SUPREME COURT
STATE OF GEORGIA

REPUBLICAN NATIONAL COMMITTEE et al., Appellants, v. ETERNAL VIGILANCE ACTION, INC. et al., Appellees.	Case Nos. S25A0362, S245A0490 Trial Ct. No. 24CV011558

BRIEF OF AMICUS CURIAE DEMOCRATIC NATIONAL COMMITTEE

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INTRODUCTION AND SUMMARY OF ARGUMENT

Shortly before the November 2024 election, the State Election Board ("the Board") issued several new and unlawful rules that threaten to upend longstanding election processes. Each of those rules violates Georgia's Administrative Procedure Act ("APA") because the Board failed to follow statutorily required procedures for notice-and-comment rulemaking. Two of the rules—known as the "Hand Count" and "Reasonable Inquiry" rules—also each violate the Election Code and exceed the Board's statutory authority. The superior court was thus correct to invalidate each challenged rule.

Based on principles of judicial economy and constitutional avoidance, this Court should affirm on the statutory grounds just discussed. If this Court does reach the constitutional issues, appellees' federal Elections Clause claim is not preserved and hence does not provide a basis for any relief. Regardless, the rules do not violate the Elections Clause, as the U.S. Supreme Court has expressly held the clause permits state legislatures to delegate election functions to other state entities (here, the Board).

INTEREST OF AMICUS CURIAE

The Democratic National Committee ("DNC") is the principal committee of the Democratic Party, dedicated to electing Democratic candidates and protecting voters' rights. DNC has a core interest in ensuring proper and legal administration of elections. That interest is harmed when ballots cast for Democratic candidates are lost or discarded through hand counts or inquiries unauthorized by law. To further that interest, DNC has filed or intervened in other suits challenging the legality of two of the rules at issue here—the Hand Count Rule and the Reasonable Inquiry Rule. *See Abhiraman v. State Election Board*, No. 24CV010786 (Ga. Super. Ct. Oct. 26, 2024); *Cobb County v. State Election Board*, No. 24CV01491 (Ga. Super. Ct. Oct. 15, 2024); *Crawford v. State Election Board*, No. 24CV012349 (Ga. Super. Ct. Sept. 30, 2024). Those cases are stayed pending this appeal.

DNC's interest in the proper administration of elections is also harmed when election results from particular counties or precincts are improperly delayed, as would occur under the rules at issue here. Such delays introduce opportunities for bad-faith actors to claim that fraud has

affected election results, which undermines public confidence in our election system and the election of Democratic candidates.

ARGUMENT

THIS COURT SHOULD AFFIRM ON STATUTORY GROUNDS

A. The Rules Are Each Infirm On One Or More Statutory Bases

1. The rules violate the Georgia APA's procedural requirements

Each rule at issue here was promulgated in violation of two related APA requirements: first, that an agency must provide advance notice of its intent to vote on the adoption of a proposed rule, and second that it must—upon request—issue a statement of its reasons for promulgating that rule over objections raised during the rulemaking process. Consistent with the principle that an "appellate court will affirm a judgment if it is correct for any reason, even if that reason is different than the reason upon which the trial court relied," *City of Gainesville v. Dodd*, 275 Ga. 834, 835 (2002), this Court can and should affirm based on these procedural deficiencies alone, without addressing any other arguments.

First, the rules violate the APA's notice requirement, which requires an agency to "[g]ive at least 30 days' notice of its intended

action," including a synopsis of the proposed rule, O.C.G.A. §50-13-4(a)(1). If a rule amends existing law, moreover, the APA requires the agency's synopsis to "indicate the differences between the existing rule and the proposed rule." *Id.* §50-13-4(a)(1). The Georgia Code demands "*exact* compliance" with the notice rule, in contrast to other procedural requirements, for which only "substantial compliance" is required. *Id.* §50-13-4(d) (emphases added here and throughout). And as courts have long held, "exact compliance" is a demanding standard. It exceeds even "strict compliance," *State v. Fielding*, 229 Ga. App. 675, 676 (1997), which itself "is exactly what it sounds like: strict," *DeFloria v. Walker*, 317 Ga. App. 578, 582 (2012).

Here, the Board informed the public only that the meetings at which the rules were adopted would provide "an opportunity to *comment* upon and *provide input* into the proposed rule amendments." V80 (Hand Count Rule notice); V2-382 (Reasonable Inquiry notice) at 1; V76 (Daily Reporting notice); V72 (Poll Watcher notice); Ex. 1 (Examination notice) at 1; Ex. 2 (Drop-Box ID and Surveillance notice) at 1. Nothing in the notices informed the public that the Board would actually vote at the meetings on whether to adopt the rules.

