IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

VASU ABHIRAMAN, TERESA CRAWFORD, LORETTA MIRANDOLA, JENNIFER MOSBACHER, ANITA TUCKER, ESSENCE JOHNSON, LAUREN WAITS, SUZANNE WAKEFIELD, MICHELLE AU, JASMINE CLARK, DEMOCRATIC NATIONAL COMMITTEE, and DEMOCRATIC PARTY OF GEORGIA, INC.,

Petitioners,

v.

STATE ELECTION BOARD,

Respondent,

&

REPUBLICAN NATIONAL COMMITTEE and GEORGIA REPUBLICAN PARTY, INC.,

Intervenors.

Civil Case No. 24CV010786

TRIAL BRIEF OF AMICI FORMER GEORGIA LIEUTENANT GOVERNOR, POLICY ANALYSTS, FORMER GOVERNMENT ATTORNEYS, CONGRESSIONAL REPRESENTATIVES, AND ELECTION OFFICIALS IN SUPPORT OF PETITIONERS

Allegra J. Lawrence (GA Bar No. 439797)
Maia J. Cogen (GA Bar No. 832438)
LAWRENCE & BUNDY LLC
1180 West Peachtree Street, NW, Suite 1650
Atlanta, Georgia 30309
Telephone: (404) 400-3350
allegra.lawrence-hardy@lawrencebundy.com
maia.cogen@lawrencebundy.com

Counsel for Amici Curiae

Table of Contents

I. INTRODUCTION[1]

The State Election Board ("SEB") recently adopted a new rule that invites election superintendents to act in a way that does not comport with their election duties, which are ministerial in nature under Georgia law. That new rule—the "Reasonable Inquiry Rule"—specifically requires election officials to conduct a "reasonable inquiry" before certifying election results. Ga. Comp. R. & Regs. 183-1-12-.02(c.2). This inquiry, however, is an ambiguous standard, particularly when Georgia's Election Code delineates the specific roles election superintendents must take in the certification process. Amici agree with Petitioners that the Reasonable Inquiry Rule undermines election integrity to the extent it creates chaos and confusion regarding the role of election superintendents and provides them with discretion not contemplated by statute. Far from seeking an advisory opinion, Petitioners' challenge of the Reasonable Inquiry Rule presents the Court with at least two actual controversies. First, the Court must decide whether the SEB's new rule exceeds its permissible authority by altering the scope of O.C.G.A. § 21-2-493—a properly enacted statute addressing election certification. Second, the Court must determine whether the SEB's new rule allows certification to be delayed or even not occur. These controversies require resolution to protect the integrity of and prevent harm to the election process. The judicial branch has long acted to protect the sanctity of voters' rights. This case is no different. And for the reasons expounded upon herein, amici respectfully request that this Court grant Petitioners' request to enter a declaratory judgment that the Reasonable Inquiry Rule adopted by the SEB is invalid.

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief.

II. STATEMENT OF INTEREST

Amici are a group of indviduals who include Georgia's former Lieutenant Governor, policy analysts and former government attorneys, congressional representatives, and election officials who staunchly defend the Constitution, the interests of the American people, and the rule of law. Election integrity has emerged as a focal point for political discourse in the United States, particularly among some Republicans after the 2020 election. Since election integrity is the seminal thread interwoven into the fabric of our democracy, Amici advocate against any effort that tugs on that thread. And implementing a new rule just months before the 2024 presidential election, after training of election officials has begun, and with no defined parameters of what constitutes a "reasonable inquiry," represents such an effort.

Had the General Assembly contemplated individual county board members to have the discretion called for by the new Reasonable Inquiry Rule, it would have made such a mandate explicit in the Election Code. The unrestrained discretion that appears to be afforded to election superintendents under the new rule can lead to inconsistent decision-making or even thwart election certification altogether. As even Respondent-Intervenors admit, there is an "abstract meaning" of the Reasonable Inquiry Rule. (Trial Br. Republican National Committee & Georgia Republican Party at 1, Sept. 25, 2024.) The ambiguities arising from an abstract meaning create an opportunity for potential misuse, compromising the integrity of elections both here in Georgia and in any state that desires to achieve a similar outcome. The Amici have a strong interest in the outcome of this case and offer their insights based on their collective decades of relevant experience.

