

November 25, 2019

The Honorable Brad Raffensperger
Chairperson, State Election Board
2 Martin Luther King, Jr Drive, S.E.
Suite 1104, West Tower
Atlanta, Georgia 30334-9000

(certified mail, copy via email to R. Germany rgermany@sos.ga.gov)

Re: Petitions for Rule-Making

Dear Chairman Raffensperger:

Please add the Libertarian Party of Georgia as a petitioner to the Petition for Rule Making filed by Coalition for Good Governance and Morgan County Democratic Committee dated November 22, 2019 for the consideration of Proposed Rules 1,2, and 3 for the consideration of the State Election Board under the provisions of Ga Comp. R. & Regs. 183-1-1-.01.

Additionally, we wish to be a co-petitioner on the Petition for Rule Marking submitted herewith dated November 24, 2019 with co-petitioners Morgan County Democratic Committee for consideration of Proposed Rule 4.

We offer these proposed rule drafts to suggest practical and efficient improvements in the election administration process that will improve the voting experience for voters, streamline procedures, and reduce cost. At the heart of our proposal is the protection of the vote, the preservation of the secret ballot, and the rights of citizens and political parties to observe elections.

The Libertarian Party of Georgia has an interest in participating in the political process, a responsibility to promote fair and accurate elections, as well as protecting, and advancing, the voting rights of all eligible voters. Its interests in these rule changes are to provide more voters with timely and secure access to exercise their right to vote.

We encourage you to contact us if you have any questions about our proposed rules.

Your primary contact within Libertarian Party of Georgia for this matter is

Smythe DuVal
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Marietta, GA 30067
smytheduval@gmail.com
678-549-1775

Thank you for your consideration of these important improvements for the voting process in Georgia.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ryan Graham', is written over a horizontal line.

Ryan Graham
Chair, Libertarian Party of Georgia
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Atlanta, GA 30315
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404-955-4555

Proposed Rule 1-- Mail Ballot Returned at Polling Places

The superintendent shall designate an absentee ballot clerk for every polling place for absentee in person voting and Election Day voting. Any eligible elector who receives an official absentee ballot may return the completed ballot and completed return envelope in person to a designated absentee ballot clerk at the voter's assigned polling place or any absentee in person location. The voter shall provide acceptable personal identification at the time the voter presents the ballot to the absentee ballot clerk. The absentee clerk shall verify the voter's absentee ballot oath information prior to accepting the ballot. The clerk shall mark with his or her initials and date indicating the clerk's verification of the voter's identity and acceptance of the ballot, and deposit the ballot into a secured ballot container.

Upon the close of the polls, the absentee mail ballots shall be securely delivered to the election superintendent for immediate counting without further verification of the absentee ballot return envelope information.

Reason for the proposed rule:

Georgia voters are currently entitled to request an absentee ballot without providing a reason. In the 2018 election, record numbers of voters requested a mail-in absentee ballot. Even though the law was modified to improve notice to voters, there are ongoing problems in 2019.

- This change will allow voters who want to be certain their ballot is returned and accepted to deliver their ballots to a location of their choice, removing uncertainty and risk of mail delivery or signature rejection.
- This change will provide voters who wish to vote a paper absentee ballot at home the opportunity to cast their ballot at their home precinct on election day with the advantage of the latest election information.
- This change will permit voters who have visual or dexterity difficulty with computer screens and operation to vote their ballots with paper and pen at home, and cast it on election day in their home precinct.

- This change will reduce bottlenecks and lines at the polling place as many voters would likely choose to deliver their ballots on election day rather than stand in line for voting on machines.