For the rules that amended existing law, moreover, the Board's notices also included sections titled "Differences Between The Existing Rule And The Proposed Amendments." *See, e.g.*, V81-82 (Hand Count Rule notice). With respect to the Hand Count rule that section failed to include key proposed changes. For example, the pre-Hand Count rule provides that after ballots are removed from a scanner, the poll manager and his or her assistants must "place the paper ballots into a durable, portable, secure and sealable container to be provided for transport to the office of the election superintendent." Board Rule 183-1-12-.12(a)(5). The Hand Count Rule removes this important language, but the notice did not disclose that change. *Compare* Board Rule 183-1-12-.12(a)(5), *with* V81-82 (Hand Count notice).

In short, the Board did not strictly comply with the notice requirement. The rules are thus invalid. *See Outdoor Advertising Ass'n of Georgia, Inc. v. Department of Transportation*, 186 Ga. App. 550, 554 (1988).

Second, the APA requires that an agency must (if timely requested to do so) "issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the

consideration urged against its adoption." O.C.G.A. §50-13-4(a)(2). Failure to do so renders a rule "invalid." *Outdoor Advertising*, 186 Ga. App. at 554. "[E]xact compliance" is once more required. O.C.G.A. §50-13-4(d).

Here, despite receiving requests to provide a statement of reasons, Exs. 3-6 (Aug. 5, 2024 Democratic Party of Georgia ("DPG") comment letter regarding the Reasonable Inquiry Rule at 1; Aug. 17, 2024 DPG comment letter regarding the Examination Rule at 1; Aug. 17, 2024 DPG comment letter regarding the Hand Count Rule at 7; Sept. 19, 2024 DPG comment letter regarding the Poll Watcher and Reporting Rules at 8) and Ex. 7 (Aug. 2, 2024 ACLU of Georgia comment letter regarding the Drop-Box ID and Surveillance Rules at 2), the Board did not issue (and to this day still has not issued) the statutorily required statement as to why comments against the rules were disregarded. That independently requires invalidation of the rules.

2. The rules each violate the Election Code and exceed the Board's statutory authority

The Court can also affirm as to the Hand Count and Reasonable Inquiry Rules because both conflict with the Election Code and exceed the Board's authority.

i. The Hand Count Rule violates the Election Code

The Hand Count Rule provides that after the close of polls on election day, three sworn poll officers must (1) independently count all ballots removed from a scanner, (2) sort these ballots into stacks of 50, and (3) each independently arrive at the same total ballot count. V81 (Hand Count Rule notice). In the event the poll workers identify an "inconsistency" (a term that is left undefined) between their count and the machine count, they must then "correct" it if possible. *Id.* The rule does not, however, specify how such correction can or should occur.

As the superior court explained, the Hand Count Rule both "contradicts" and is "inconsistent with" the Election Code. V7. That conclusion aligned with the views of both the Attorney General and the Secretary of State, who took the unusual step of telling the Board that there were serious questions about the rule's validity. *See* V65-70 (Attorney General); V221-222 (Secretary of State). Specifically, the Attorney General stated the Hand Count Rule is "not tethered to any statute" and thus is "likely the precise type of impermissible legislation that agencies cannot do." V70. And the Secretary of State warned that the rule not only "could lead to significant delays in reporting" but also

"would disrupt existing chain of custody protocols under the law and needlessly introduce the risk of error, lost ballots, or fraud." V222.

In this Court, the Republican National Committee ("RNC") and Georgia Republican Party ("GAGOP") provide no independent defense of the Hand Count Rule, simply relying (Br.7) on "the State's brief" and unspecified "arguments on the record." But the State's brief merely asserts without explanation (p.49) that "[n]othing in the Hand Count Rule conflicts with or otherwise contradicts anything in the Election Code." For the reasons given in the following paragraphs, the Georgia brief is wrong and the superior court and Georgia's chief law-enforcement and elections officials were right: The Hand Count Rule cannot be squared with the Elections Code.

ii. The Hand Count Rule improperly adds requirements to the Election Code

The Board's authority to promulgate rules is limited "to carry[ing] into effect a law already passed" or otherwise "administer[ing] and effectuat[ing] an existing enactment of the General Assembly." *HCA Health Services of Georgia, Inc. v. Roach*, 265 Ga. 501, 502 (1995). As a result—and contrary to the State's unsupported assertion (Br.44) that "the mere absence of legislation on this particular administrative topic

does not prevent the [Board] from regulating in that space"—"an administrative rule which exceeds the scope of or is inconsistent with the authority of the statute upon which it is predicated is invalid," *Georgia Department of Community Health v. Dillard*, 313 Ga. App. 782, 785 (2012).