III. BACKGROUND

The Reasonable Inquiry Rule was introduced and promulgated based on the theory that County Board Members, i.e., superintendents, have discretion to certify elections. On March 26, 2024, Michael Heekin, a member of the Fulton County Board of Elections, the election board responsible for certifying the election results for Georgia's largest county, submitted a letter to the SEB petitioning for the SEB to amend SEB Rule 183-1-2-.02. (*See* Verified Pet. Declaratory Relief at Ex. C, Aug. 26, 2024 [hereinafter the "Heekin Petition Letter"].) The Heekin Petition Letter requested the SEB to add a definition of the term "Certify the results of a primary, election or runoff." (Heekin Pet. Letter at 1.) The Heekin Petition Letter first provided a background for why Mr. Heekin believed the amendment to the SEB rules was necessary, and Mr. Heekin stated:

> Election officials are entrusted under Georgia law with the duty to conduct fair elections and properly tabulate, certify and report the results. Both the Georgia Election Code and the Rules of the State Election Board ("SEB") require election officials to certify the results of elections (including primaries, elections and runoffs).
>
> However, what it means to certify an election is not defined in either the Georgia Election Code or the SEB Rules. This creates a challenge in the efficient administration of Georgia elections, especially when elections are not perfect, which they rarely are.
>
> For example, in the municipal elections last Fall, the cast vote record reported that many voters had voted multiple times. This was believed possibly to have been caused by malfunctions in the voter information system. Also, recent municipal redistricting was not accurately reflected in the ballot styles given to many voters. There were clearly problems with the election in many places, but were they serious enough to consider not certifying the results? Election board members and others who referred to the Georgia Election Code and SEB Rules for guidance on the standard for certification found that there was none.
>
> In the absence of a standard for certification, are superintendents performing a simple bureaucratic act of certifying the tabulated results of an election even if those results are suspect? Or are they entrusted to use their professional judgment in the certification process?
>
> Guidance from several authorities including the United States Election Assistance Commission ("EAC") suggests that certifying the results of an election requires

> election officials to pass judgment on the election as a whole, including making sure that every valid vote is included in the final results. In its publication on election certification, the EAC defines certification as: . . . the process of election officials attesting that the tabulation and canvassing of the election are complete and accurate and that the election results are a true and accurate accounting of all votes cast in that election.

(Heekin Pet. Letter at 1-2.) The Heekin Petition Letter then provides this proposal:

> This petition respectfully requests that SEB Rule 183-1-2-.02., be amended to include the following definition of "Certify the Results of an Election":
>
> *(c.2) "Certify the results of a primary, election, or runoff," or words to that effect, means to attest, after reasonable inquiry, that the tabulation and canvassing of the election are complete and accurate and that the results are a true and accurate accounting of all votes cast in that election.*

(Heekin Pet. Letter at 2.) The Heekin Petition Letter further states that the proposed amendment "stat[es] explicitly that certifying officials should properly conduct a reasonable inquiry at arriving at the certification decision." (Heekin Pet. Letter at 2.) The Heekin Letter then provides a view of SEB Rule 183-1-2-.02 as shown when one visits the corresponding website for the Rules and Regulations for the State of Georgia[2] with the proposed language highlighted and inserted into the rule. (Heekin Pet. Letter at 3.) Mr. Heekin signed his petition letter using his Fulton County, Georgia email address. (Heekin Pet. Letter at 2, 4, 5.)

On May 8, 2024, the SEB voted to advance the rule proposed in the Heekin Petition Letter to proposed rulemaking. The proposed rule advanced by the SEB copied, verbatim, the language proposed in the Heekin Petition Letter. After a notice and comment period, the SEB adopted the rule proposed in the Heekin Petition Letter on August 6, 2024, with a 3-2 vote. This rule, referenced throughout this brief as the Reasonable Inquiry Rule, adopted the language proposed in the Heekin Petition Letter verbatim.

[2] The official Rules and Regulations of the State of Georgia SEB Rule 183-1-2-.02 can be found online at https://rules.sos.ga.gov/gac/183-1-12.