Citation of related law: O.C.G.A. §§ 21-2-382(a), 21-2-385(a), 21-2-380.1

Proposed Rule 2---Protecting Ballot Secrecy

- 1) *Whenever used, electronic touchscreen ballot marking devices shall be positioned in such a manner as no one other than the voter, and anyone duly assisting the voter, shall have visual access to the content on the screen.*
- 2) *Notwithstanding the above, electronic touchscreen ballot marking devices shall be arranged in a manner such that, during open poll hours, poll workers and public observers have visual access to the devices, so as to ensure that no observable tampering occurs, and that the officials conduct their duties in full view of the public.*

Reason for the proposed rule:

The Georgia Constitution guarantees absolute secrecy of ballot. This is reinforced in the statutes. The new Dominion touchscreen ballot marking devices are large, with bright, easy to read screens – a benefit to voters in many ways. However, during pilot elections multiple observers have noted that ballot secrecy was routinely compromised. The content of the screens is easily read from a distance, and the privacy screens are not preventing other voters, poll workers, and public observers from seeing how an individual voter is casting his ballot. The on-screen displayed “bars” surrounding the target area for the vote change color when the voter selects the target area, making the voter’s selection visible from across a large room. Adopting this rule will reinforce the protection of absolute secrecy of the ballot already in Georgia law. The rule is essential to help voters feel comfortable to freely vote their conscience, without fear of unintended disclosure, and is clearly necessary to impress upon election officials the importance of maintaining absolute ballot secrecy.

Without the assurance of and provision for absolute secrecy, not all voters will feel free to vote their true choices. The officials must provide for unequivocal and absolute secrecy of the ballot.

Citations of applicable law: Ga. Const. Art. II, § 1, ¶ 1.; O.C.G.A. § 21-2-379.22(5); O.C.G.A. § 21-2-365(6); §21-2-267(a)

Rule 3 --Paper Pollbook Back-ups (Printed Electors' List)

In every election, after the close of advance in-person voting, the election superintendent shall print a paper copy of the poll book for every polling place, updated for advance in-person voting, and such copy shall be available in each polling place on Election Day in accordance with the provisions of O.C.G.A. 21-2-401(b). The printed poll book (printed electors' list) information shall be deemed the official voter information in the event of discrepancies in the electronic pollbook, and used for adjudication of disputes that arise from discrepancies or malfunctions of the electronic pollbook.

Note: The adoption of the above proposed rule requires the **repeal** of obsolete Rule 183-1-12.07 (1) which provides:

Beginning July 1, 2006, counties shall use ExpressPoll units at precincts within the county during primaries, elections, and runoffs. The ExpressPoll units shall be utilized in lieu of the printed electors list and ballot encoders in each precinct where in use.

Reason for the proposed rule:

Electronic poll books offer many advantages, including ease of use and fast updating of records. However, numerous reports from cyber-experts have warned of the potential for malicious attacks that could render the devices unusable or inaccurate. Observers during the recent pilot elections have observed an alarming number of discrepancies and malfunctions, including persistent reports where voters residing at the same address are unable to be processed simultaneously. In many counties, voting is a family affair – this type of malfunction presents an inconvenience to voters, and puts a severe strain on voter processing. For example, in the November 5, 2019 Valdosta municipal election, the electronic pollbooks malfunctioned and voters were turned away from the polling place while the pollbooks were not working. They were not offered provisional ballots. Hundreds of such incidents were documented in the November 2018 mid term elections.

Having an official paper poll book on site is a low cost and efficient way to protect against both malfeasance and malfunction, as well as mitigate emergencies like power outages.

Use of the paper pollbook back-ups should reduce the number of provisional ballots required that now result from electronic pollbook discrepancies.

Current statute (O.C.G.A. 21-2-401(b)) requires the printing of the electors' list. However, it is not currently being used to resolve discrepancies or supply a back-up pollbook record. As a result, eligible voters are frequently forced to vote by provisional ballot or turned away from the polling place, or sent to the incorrect polling place.

Proposed Rule 4—Incremental Voting System Conversion

The purpose of this proposed Rule is to permit all county election superintendents to complete a smooth and efficient incremental transition from the Diebold GEMS Voting System to the Dominion Voting System during 2020 at the option of the county election superintendent (county election board). The intent of the Rule is to permit each county to choose the transition plan that best suits their local capabilities and resource availability to avoid unnecessary election disruption during the 2020 presidential election year, and to provide for other administrative and financial assistance to counties during the voting system transition.

The proposed rule permits the conversion to the Dominion Voting System, including the KnowInk Pollbooks, to be made in incremental steps to avoid disruptions from system debugging, start-up malfunctions, recruiting additional pollworkers, and intensive training during the presidential election year likely to see record turnout.