Nothing in the Election Code either expressly permits hand counting in the circumstances that the Hand Count Rule requires it, or suggests that the legislature meant to allow the Board to require such counting in those circumstances. The Code provides for hand counting prior to county superintendents' certification of results in only two circumstances, neither of which aligns with what the Hand Count Rule requires. The first occurs during the tabulation of paper ballots marked by hand—a process that has nothing to do with the automated devices affected by the Hand Count Rule, O.C.G.A. §§21-2-435(c), 21-2-437(a). The second occurs at the tabulation center where a tabulating machine cannot read a ballot due to damage or unclear markings. *Id.* §21-2-483(f), (g). The General Assembly's authorization of hand counting in only these two situations precludes the Board from requiring it in additional circumstances.

The Board purported to rely on three other Election Code provisions as "authority" for the Hand Count Rule. *See* V82 (Hand Count Rule notice). But even the RNC and GAGOP conceded the inapplicability of two of the three (O.C.G.A. §§21-2-436 and 21-2-483(a)) in their supersedeas motion (pp.30-31). And no appellant relies on either of those provisions in the opening briefs, so those two provisions should be "considered as abandoned," *Schmid v. State*, 226 Ga. 70, 70 (1970). In any event, none of the three provisions provides authority for the Hand Count Rule.

First, O.C.G.A. §21-2-436 applies only to precincts using paper ballots marked by hand. *See* V70 (Attorney General memorandum); RNC/GAGOP Supersedeas Mot.30. It thus grants no authority to impose hand counting for voting "conducted via ballots marked by electronic ballot markers and tabulated by ballot scanners." Board Rule 183-1-12-.01.

Second, the Board cited O.C.G.A. §21-2-483(a), which provides detailed procedures for the counting and tabulation of ballots. As the RNC and GAGOP have conceded, however (Supersedeas Mot.31), section 483(a) "is inapposite[] because it governs '[p]rocedures at the tabulation

center.'" It says nothing about hand counting every ballot, does not authorize poll managers to conduct general hand counts at precincts, and envisions the processing of ballots will take place under the supervision of the superintendent at a tabulating center. O.C.G.A. §21-2-483(c); *see also* V69 (Attorney General memorandum).

Third, the Board cited O.C.G.A. §21-2-420(a), which states that "the poll officials in each precinct shall complete the *required accounting* and related documentation for the precinct." Nothing in the Election Code defines the "required accounting" so broadly as to encompass hand counting, and the Board made no attempt to link the Hand Count Rule to any accounting "require[ment]" (*id.*) in the Election Code. And as the Attorney General informed the Board, "neither the statutes that prescribe the duties of poll officers after the close of the polls for precincts using voting machines nor the precincts using optical scanners suggest that the General Assembly contemplated that a hand-count of the ballots would be part of the 'required accounting.'" V70 (citations omitted). Because O.C.G.A. § 21-2-420(a)'s reference to "required accounting" speaks only to the specific post-vote procedures "required" by other

statutory provisions, it cannot be read to introduce an entirely new procedure that is not in the Election Code.

iii. The Hand Count Rule conflicts with the Election Code

The Hand Count Rule also directly conflicts with the Election Code in numerous other ways.

First, the Hand Count Rule impermissibly transfers part of each superintendent's statutory responsibilities over the computation and canvassing of the ballots, O.C.G.A. §21-2-493(a), to poll managers. The Board—like any other agency—is not authorized to shift statutory responsibility from one official to another, and a regulation that purports to do so is consequently invalid. *See Department of Human Resources v. Anderson*, 218 Ga. App. 528, 529 (1995).