IV. ARGUMENT

It is well-settled law in Georgia that administrative boards, such as the SEB, "are not authorized to enlarge the scope of, or supply omissions in, a properly-enacted statute." *N. Fulton Med. Ctr. v. Stephenson*, 269 Ga. 540, 543 (1998); *see also Metro. Atlanta Rapid Transit Auth. v. Reid*, 282 Ga. App. 877, 881 (2006) ("[T]he interpretation of a statute by an administrative agency charged with enforcing its provisions is given great deference, *unless contrary to law*." (emphasis added)). Nor can administrative boards, under Georgia law, "change a statute by interpretation, or establish different standards within a statute that are not established by a legislative body." *Stephenson*, 269 Ga. at 543-44; *see also Groover v. Johnson Controls World Serv.*, 241 Ga. App. 791, 793 (2000) (recognizing that agencies with rule-making authority "cannot establish rules that subvert express statutory language or that contradict judicial decisions interpreting the statutory language"). Administrative bodies such as the SEB, rather, are "authorized only to adopt and implement rules 'sufficient to administer' the Act's provisions." *Stephenson*, 269 Ga. at 544. Accordingly, when an administrative body's rule, as applied, conflicts with a statutory provision the rule exceeds the body's administrative powers, is therefore invalid, and must be stricken. *See id*. (holding that the administrative rule, as applied, conflicted with statutory provisions and striking the administrative rule as invalid).

As demonstrated below, the SEB's Reasonable Inquiry Rule is precisely the type of provision that must be stricken as invalid because (A) Georgia law is already clear in establishing when superintendents may investigate election returns; (B) to the extent the Reasonable Inquiry Rule allows superintendents discretion to inquire into issues outside of those prescribed by law, it conflicts with established Georgia law; and (C) to the extent the Reasonable Inquiry Rule allows superintendents to refuse to certify election results, it conflicts with established Georgia law.

A. Georgia law is already clear on the specific circumstances in which superintendents may investigate election returns.

Georgia's Election Code, specifically O.C.G.A. § 21-2-493, provides a delineated set of circumstances in which superintendents may "investigate" election returns and certificates. The statute provides direction for the computation of results for both paper ballots and votes cast on a voting machine and provides further guidance if there is a discrepancy in the number of votes cast for a candidate versus the number of electors in a precinct or the number of people who voted in a precinct. In the event of a discrepancy, O.C.G.A. § 21-2-493(b) provides explicit direction:

> If, upon consideration by the superintendent of the returns and certificates before him or her from any precinct, it shall appear that the total vote returned for any candidate or candidates for the same office or nomination or on any question exceeds the number of electors in such precinct or exceeds the total number of persons who voted in such precinct or the total number of ballots cast therein, such excess shall be deemed a discrepancy and palpable error and shall be investigated by the superintendent; and no votes shall be recorded from such precinct until an investigation shall be had. Such excess shall authorize the summoning of the poll officers to appear immediately with any primary or election papers in their possession. The superintendent shall then examine all the registration and primary or election documents whatever relating to such precinct in the presence of representatives of each party, body, and interested candidate. Such examination may, if the superintendent deems it necessary, include a recount or recanvass of the votes of that precinct and a report of the facts of the case to the district attorney where such action appears to be warranted.

Thus, Georgia's Election Code explicitly provides that the only reason for an "investigation" to occur is when the votes for any candidate or question exceeds the total number of votes cast in a precinct or the number of electors assigned to a precinct. The statute provides no other reason to conduct an investigation or other "inquiry" into the number of votes cast. It does not create a condition for certification based on the discrepancy.

O.C.G.A. § 21-2-493(c) speaks to the same "excess" regarding paper ballots as discussed in O.C.G.A. § 21-2-493(b). Again, as with O.C.G.A. § 21-2-493(b), action that the

superintendent may take is predicated on whether "the ballot box is found to contain more ballots than there are electors registered in such precinct or more ballots than the number of voters who voted in such precinct at such primary or election." O.C.G.A. § 21-2-493(c). O.C.G.A. § 21-2-495 allows for a recount or recanvass of votes if a numerical discrepancy is recorded, but does not allow additional investigation or inquiry, and does not condition certification on the recount or recanvass. The recount or recanvass must statutorily occur before the certification period. *See* O.C.G.A. § 21-2-495(a), (b). O.C.G.A. § 21-2-493(g) and (h) allow superintendents to examine return sheets, tally sheets, proof papers, and other papers only if a discrepancy arises between the records and the returns regarding the number of ballots and the number of votes recorded for each candidate. *See* O.C.G.A. § 21-2-493(g),(h). Again, the statute does not precondition certification on the superintendent's examination. *See id.* Accordingly, every statutory provision that allows superintendents to conduct an additional inquiry into election returns is based solely on numerical discrepancies; the Election Code does not allow superintendents to inquire into other types of errors.[3] *See generally* O.C.G.A. §§ 21-2-493, 495.