Under the proposed rule, the Dominion Voting System would be considered an approved pilot program until the system is fully operational and adequately tested in all counties, and the Diebold system would not be decertified until the Dominion system is fully operational and adequately tested in significant elections in all counties. **At the election superintendent's option, the current Diebold system components (ExpressPolls, GEMS servers, Accu-Vote Optical Scanners), excluding the DRE units, could be used as part of a hand marked paper ballot voting system¹.** Alternatively, the Dominion Voting System components could be used as part of a hand-marked paper ballot system, in lieu of fully installing the BMD units during 2020. The BMD units and printers make up the bulk of the new computerized equipment and are the most difficult to install. In addition, the violations of ballot secrecy they create has not been solved. Georgia statutes support these emergency options.

The various configurations we envision with the adoption of this rule would be:

- A. Use GEMS server, hand marked paper ballots and Accu-vote optical scanners for centralized tabulation at election office. ExpressPollbooks used.

¹ Diebold retention option requires that the State obtain Court approval for the State's continued use in the Curling v. Raffensperger case (17 cv 2989).

- B. Use GEMS server, hand marked paper ballots and Accu-vote optical scanners in the polling places with ExpressPollbooks.
- C. Use Dominion EMS, scanners, hand marked paper ballots and PollPads. (This was the configuration of the Cobb County pilot,)
- D. Use Dominion EMS, scanners, BMDs, and PollPads. (configuration of the 6 pilot counties.)
- E. Small county—Hand **counted** paper ballots, paper pollbooks.

Georgia statutes permit the use of traditional hand counted or optical scan ballots under certain conditions as explained below in the section entitled “Statutory Authorization.”

Proposed Rule Language

March 24, 2020 primary election

1. *The Secretary of State’s office, at its expense, shall arrange for the printing and delivery of all UOCAVA and mail ballots anticipated to be required by each county for the March 24, 2020 presidential primary election. The delivery of printed ballots to the county superintendent shall occur no later than January 29, 2020.*
2. *Counties wishing to retain components of the Diebold system² (Configurations A. or B. above) for the March 24, 2020 election must notify the Secretary of State no later than January 6, 2020, or other date as established by the Secretary of State to provide for timely UOCAVA and absentee ballot printing and delivery.*
3. *For counties desiring to conduct a hand marked paper ballot election with the Diebold system in lieu of Dominion BMDs, the Secretary of State, at its expense, shall arrange for printing and delivery of sufficient ballots and emergency ballot stock to conduct the March 24, 2020 election.*

² As noted in footnote 1, use of Diebold system will require the State to obtain Court approval.

4. *For counties desiring to conduct a hand marked paper ballot election with the Diebold system in lieu of Dominion BMDs, the Secretary of State, at its expense shall arrange for installing a new (unused) GEMS server loaded with a trusted build copy of GEMS.*
5. *The Secretary of State shall supply at its expense, an adequate number of new or used properly operating Diebold Accu-Vote Optical Scanners to counties opting to place such scanners in each polling location (versus central count at a tabulation center).*
6. *County election superintendents choosing to use the Diebold voting system may choose to scan ballots in the polling place or to use the central count option placing the tabulating center in the superintendent's office as permitted by O.C.G.A. § 21-2-438.*
7. *County election superintendents who anticipate a presidential primary voter turnout of less than 10,000 may choose to hand count the ballots in accordance with the provisions of O.C.G.A. § 21-2-430 through §21-2-440, rather than use a voting system for tabulation. If hand counting is used, ballots cast during advance in-person or mail ballot voting may be counted beginning at noon on Election Day. An appropriate voting device for accessibility needs shall be provided and programmed for each polling place by the Secretary of State.*

2020 primaries and elections after March 24, 2020

8. *Counties wishing to adopt the Dominion Voting System after the March 24, 2020 primary, shall notify the Secretary of State 60 days prior to the election for which the adoption of part or all of the Dominion Voting System is desired.*
9. *Provisions 2 through 6 above shall apply.*
10. *County election superintendents who reasonably anticipate a voter turnout of less than 5,000 for any election may choose to hand count the ballots in accordance with the provisions of O.C.G.A. § 21-2-430 through §21-2-440, rather than use a voting system for tabulation. If*

hand counting is used, ballots cast during advance in-person or mail ballot voting may be counted beginning at noon on Election Day. An appropriate voting device for accessibility needs shall be provided and programmed for each polling place by the Secretary of State.