Second, and relatedly, the Hand Count Rule interferes with county superintendents' authority to "compare the registration figure with the certificates returned by the poll officers showing the number of persons who voted in each precinct or the number of ballots cast" and if there is a discrepancy, to "investigate[.]" O.C.G.A. §21-2-493(b). The Hand Count Rule interferes because it requires *poll managers*—rather than the superintendent—to "immediately determine the reason for the

inconsistency" in hand count totals and "correct the inconsistency, if possible; and fully document the inconsistency or problem along with any corrective measures taken." V81 (Hand Count Rule notice). In other words, the rule purports to give poll managers the first (and perhaps only) opportunity to address numerical inconsistencies in the ballot tallies. The General Assembly vested that duty solely with county superintendents, not poll managers. O.C.G.A. §21-2-493(b).

Third, the Hand Count Rule conflicts with the statutory requirement that the superintendent report to the Secretary of State—and post in a public place—the "number of ballots cast at the polls on the day of the … election" by "not later than 11:59 P.M. following the close of the polls *on the day of a[n] … election*," O.C.G.A. §21-2-421(a)(1). The rule conflicts with this by requiring only that poll officers finish their count "during the week designated for county certification." V82 (Hand Count Rule notice). The rule thus appears to give poll officers the ability (even if unintentionally) to prevent the superintendent from timely notifying the Secretary and the public regarding the number of ballots received.

Fourth, the Hand Count Rule conflicts with the General Assembly's clear mandate to tabulate results "as soon as possible," O.C.G.A. §21-2-420(a), setting up a conflict with the statutory requirement that the superintendent finish computation and canvassing in time to certify results by 5:00 P.M. on the Monday following the election, *id.* § 21-2-493. If the hand counts that the rule requires are not completed until late in the certification process (a real possibility in large counties), it becomes far more difficult for county superintendents to complete the statutorily required tabulation by the certification deadline.

Fifth, the Hand Count Rule requires poll workers to create an election-related form—*i.e.*, a "control document"—for recording the results of a hand count. *See* V81 (Hand Count Rule notice). But under O.C.G.A. §21-2-50(a)(5), only the Secretary of State has the authority to create "all blank forms" to be used in any election. *See* O.C.G.A. §21-2-50(a)(5); *see also* V221 (letter from Secretary's office to the Board citing §21-2-50 for the proposition that "the form of the ballot is exclusively within the control of the Secretary of State under Georgia law.").

Sixth, the Hand Count Rule requires all poll managers and poll officers to handle ballots regardless of their relationship with the county

superintendent. *See* V81 (Hand Count Rule notice). This procedure cannot be squared with the requirement in O.C.G.A. §21-2-483(a) that only those deputized by the superintendent may handle ballots.

iv. The Reasonable Inquiry Rule violates the Election Code and exceeds the Board's statutory authority

The Reasonable Inquiry Rule requires election officials to conduct a "reasonable inquiry" prior to certification. The rule does not define "reasonable inquiry," which fosters confusion about whether and when election officials must certify election results. The rule is thus contrary to the Election Code's clear mandate that the election officials must certify by the statutorily prescribed deadline.

Asserting that the Reasonable Inquiry Rule is consistent with the Election Code, appellants vaguely claim that "[a]n election official can both conduct a reasonable inquiry into the accuracy of a count *and* certify election results." RNC Br.26; *see also* GA Br.42 (asserting that "the Reasonable Inquiry Rule does not … permit elections officials 'to delay certification'"). Were that the case—and if this Court were to conclude that certification is a mandatory duty that the Reasonable Inquiry Rule does not disturb, as the State concedes (Br.42)—the rule would indeed be lawful. The rule's drafters, however, stated that the rule rests on the

assumption that certification of election results by a county board is discretionary, and subject to free-ranging inquiry that could delay or prevent certification. Ex. 8 (Heekin Petition for Rulemaking) at 1-2; Ex. 9 (May 8, 2024 Board Hr'g Tr.) at 288:4-15, 292:8-13. And to the extent county elections officials seek to rely on the stated intent of the Board when conducting the required inquiry, the rule is unlawful. The text, structure, and history of Georgia statutes—as well as case law interpreting them—make clear that certification is a mandatory duty within Georgia's highly regulated election administration scheme.