Georgia's Election Code, therefore, already provides guidance on the specific circumstances when superintendents can inquire into election returns. To the extent the Reasonable Inquiry Rule is applied to allow superintendents to inquire into any other issue, the Reasonable Inquiry Rule conflicts with Georgia law, and is, therefore, invalid and must be

[3] The fact that the Election Code mandates the role of superintendents be focused on numerical discrepancies, rather than judgments regarding other types of errors and fraud, is aligned with the historical duties of superintendents as "purely ministerial," *Bacon v. Black,* 162 Ga. 222, 226 (1926), entailing only the "mathematical act of tabulating the votes," *Davis v. Warde*, 118 S.E. 378, 391 (Ga. 1923) (citation omitted), strictly "regulated by statute, and not left to the discretion of the party performing" them, *Tanner v. Deen*, 33 S.E. 832, 835-36 (Ga. 1899) (citation omitted).

stricken. *Cf. Stephenson.*, 269 Ga. at 544 (holding that the administrative rule, as applied, conflicted with statutory provisions and striking the administrative rule as invalid).

B. The Reasonable Inquiry Rule threatens to create chaos and confusion by seeming to allow discretionary inquiries into issues not anticipated by and in conflict with Georgia law, rendering it invalid.

The Reasonable Inquiry Rule was promulgated with the intent to allow election superintendents discretion to inquire into the certification process in ways that conflict with Georgia law. That is, the Reasonable Inquiry Rule, on its face, purports to require election superintendents to conduct a "reasonable inquiry that the tabulation and canvassing of the election are complete and accurate and that the results are a true and accurate accounting of all votes cast in that election" before certifying the results of an election, primary, or runoff. Ga. Comp. R. & Regs. 183-1-12-.02(c.2). But, as discussed *supra* Section III, the Reasonable Inquiry Rule's language was provided verbatim by Mr. Heekin, a member of the Fulton County Board of Elections with superintendent, i.e., certification, duties.[4] Mr. Heekin's Petition Letter to the SEB that proposes the exact language of the Reasonable Inquiry Rule provides specific examples of when a superintendent might use the Reasonable Inquiry Rule:

> However, what it means to certify an election is not defined in either the Georgia Election Code or the SEB Rules. This creates a challenge in the efficient administration of Georgia elections, especially when elections are not perfect, which they rarely are.
>
> For example, in the municipal elections last Fall, the cast vote record reported that many voters had voted multiple times. This was believed possibly to have been caused by malfunctions in the voter information system. Also, recent municipal redistricting was not accurately reflected in the ballot styles given to many voters. There were clearly problems with the election in many places, but were they serious enough to consider not certifying the results? Election board

[4] O.C.G.A. § 21-2-40(a) gives the General Assembly the power to "create a board of elections in any county of this state and empower the board with the powers and duties of the election superintendent relating to the conduct of primaries and elections."

> members and others who referred to the Georgia Election Code and SEB Rules for guidance on the standard for certification found that there was none.
>
> In the absence of a standard for certification, are superintendents performing a simple bureaucratic act of certifying the tabulated results of an election even if those results are suspect? Or are they entrusted to use their professional judgment in the certification process?
>
> Guidance from several authorities including the United States Election Assistance Commission ("EAC") suggests that certifying the results of an election requires election officials to pass judgment on the election as a whole, including making sure that every valid vote is included in the final results.

(Heekin Pet. Letter at 1-2.)