General

- 11. The Secretary of State shall issue instructions to superintendents regarding reviews for accuracy at the time of ballot issuance during **in-person advance voting** to assure that accurate ballot styles are issued to voters. This rule applies to both BMD ballots and paper ballots.*
- 12. For any polling places the superintendent reasonably believes will receive less than 500 Election Day voters, the superintendent may use the paper pollbook (voters' printed list) as provided in § 21-2-401(b), in lieu of the electronic pollbook if the polling place is also using hand marked paper ballots.*
- 13. Counties utilizing the Dominion system shall use the BMD for accessible units. Counties opting to use the Diebold system will use an appropriate voting device for accessibility needs shall be provided and programmed for each polling place by the Secretary of State.*

Existing Statutory Authority

Georgia's Election Code has long provided for use of hand marked paper ballots in the event that the use of voting equipment is not practical.

§ 21-2-281. Voting by paper ballot when use of voting equipment impossible or impracticable

*In any primary or election in which the use of voting equipment is **impossible or impracticable**, for the reasons set out in Code Section 21-2-334, the primary or election may be conducted by paper ballot in the manner provided in Code Section 21-2-334.*

§ 21-2-334. Voting by paper ballot when use of voting machine impossible or impracticable

*If a method of nomination or election for any candidate or office, or of voting on any question is prescribed by law, in which the use of voting machines is not possible or practicable, or in case, at any primary or election, the number of candidates seeking nomination or nominated for any office renders the use of voting machines for such office at such primary or election impracticable, or if, for any other reason, at any primary or election the use of voting machines **wholly or in part is not practicable**, the superintendent may arrange to have the voting for such candidates or offices or for such questions conducted by **paper ballots**. In such cases, paper ballots shall be printed for such candidates, offices, or questions, and the primary or election shall be conducted by the poll officers, and the ballots shall be counted and return thereof made in the manner required by law for such nominations, offices, or questions, insofar as paper ballots are used.*

If the county election superintendent (county election board) determines that a rapid transition to new pollbooks, touchscreen units, scanners, or EMS systems is not practical because of significant implementation risks, the board has the long-standing authority to order hand marked paper ballots instead.

Alternatively, each board of County Commissioners is also authorized to order the use of optical scanners and hand marked paper ballots under the provisions of §21-2-366. While this may be in potential conflict with the uniform voting system requirement in §21-2-300, the flexibility of the pilot program provision (§21-2-300(d)) should permit the Dominion system to be considered a pilot system until it is fully implemented, allowing it to exist alongside the GEMS system just as it does in the municipal elections of November 5, and December 3, 2019.

VERIFICATION OF PETITION OF ADOPTION OF RULES

by Libertarian Party of Georgia

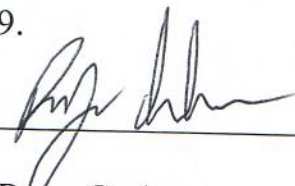
I, Ryan Graham, Chairman of the Libertarian Party of Georgia, a registered political body with the Secretary of the State of Georgia, personally appeared before the undersigned notary public, duly authorized to administer oaths, and state under oath that every fact alleged in the Petition for Adoption of Rules submitted by Coalition for Good Governance and Morgan County Democratic Committee dated November 22, 2019 attached hereto is true and correct to the best of my knowledge, information and belief, except for any fact that also states a legal conclusion. The referenced Petition covers Proposed Rules 1, 2, and 3.

I further state under oath that every fact alleged in the Petition for Adoption of Rules dated November 24, 2019 attached hereto for Proposed Rule 4 is true and correct to the best of my knowledge, information and belief, except for any fact that also states a legal conclusion.

I am authorized by the Libertarian Party of Georgia to submit this petition on its behalf.

The attached petition is submitted under the provisions of Ga Comp. R. & Regs. 183-1-1-.01

Dated this 26 day of November 2019.



Ryan Graham

Sworn to and subscribed before me

This 26th day of November 2019