1. Certification of election results is mandatory

Georgia law uses mandatory language to require county boards of election and other superintendents to administer elections. *See* O.C.G.A. §21-2-2(35)(A); 2019 Ga. Laws 4181. In particular, O.C.G.A. §21-2-70(9) provides that "[e]ach superintendent … *shall* perform all the duties imposed upon him or her," including "receiv[ing] from poll officers the returns of all primaries and elections, [] canvass[ing] and comput[ing] the same, and [] certify[ing] the results thereof." The Georgia Code section that specifically governs "certification" and the "[c]omputation of returns by superintendent" likewise uses mandatory language, providing that

"[t]he superintendent *shall*, after the close of the polls on the day of a primary or election … publicly commence the computation and canvassing of the returns," and adding that "[t]he consolidated returns shall then be certified by the superintendent." O.C.G.A. §21-2-493(a) & (k). Georgia law also imposes a clear deadline to complete certification: "Such returns *shall* be certified by the superintendent not later than 5:00 P.M. on the Monday following the date on which such election was held[,] and such returns shall be immediately transmitted to the Secretary of State." O.C.G.A. §21-2-493(k).

Nothing in the plain language of these statutes even hints at an intent to leave certification to a superintendent's discretion. By contrast, in the same code section, the General Assembly explicitly gave superintendents discretion in other circumstances before and apart from certification—using words like "may" and "discretion." For example, O.C.G.A. §21-2-493(b) states that when a superintendent investigates an apparent numerical discrepancy caused by a vote total from a precinct that "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," the superintendent "*may*" order "a recount or

recanvass of the votes … and a report … to the district attorney." *Id.* Similarly, if such a discrepancy occurs in a precinct "in which paper ballots have been used," then "the superintendent *may* require the production of the ballot box and the recount of the ballots." *Id.* §21-2-493(c).

The non-discretionary nature of the certification duty in O.C.G.A. § 21-2-493(k) is even clearer "when read with the remainder of the statutory scheme" governing elections, as it must be, *Cobb Hospital, Inc. v. Emory-Adventist, Inc.*, 357 Ga. App. 617, 621 (2020). Georgia law provides that "[n]ot later than 5:00 P.M. on the seventeenth day following the date on which such election was conducted, the Secretary of State shall certify the votes cast for all candidates … and shall no later than that same time lay the returns for presidential electors before the Governor." O.C.G.A. § 21-2-499(b). It also provides that "[t]he Governor shall certify the slates of presidential electors no later than 5:00 P.M. on the eighteenth day following the date on which such election was conducted." *Id.* And these deadlines can only be altered by a court order. *Id.* Hence, if a county board or other superintendent refused to certify (or delayed in certifying) in order to complete a "reasonable inquiry" or

conduct an undefined examination, the Secretary of State and the Governor would still have to proceed with their mandatory reporting of results, meaning that reporting could occur without counting ballots from that county—thereby denying the county's voters their fundamental right to vote. Under the structure of the broader Election Code, then, the mandatory nature and timing of county certification play a crucial role in avoiding the disenfranchisement of Georgia voters.

In providing for mandatory county certification, the General Assembly was not breaking new ground; Georgia case law has treated election certification as non-discretionary for over a century, as illustrated by a trio of decisions from this Court. For example, in *Tanner v. Deen*, 108 Ga. 95 (1899), this Court held that certain county superintendents' refusal to certify an election was subject to mandamus, and it ordered the lower court to issue a writ of mandamus requiring them to certify, *id.* at 101-102. Rejecting the superintendents' contention that the returns of a certain precinct were invalid, this Court noted that "most, if not all, the points made against the validity of these returns involved questions of law only." *Id.* at 101. The superintendents "were not selected for their knowledge of the law," and therefore had no

authority to make legal determinations as to the validity of any election returns. *Id.* The same is true here.

Similarly, *Bacon v. Black*, 162 Ga. 222 (1926), held that certification was a "purely ministerial" duty that left no discretion for any superintendents to investigate issues of irregularity or fraud, *see id.* at 226. As this Court explained, "superintendents who consolidate the vote of a county in county elections have no right to adjudicate upon the subject of irregularity or fraud," because the "duties of the managers or superintendents of election who are required by law to assemble at the courthouse and consolidate the vote of the county are purely ministerial." *Id.*

Finally, *Thompson v. Talmadge*, 201 Ga. 867 (1947), reached the same result, expressly characterizing canvassing (a duty the 1945 Georgia Constitution imposed on the General Assembly) as the "mathematical process of adding the number of votes," *id.* at 877. Invoking "the general, if not indeed the universal, rule of law applicable to election canvassers," this Court held that "they are given no discretionary power except to determine if the returns are in proper form

and executed by the proper officials and to pronounce the mathematical result." *Id.* at 876-877.