Mr. Heekin's Petition Letter provides two specific examples contemplating when a superintendent might use the Reasonable Inquiry Rule to support use of their "professional judgment" in deciding whether to certify an election: 1) a cast vote record shows that voters had voted multiple times due to malfunctions in the voter system, and 2) when municipal redistricting does not accurately reflect the ballot styles given to many voters. (Heekin Pet. Letter at 1-2.) Mr. Heekin then generally speaks to "problems with the election" that may or may not have been "serious enough to consider not certifying the results." (Heekin Pet. Letter at 1-2.) Importantly, with the possible exception of an inaccurate cast vote record, the circumstances discussed in Mr. Heekin's letter do not fit the specific circumstances outlined in O.C.G.A. § 21-2-493 that allow for superintendents to examine the election returns. *See supra* Section III.

Mr. Heekin made abundantly clear in his Petition Letter that supplied the verbatim language for the Reasonable Inquiry Rule, therefore, that he (and others) intends to apply the Reasonable Inquiry Rule in a way that conflicts with Georgia's Election Code. Worse yet, as noted by Mr. Heekin's Petition Letter, the Reasonable Inquiry Rule's promulgation contemplates an endless array of "problems" for which the Rule anticipates superintendents will use their "professional judgment" to inquire into the certification process, inquiries not contemplated by

the Election Code. (*See* Heekin Pet. Letter at 1.) Mr. Heekin further explains that certification requires superintendents "to pass judgment on the election as a whole." (Heekin Pet. Letter at 2.)

But as discussed *supra* Section IV.A, Georgia's Election Code sets out specific circumstances where a superintendent may conduct an additional inquiry into election results. *See* O.C.G.A. § 21-2-493(b), (c), (g), (h); O.C.G.A. § 21-2-495(a). Each instance of additional inquiry a superintendent may undertake legally is pre-conditioned on a discrepancy in the numbers; the Election Code does not allow for superintendents to undertake additional investigations in circumstances that do not involve a discrepancy in the election return numbers. *See generally* O.C.G.A. §§ 21-2-493, -495. Despite the clear legislative mandate, the history of the Reasonable Inquiry Rule demonstrates the Rule was promulgated with the purpose of superintendents relying on the Rule to conduct an inquiry into issues that include municipal redistricting not being reflected on a ballot style and other election "problems," and that superintendents should "pass judgment on the election as a whole" as a condition to certification. (Heekin Pet. Letter at 1-2.) Such issues do not align with the delineated legislation that allows superintendents to conduct inquiry into numerical discrepancies only. The obvious intent of the application of the Reasonable Inquiry Rule conflicts with Georgia's Election Code, rendering the Reasonable Inquiry Rule invalid and due to be stricken.

C. To the extent the Reasonable Inquiry Rule can be read to allow superintendents to refuse to certify election results, the Reasonable Inquiry Rule conflicts with Georgia law, and is, therefore, invalid.

1. *Georgia's Election Code does not give superintendents discretion to not certify elections, even if there is a discovery of fraud.*

The intended application of the Reasonable Inquiry Rule is clear from the Rule's promulgation history: to allow superintendents the discretion not to certify an election if the superintendent deems the results "suspect." (*See* Heekin Pet. Letter at 1 ("In the absence of a

standard for certification, are superintendents performing a simple bureaucratic act of certifying the tabulated results of an election even if those results are suspect? Or are they entrusted to use their professional judgment in the certification process?").)

But Georgia law simply does not allow superintendents to use their "professional judgment" to decide whether to certify an election, even when there is suspicion of fraud. The Election Code states: "If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action." O.C.G.A. § 21-2-493(i). Any application of the Reasonable Inquiry Rule to not certify an election due to fraud or any other error, as intended by the Rule's promulgation, clearly violates Georgia law. Such a conflict invalidates the Reasonable Inquiry Rule and requires it to be stricken.

2. *Ensuring the election results are free from fraud is an important priority for Georgia's elections, but Georgia law has explicit avenues to address such fraud—none of which allow for superintendents to choose not to certify election results.*

Ensuring Georgia's elections are free from fraud is an important priority for Georgia elections, but Georgia's Election Code delineates other branches of government, not superintendents, to adjudicate the existence of fraud: the courts. Under O.C.G.A. § 21-2-493(b), for instance, even though superintendents have the authority to examine numerical issues as discussed *supra* Section IV.A & n.3, superintendents' statutory recourse after such an examination is to conduct a recount or recanvass, or otherwise voice their concerns to the appropriate district attorney. Refusing to certify an election is not a recourse provided by statute.

