



August 31, 2020

Jasmine Shannon  
Elections Division  
Office of the Secretary of State  
2 Martin Luther King Jr. Drive, S.E.  
8<sup>th</sup> Floor West Tower  
Atlanta, GA 30334

Re: Proposed Amendments to Rule 183-1-14-.06(3)

Dear Ms. Shannon:

On behalf of the Brennan Center for Justice at NYU School of Law, the Center for Civic Design, Common Cause on behalf of Common Cause Georgia, and Asian Americans Advancing Justice-Atlanta, we write to provide comment on proposed amendments to Rule 183-1-140.06(3), regarding absentee ballot instructions that explain how to cast a vote and how to obtain a new ballot after one is spoiled.

We commend the Board's effort to improve absentee ballot instructions for voters, but clear, simple language and illustrations are necessary, including translations for limited English proficient voters, to ensure that all voters understand how to have their votes counted. Additionally, instructions regarding how to vote in person must be accurate.

The effort to improve absentee ballot instructions is particularly important in Georgia, where the vast majority of voters are used to voting in person, using touchscreen voting machines. As marking paper ballots by hand is a new experience for many Georgia voters,<sup>1</sup> it is crucial that absentee ballot instructions are designed to minimize lost votes.

Ballot selections marked with an "X" or a check mark, rather than a filled in oval, are legally valid votes in Georgia,<sup>2</sup> but voters must nevertheless be instructed to fill in the ovals next to

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<sup>1</sup> Only about 5.4 percent of voters in Fulton County in November 2018 voted by mail. *See* <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>.

<sup>2</sup> Ga. Stat. § 21-2-438(c).

their selections completely. This is because ballot scanners that automatically count ballots sometimes fail to record votes that are marked with a check, an X, or some other such mark. In the June 9, 2020 primary elections, scanners failed to pick up the votes of many ballots that were marked in this manner. The scanners did not always flag these ballots for manual inspection. Fortunately, some of these missed votes were noticed by election workers, who were then able to manually inspect ballots and count the votes the scanners had missed.<sup>3</sup>

The proposed amendments appropriately instruct voters to fill in ovals completely, as well as to avoid the use of red ink color that the ballot scanners do not detect. However, the instructions will be more effective—and fewer legitimate votes will be lost—if they employ the design principles that are supported by years of testing by the Center for Civic Design: A simple illustration that shows voters how to properly mark their selections should be included. The instructions will also be more effective if they are shorter, removing all unnecessary words, and use simpler language, avoiding technical or legal terms.<sup>4</sup> For instance, the term “bring” is preferable to “surrender,” while “contests” is a single term that covers all types of selections a voter may be asked to make, including ballot initiatives, races between candidates, or bond approvals. Finally, rigid rules about the exact placement of instructions on ballots, such as rules that instructions must come “immediately after” other text, should be avoided, so that inadvertent effects on the usability of ballot designs in future elections can be avoided.<sup>5</sup>

The proposed instructions also explain for voters what to do if they wish to vote in person. These instructions would ideally appear in the Uniform Instructions that accompany absentee ballots, along with instructions about how to use the provided envelopes and how to return an absentee ballot.<sup>6</sup> But wherever they are provided, it is crucial that these instructions be accurate and that voters understand they have a right to vote in person, whether or not they have their absentee ballot with them. In the June 9, 2020 primary elections in Georgia, some voters who requested absentee ballots never received them.<sup>7</sup> It is important that any voters whose requested ballots do not arrive in a timely fashion know that they may vote in person.

After consultation with experts at the Center for Civic Design, we suggest the following amendments to the proposed rule. Suggested deletions are stricken out, while suggested

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<sup>3</sup> Mark Niese, “Election Workers Struggle To Finish Counting Absentee Ballots,” Atlanta Journal-Constitution, June 17, 2020, <https://www.ajc.com/news/state--regional-govt--politics/election-workers-struggle-finish-counting-georgia-absentee-ballots/ra6euGvP4I5ikiami0SmBP/>.

<sup>4</sup> Center for Civic Design, *How To Design Better Ballots*, 2020, <https://www.brennancenter.org/our-work/research-reports/how-design-better-ballots>.

<sup>5</sup> Gowri Ramachandran and Whitney Quesenberry, *Ballot Design Guidance for Election Officials*, Brennan Center 2020, <https://www.brennancenter.org/our-work/research-reports/ballot-design-guidance-election-officials>; Andrea Córdova McCadney, Lawrence Norden, and Whitney Quesenberry, *Common Ballot Design Flaws and How To Fix Them*, Brennan Center 2020, <https://www.brennancenter.org/our-work/research-reports/common-ballot-design-flaws-and-how-fix-them>.

<sup>6</sup> Ga. Stat. § 21-2-384(b).

<sup>7</sup> Mark Niese and Ben Brasch, “Absentee Ballot Requests Go Missing in Fulton Ahead of Georgia Primary,” Atlanta Journal-Constitution, May 29, 2020, <https://www.ajc.com/news/state--regional-govt--politics/absentee-ballot-requests-missing-fulton-ahead-georgia-primary/kkXUUbL0wug5niqAvKTqM/>.

additions appear in bold. Three options for the illustration, generously provided by the Center for Civic Design, are provided below the proposed amendments.

Sincerely,

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Suggested Amendments to Proposed Rule 183-1-14-.06(3)

(3) The directions that explain how to cast a vote and how to obtain a new ballot after one is spoiled shall appear ~~immediately under the caption on the~~ **at the top of the** ballot in substantially the following form as appropriate for that particular primary or election:

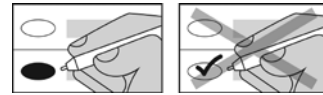
To vote, use black or blue ink to ~~mark the ballot c~~ **Completely fill in fill in** the empty oval to the left of the candidate name or choice ~~in all races you wish to vote.~~

~~If voting for a~~ **To vote for a** Write-In Candidate, completely fill-in the empty oval to the left of the write in selection, then ~~write~~ **print** the name of the ~~write in~~ candidate in the space provided.

**Read the instructions for each contest. Do not mark more choices than allowed.**

**Help us count your ballot accurately:**

- ~~Warning, d~~ **Do not use red ink or a felt tip pen to mark the ballot. Do not circle, underline, or mark through ballot choices. Do not use “check” marks or an “X” to mark your ballot choices.**



- **Do not sign, cut, tear, or damage the ballot.**  
~~Do not mark more choices per race than allowed.~~

If you change your mind or make a mistake ~~on a selection,~~ do not attempt to **correct the ballot.**

- ~~mark through the selection or attempt to erase,~~ **W**rite "Spoiled" across the face of the ballot and across the return envelope.
- Mail or return the spoiled ballot and envelope to your county board of registrars, and a new official absentee ballot will be mailed to you.

If you decide to vote in-person, **you can bring** ~~surrender~~ the ballot to ~~the poll manager of any~~ early voting site within your county or to ~~the precinct to which you are assigned~~ **your Election Day polling place. Even if you don't have your ballot, you can complete a form that cancels it.** You will then be permitted to vote a regular ballot.

Illustration Options