2. The Reasonable Inquiry Rule is unlawful to the extent it confers superintendents with discretion over certification

Because certification is mandatory, the Board cannot promulgate a rule conferring discretion whether or when to certify. Yet the Reasonable Inquiry Rule adopts a definition of "[c]ertify" that requires officials to conduct a "reasonable inquiry" before certifying election results—but without defining in any way what constitutes a reasonable inquiry. That omission invites election boards, as well as individual board members, to decide that they have discretion to decide that issue for themselves. Consequently, any official who decides that he or she (for whatever reason) has not yet completed a "reasonable inquiry" may improperly delay or refuse certification on that basis while claiming compliance with the rule. That is not the law, and to the extent the Reasonable Inquiry rule provides otherwise, this Court should affirm the superior court's ruling enjoining it.

B. The Rules Do Not Violate The Elections Clause, But This Court Need Not And Should Not Reach That Issue

1. Constitutional avoidance requires first addressing statutory grounds, which as explained above resolve this appeal

As Appellee Georgia State Conference of the NAACP rightly points out (Br. 6-8), this Court does not and "must not address a constitutional question where it is unnecessary to do so." *Sons of Confederate Veterans v. Henry County Board of Commissioner*, 315 Ga. 39, 65 (2022). Because all the rules should be invalidated on statutory grounds, "here it is not necessary" to reach the superior court's Elections Clause holding. *Id.*

2. Appellees' complaints included no Elections Clause claim, nor was such a claim otherwise properly developed below

The Court should also not resolve appellees' Election Clause claim for the independent reason that they did not preserve it below. To be sure, the superior court ruled the challenged rules were "void" because they violated the Elections Clause. V9. But appellees did not include such a claim in their complaint or even their amended complaint. V17-43 (EVA Compl.); V56-84 (EVA Am. Compl.). And although appellees listed an Elections Clause violation among the legal issues to be decided at trial, V271, they argued in their trial brief only that the clause

supported invoking the *constitutional avoidance* doctrine, V2-441-442 (EVA Trial Br.). They did not seek invalidation of *any* rule on the ground that it violated the Elections Clause. V2-441-442 (EVA Trial Br.). A court cannot "grant relief as to matters not pleaded." *Burgess v. Nabers*, 122 Ga. App. 445, 448 (1970). The trial court erred by doing so here, and this Court should not compound that error by itself reaching the merits of any Elections Clause argument.

3. If this Court reaches the issue, the challenged rules do not violate the Elections Clause

If, despite the foregoing, this Court reaches the Elections Clause, then it should hold that the superior court erred by enjoining the rules as violating that clause. The court's reasoning on this issue is just one paragraph, which cites the text of the clause and three opinions by single justices of the U.S. Supreme Court, and then states that all of the rules are "unconstitutional and void" because only the state legislature may regulate "the time, place and manner" of a federal election. V9.

Tellingly, neither brief filed by appellees meaningfully defends the superior court's Elections Clause ruling. The NAACP brief (at 6-8) urges this Court to resolve this case on other grounds and Eternal Vigilance Action, Inc. mentions the clause only in a footnote on the 81st page of its

brief. This is for good reason. The superior court cited no binding authority supporting its decision on this point, and to the DNC's knowledge there is none. In fact, the U.S. Supreme Court *rejected* the position that the Elections Clause grants state legislatures non-delegable, plenary power over elections in *Moore v. Harper*, 143 S.Ct. 2065 (2023), explaining that the U.S. Constitution "does not preclude a State from vesting" authority over the conduct of elections "in a body other than the elected group of officials who ordinarily exercise lawmaking power," *id.* at 2083. Instead, states "retain autonomy to establish their own governmental processes" with respect to election administration. *Id.* In Georgia, the state did so by creating the Board. O.C.G.A. §21-2-30. That should be the end of the inquiry. While Eternal Vigilance distinguishes *Moore* on the grounds that it involved state judiciary rather than a state agency, it identifies no basis in the U.S. Constitution for that distinction. If anything, a state agency acting on delegated power from the legislature falls more naturally within the metes and bounds of the clause than does a separate branch of state government.

CONCLUSION

The Court should affirm on statutory grounds, without reaching appellees' constitutional arguments.

Respectfully submitted this 7th day of February, 2025.

This submission does not exceed the word-count limit imposed by Rule 20.

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CERTIFICATE OF SERVICE

I certify that on February 7, 2025, I caused a copy of this **BRIEF OF AMICUS CURIAE DEMOCRATIC NATIONAL COMMITTEE** to be served by United States Postal Service to all parties and counsel record. I have also sent same by electronic mail to below-listed counsel:

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