Most importantly, O.C.G.A. § 21-2-493 explicitly requires superintendents to certify election results, even if a superintendent believes they have discovered fraud or "erroneous" returns, and again directs superintendents to report such facts to the appropriate district attorney.

See O.C.G.A. § 21-2-493(i) ("If any error or fraud is discovered, the superintendent shall compute and certify the votes justly, regardless of any fraudulent or erroneous returns presented to him or her, and shall report the facts to the appropriate district attorney for action."). Requiring superintendents to send concerns of alleged fraud to the appropriate district attorney, rather than allowing superintendents to address such concerns, makes sense given the statutory, and professional, resources available to district attorneys. For instance, Article 15 of the Election Code provides forty-eight provisions regarding election-related criminal offenses that district attorneys are statutorily mandated to prosecute. *See* O.C.G.A. §§ 21-2-560 *et seq.* The election-related crimes discussed in the Election Code, for which district attorneys have statutory authority to prosecute, include conspiracy to commit election fraud, criminal solicitation to commit election fraud, and frauds by poll officers. *See* O.C.G.A. §§ 21-2-587, -603, -604.

Although the Election Code requires superintendents to report any concerns to the district attorney and requires superintendents to certify elections, without imputing their own discretion or decision-making into the certification decision, the Election Code provides avenues to address allegations of fraud or other concerns that may change the election outcome. The exclusive avenue for addressing concerns that may change election outcomes is through the courts using the election contest statutory provisions. *See* O.C.G.A. §§ 21-2-520 *et seq.* (providing guidance regarding contested elections and primaries). Specifically, any candidate or aggrieved elector entitled to vote for a candidate can bring an election contest in the appropriate court. *See* O.C.G.A. § 21-2-521. The grounds for election contests include "[m]isconduct, fraud, or irregularity by any primary or election official or officials sufficient to change or place in doubt the result;" "[w]hen illegal votes have been received or legal votes rejected at the polls sufficient to change or place in doubt the result;" and "any error in counting the votes or declaring the

result of the primary or election, if such error would change the result[.]"[.]" O.C.G.A. § 21-2-522(1), (3), (4). Both candidates and electors from across the political spectrum and for state and national elections have brought election contest cases in the courts, and courts can and have used their capacity, resources, and expertise as fact-finders to determine if the allegations brought forth by an aggrieved elector or candidate are sufficient to change the results of an election. *See, e.g.*, *Trump v. Raffensperger*, No. 2020CV343255 (Ga. (Fulton) Super. Ct. filed Dec. 4, 2020); *Boland v. Raffensperger*, No. 2020CV343018 (Ga. (Fulton) Super. Ct. filed Nov. 30, 2020); *Wood v. Kemp*, No. 2020CV342959 (Ga. (Fulton) Super. Ct. filed Nov. 25, 2020); *Coalition for Good Governance v. Crittenden*, No. 2018CV313418 (Ga. (Fulton) Super. Ct. filed Nov. 23, 2018).

After the courts have performed their fact-finding function, the courts will decide whether an election was so defective to have changed the results of an election, and the courts have the authority to order a new election:

> Whenever the court trying a contest shall determine that the primary, election, or runoff is so defective as to the nomination, office, or eligibility in contest as to place in doubt the result of the entire primary, election, or runoff for such nomination, office, or eligibility, such court shall declare the primary, election, or runoff to be invalid with regard to such nomination, office, or eligibility and shall call for a second primary, election, or runoff to be conducted among all of the same candidates who participated in the primary, election, or runoff to fill such nomination or office which was declared invalid and shall set the date for such second primary, election, or runoff.

O.C.G.A. § 21-2-527(d). The Election Code further provides an appeals process. *See* O.C.G.A. § 21-2-528.

Finally, if and only after a court has reviewed the relevant evidence and made a determination that concerns with an election are sufficient to have placed in doubt the election results, a court may order a corrected return, and "a corrected return shall be certified and filed

by the superintendent which makes such corrections as the court orders." O.C.G.A. § 21-2-493(l). Thus, under Georgia law, only courts, not superintendents, may make decisions regarding certification results. Any rule that allows an outcome contrary to this statutory scheme is invalid and must be stricken; the Reasonable Inquiry Rule is such a rule.

