorded, and such chain of custody shall be signed by the two-person bipartisan team.
- (d) Depending on the process being performed, two-person bipartisan teams may be deputized employees of the election office or designated

deputized witnesses from each political party. In most cases a superintendent can fulfill the bipartisan requirement with qualified employees who perform both election procedures and act as witnesses. However, the county or state chairperson of the two major county political parties has the right to designate witness team members.

- (e) Bipartisan teams shall keep all personal voter information confidential. Vote tallies and results shall be confidential until the polls are closed on Election Day.
- (f) The names of the bipartisan teams (employees and witnesses) shall be furnished to the chairpersons of the county parties for review and verification of party affiliation by the election superintendent. If the party chairpersons do not provide bipartisan team members for witnessing ballot processing, the superintendent shall proceed with ballot processing as scheduled.
- (g) Failure or refusal of the superintendent to allow bipartisan witnessing of ballot processing shall constitute a violation of this rule and O.C.G.A § 21-2-408.
- (h) Failure to follow and document bipartisan team procedures and chain of custody documentation shall be reported by the end of the day to the superintendent and the State Election Board to be immediately investigated. Repeated failure to follow these procedures may result in sanctions or interventions.
- (i) At precincts, the poll manager shall be the primary contact for poll watcher questions and concerns. At central processing, the Election Director or Assistant Election Director shall be the primary contact for poll watcher questions and concerns.

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

The right to vote derives from the right of individuals to associate for the advancement of political beliefs that is at the core of First Amendment rights protected by the U.S. and Georgia Constitutions. The right to transparency comes from the right of the citizens to have adequate oversight of government operations and governmental proceedings.

A lack of transparency is not consistent with the United States Declaration of Independence, which provides that a “just” government is accountable to its people. The Constitution for the United States of America provides a series of checks and balances not only between the branches of the Federal government but between the Federal and State governments, to ensure that the rights of the citizens are not infringed by State governments- including the rights to transparency and accountability. The State Election Board has the duty and authority to promulgate rules to ensure that primaries and elections are conducted in a manner that is fair, legal, and orderly.

Furthermore, it is the duty of the State Election Board to obtain uniformity in the practices and proceedings of all election officials, as well as legality and honesty in all primaries and elections. (O.C.G.A. § 21-2-31(1)). The State Election Board is instructed to “take other action, consistent with law, as the board may determine to be conducive to the fair, legal, and orderly conduct of primaries and elections. (O.C.G.A § 21-2-31(10)).

The Georgia Election Code has guaranteed the right of political party committees to appoint designated poll watchers, observers, and monitors who are entitled to observe fully and effectively “the conduct of the election and the counting and recording of votes.” **O.C.G.A. § 21-2-408(d).**

Section 21-2-408 was recently amended to ensure that the locations designated for poll watchers “shall ensure that each poll watcher can fairly observe the procedures” of the election. Poll watching supports and promotes open and transparent government.

The State Election Board believes that public observers, poll watchers, and designated monitors should be able to observe all election processes in a fair and meaningful way to confirm the processes used are legal, accurate, fair, and honest.

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

In past elections, poll watchers have been treated inconsistently among the various counties with wide ranging subjectivity assigned to poll watcher access to the election tabulation process. This rule seeks to bring uniformity and definitions to meaningful poll watching.

It has been reported that poll watcher sometimes experience mistreatment by county officials who did not allow meaningful access to the ballot tabulation process. In past elections, poll watchers in several counties reported they were denied meaningful visual access to ballot scanning processes - they were allowed in the room, but kept so far away from the scanners, they could not see anything. In addition, they were not allowed to ask basic questions of the manager regarding tabulation processes.

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

Currently, counties are already required by O.C.G.A 21-2-408 to allow access to poll watchers but the code does not define meaningful observation other than to codify “a poll watcher may be permitted behind the enclosed space for the purpose of observing the conduct of the election and the counting and recording of votes.” However, a hostile poll manager could interpret the meaning of the code perhaps as “you can sit in a corner 20 feet away behind the enclosed space” and still satisfy the current code yet defeat the purpose of the poll watcher. If we can define “meaningful observation” with some degree of uniformity, we may see more consistent treatment of poll watchers so that civility is maintained in Georgia elections.

6. Citations of legal authorities that require the action requested by Petitioner.

O.C.G.A 21-2-408. Poll Watchers; Designation; Duties; etc. defines how poll watchers are selected, their duties and their limitations but does not discuss how they may obtain meaningful observation in the interest of transparent elections.

I, David Cross personally appeared before the undersigned officer duly authorized to administer oaths, and on oath deposes that the facts stated in the Petition therein are true and accurate.

Respectfully submitted this the 10th day April, 2024.

David D. Cross

David Cross

SUBSCRIBED AND SWORN BEFORE ME

this the 10th day of October, 2023
to certify and witness my hand
and official seal.

Notary Public in and for

Gwinnett County, Georgia.

Karen M Karl
NOTARY PUBLIC

Gwinnett County, GEORGIA

[AFFIX NOTARIAL SEAL] My Commission Expires 03/29/2025

Karen M Karl