3. Allowing superintendents to have discretion regarding the election certification undermines the integrity of elections and invites fraud.

By permitting superintendents to have discretion regarding whether they will certify elections, the Reasonable Inquiry Rule invites the potential for fraud and for superintendents to have undue influence over election results. Such an outcome undermines the integrity of our state's elections. Courts across the country have long recognized that allowing election superintendents discretion in certifying elections can lead to election fraud. For example, in *Stearns v. State*, 100 P. 909, 911 (Okla. 1909), allegations of fraud led a canvassing board to refuse to count the votes from one ward. The Oklahoma Supreme Court rebuffed their efforts:

> To permit canvassing boards who are generally without training in the law . . . to look elsewhere than to the returns for a reason or excuse to refuse to canvass the same and adjudicate and determine questions that may be presented aliunde, often involving close legal questions, would afford temptation and great opportunity for the commission of fraud.

Stearns, 100 P. at 911; *see also Lehman v. Pettingell*, 89 P. 48, 49 (Colo. 1907) ("Any other rule would enable canvassing boards, through design or incompetency to temporarily, at least, defeat the will of the people and to compel persons who had received a majority of the legal votes to institute contest proceedings, entailing great expense and delay upon the person elected.").

Similarly in Georgia, we do not allow administrative boards to promulgate rules that would allow election officials to "defeat the will of the people." *Lehman*, 89 P. at 49. The integrity of our elections in Georgia requires that the Reasonable Inquiry Rule, a rule that invites election superintendents to undermine the will of Georgia voters, be stricken.

V. CONCLUSION

For the reasons set forth above, amici respectfully request that this Court grant Petitioners' request to enter a declaratory judgment that the Reasonable Inquiry Rule adopted by the SEB is invalid.

Respectfully submitted on this 1st day of October 2024.

s/ *Allegra J. Lawrence*
Allegra J. Lawrence (GA Bar No. 439797)
Maia J. Cogen (GA Bar No. 832438)
LAWRENCE & BUNDY LLC
1180 West Peachtree Street, NW, Suite 1650
Atlanta, Georgia 30309
Telephone: (404) 400-3350
Facsimile: (404) 609-2504
allegra.lawrence-hardy@lawrencebundy.com
maia.cogen@lawrencebundy.com

Counsel for Amici Curiae

EXHIBIT A - LIST OF AMICI CURIAE

Institutional affiliations are included for identification purposes only.

Donald Ayer

Donald B. Ayer served as Deputy Attorney General in the George H.W. Bush Administration (1989-1990); Principal Deputy Solicitor General in the Reagan Administration (1986-1988); and U.S. Attorney for the Eastern District of California in the Reagan Administration (1981-1986). He currently serves as a Board Member of the Society for the Rule of Law.

Ty Cobb

Ty Cobb served as Special Counsel to President Donald J. Trump (2017-2018).

Tom Coleman

Tom Coleman served as a Member of the U.S. House of Representatives (R-MO) (1976-1993) and as an Assistant Attorney General in Missouri (1969-1972).

Natalie Crawford

Natalie Crawford serves as Executive Director of Georgia First and was the former Vice-Chair and Chair of the Habersham County Commission (R) (2015-2020).

Geoff Duncan

Geoff Duncan served as Georgia's Lieutenant Governor (R) (2019-2023) and a Member of the Georgia House of Representatives representing the 26th District (R) (2013-2017).

Mickey Edwards

Mickey Edwards served as the Representative of the Fifth Congressional District of Oklahoma (R) (1977-1993).

Shannon Ferguson

Shannon Ferguson is the Senior Policy Analyst and Strategic Communications Director at Georgia First.

Philip Allen Lacovara

Philip Allen Lacovara served as Deputy Solicitor General in the Nixon Administration (1972-1973); Counsel to the Special Prosecutor, Watergate Special Prosecutor's Office (1973-1974); and drafted the brief for the United States and presented argument in *United States v. Nixon*, 418 U.S. 683 (1974).

Richard Painter

Richard Painter served as the Associate Counsel to President George W. Bush (R) (2005-2007).

Carter Phillips

Carter Phillips served as the Assistant to the Solicitor General under President Ronald Reagan (1981-1984).

Trevor Potter

Trevor Potter served as a Commissioner of the Federal Election Commission (R) (1991-1995) and Chairman of the United States Federal Election Commission (R) (1994).

Reid Ribble

Reid Ribble served as the Representative of the Eighth Congressional District of Minnesota (R) (2011-2017).

Claudine Schneider

Claudine Schneider served as the Representative of the Second Congressional District of Rhode Island (R) (1981-1991).

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2024, a true and correct copy of the foregoing TRIAL BRIEF OF AMICI FORMER GEORGIA LIEUTENANT GOVERNOR, POLICY ANALYSTS, FORMER GOVERNMENT ATTORNEYS, CONGRESSIONAL REPRESENTATIVES, AND ELECTION OFFICIALS IN SUPPORT OF PETITIONERS was electronically filed with the Court using the Court's eFileGA electronic filing system, which will automatically send an email notification of such filing to all attorneys of record, and was additionally served by emailing a copy to the currently known counsel of named parties and intervenors as listed below:

Manoj S. Varghese Ben W. Thorpe Jeffrey W. Chen E. Allen Page BONDURANT MIXSON & ELMORE, LLP 1201 West Peachtree Street NW Suite 3900 Atlanta, GA 30309 (404) 881-4100 varghese@bmelaw.com bthorpe@bmelaw.com chen@bmelaw.com page@bmelaw.com *Attorneys for Essence Johnson, Lauren Waits, Suzanne Wakefield, Michelle Au, Jasmine Clark, and Democratic Party of Georgia, Inc.* Charles C. Bailey COOK & CONNELLY, LLC 750 Piedmont Ave. NE Atlanta, GA 30308 (678) 539-0680 charlie.bailey@cookconnelly.com *Attorney for Vasu Abhiraman,*	Kurt G. Kastorf KASTORF LAW LLC 1387 Iverson Street NE Suite #100 Atlanta, GA 30307 (404) 900-0330 kurt@kastorflaw.com Seth P. Waxman* Daniel S. Volchok* WILMER CUTLER PICKERING HALE AND DORR LLP 2100 Pennsylvania Avenue N.W. Washington, D.C. 20037 (202) 663-6000 seth.waxman@wilmerhale.com daniel.volchok@wilmerhale.com Felicia H. Ellsworth* WILMER CUTLER PICKERING HALE AND DORR LLP 60 State Street Boston, MA 02109 (617) 526-6000 felicia.ellsworth@wilmerhale.com Alex W. Miller* WILMER CUTLER PICKERING

Teresa K. Crawford, Loretta Mirandola, Jennifer Mosbacher, and Anita Tucker Thomas R. McCarthy* Gilbert C. Dickey* Conor D. Woodfin* CONSOVOY MCCARTHY PLLC 1600 Wilson Boulevard, Ste. 700 Arlington, VA 22209 (703) 243-9423 tom@consovoymccarthy.com gilbert@consovoymccarthy.com conor@consovoymccarthy.com Alex B. Kaufman CHALMERS, ADAMS, BACKER & KAUFMAN, LLC 11770 Haynes Bridge Road #205-219 Alpharetta, GA 30009-1968 (404) 964-5587 AKaufman@chalmersadams.com William Bradley Carver, Sr. HALL BOOTH SMITH, P.C. 191 Peachtree Street NE, Ste. 2900 Atlanta, GA 30303 (404) 954-5000 BCarver@hallboothsmith.com Baxter D. Drennon HALL BOOTH SMITH, P.C. 200 River Market Avenue, Ste. 500 Little Rock, AR 72201 (501) 319-6996 BDrennon@hallboothsmith.com *Counsel for Republican National Committee and Georgia Republican Party, Inc.*	HALE AND DORR LLP 250 Greenwich Street New York, NY 10007 (212) 230-8800 alex.miller@wilmerhale.com Anuj Dixit* WILMER CUTLER PICKERING HALE AND DORR LLP 350 South Grand Avenue Los Angeles, CA 90071 (213) 443-5300 anuj.dixit@wilmerhale.com *Attorneys for the Democratic National Committee* *Admitted Pro Hac Vice Elizabeth T. Young Senior Assistant Attorney General Danna Yu Assistant Attorney General eyoung@law.ga.gov dyu@law.ga.gov *Attorneys for Respondent The State Election Board*

s/ *Allegra J. Lawrence*