

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 4, cl. 1

Section 4, Clause 1. Congressional Elections; Time, Place, and Manner of Holding

Currentness

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

U.S.C.A. Const. Art. I § 4, cl. 1, USCA CONST Art. I § 4, cl. 1
Current through P.L. 116-193.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

United States Code Annotated
Constitution of the United States
Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection;
Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE
PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION;
DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Validity Called into Doubt by New Georgia Project v. Raffensperger, N.D.Ga., Aug. 31, 2020

KeyCite Yellow Flag - Negative Treatment Proposed Legislation

West's Code of Georgia Annotated

Title 21. Elections (Refs & Annos)

Chapter 2. Elections and Primaries Generally (Refs & Annos)

Article 10. Absentee Voting (Refs & Annos)

Ga. Code Ann., § 21-2-386

§ 21-2-386. Ballot safekeeping, certification, rejection,
tabulation; challenge for cause; disclosure regarding results

Effective: April 2, 2019

Currentness

(a)(1)(A) The board of registrars or absentee ballot clerk shall keep safely, unopened, and stored in a manner that will prevent tampering and unauthorized access all official absentee ballots received from absentee electors prior to the closing of the polls on the day of the primary or election except as otherwise provided in this subsection.

(B) Upon receipt of each ballot, a registrar or clerk shall write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk shall then compare the identifying information on the oath with the information on file in his or her office, shall compare the signature or mark on the oath with the signature or mark on the absentee elector's voter registration card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or mark taken from said card or application, and shall, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

(C) If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years. Such elector shall have until the end of the period for verifying provisional ballots contained in subsection (c) of Code Section 21-2-419 to cure the problem resulting in the rejection of the ballot. The elector may cure a failure to sign the oath, an invalid signature, or missing information by submitting an affidavit to the board of registrars or absentee ballot clerk along with a copy of one of the forms of identification enumerated in subsection (c) of Code Section 21-2-417 before the close of such period. The affidavit shall affirm that the ballot was submitted by the elector, is the elector's ballot, and that the elector is registered and qualified to vote in the primary, election, or runoff in question. If the board of registrars or absentee ballot clerk finds the affidavit and identification to be sufficient, the absentee ballot shall be counted.

(D) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state by absentee ballot shall include with his or her application for an absentee ballot or in the outer oath envelope of his or her absentee ballot either one of the forms of identification listed in subsection (a) of Code Section 21-2-417 or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not provide any of the forms of identification listed in this subparagraph with his or her application for an absentee ballot or with the absentee ballot, such absentee ballot shall be deemed to be a provisional ballot and such ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subparagraph within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. The board of registrars or absentee ballot clerk shall promptly notify the elector that such ballot is deemed a provisional ballot and shall provide information on the types of identification needed and how and when such identification is to be submitted to the board of registrars or absentee ballot clerk to verify the ballot.

(E) Three copies of the numbered list of voters shall also be prepared for such rejected absentee electors, giving the name of the elector and the reason for the rejection in each case. Three copies of the numbered list of certified absentee voters and three copies of the numbered list of rejected absentee voters for each precinct shall be turned over to the poll manager in charge of counting the absentee ballots and shall be distributed as required by law for numbered lists of voters.

(F) All absentee ballots returned to the board or absentee ballot clerk after the closing of the polls on the day of the primary or election shall be safely kept unopened by the board or absentee ballot clerk and then transferred to the appropriate clerk for storage for the period of time required for the preservation of ballots used at the primary or election and shall then, without being opened, be destroyed in like manner as the used ballots of the primary or election. The board of registrars or absentee ballot clerk shall promptly notify the elector by first-class mail that the elector's ballot was returned too late to be counted and that the elector will not receive credit for voting in the primary or election. All such late absentee ballots shall be delivered to the appropriate clerk and stored as provided in Code Section 21-2-390.

(G) Notwithstanding any provision of this chapter to the contrary, until the United States Department of Defense notifies the Secretary of State that the Department of Defense has implemented a system of expedited absentee voting for those electors covered by this subparagraph, absentee ballots cast in a primary, election, or runoff by eligible absentee electors who reside outside the county or municipality in which the primary, election, or runoff is held and are members of the armed forces of the United States, members of the merchant marine of the United States, spouses or dependents of members of the armed forces or merchant marine residing with or accompanying such members, or overseas citizens that are postmarked by the date of such primary, election, or runoff and are received within the three-day period following such primary, election, or runoff, if proper in all other respects, shall be valid ballots and shall be counted and included in the certified election results.

(2) After the opening of the polls on the day of the primary, election, or runoff, the registrars or absentee ballot clerks shall be authorized to open the outer envelope on which is printed the oath of the elector in such a manner as not to destroy the oath printed thereon; provided, however, that the registrars or absentee ballot clerk shall not be authorized to remove the contents of such outer envelope or to open the inner envelope marked "Official Absentee Ballot," except as otherwise provided in this Code section. At least three persons who are registrars, deputy registrars, poll workers, or absentee ballot clerks must be present before commencing; and three persons who are registrars, deputy registrars, or absentee ballot clerks shall be present at all times while the outer envelopes are being opened. After opening the outer envelopes, the ballots shall be safely and securely stored until the time for tabulating such ballots.

(3) A county election superintendent may, in his or her discretion, after 7:00 A.M. on the day of the primary, election, or runoff open the inner envelopes in accordance with the procedures prescribed in this subsection and begin tabulating the

absentee ballots. If the county election superintendent chooses to open the inner envelopes and begin tabulating such ballots prior to the close of the polls on the day of the primary, election, or runoff, the superintendent shall notify in writing, at least seven days prior to the primary, election, or runoff, the Secretary of State of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls. The county executive committee or, if there is no organized county executive committee, the state executive committee of each political party and political body having candidates whose names appear on the ballot for such election in such county shall have the right to designate two persons and each independent and nonpartisan candidate whose name appears on the ballot for such election in such county shall have the right to designate one person to act as monitors for such process. In the event that the only issue to be voted upon in an election is a referendum question, the superintendent shall also notify in writing the chief judge of the superior court of the county who shall appoint two electors of the county to monitor such process.

(4) The county election superintendent shall publish a written notice in the superintendent's office of the superintendent's intent to begin the absentee ballot tabulation prior to the close of the polls and publish such notice at least one week prior to the primary, election, or runoff in the legal organ of the county.

(5) The process for opening the inner envelopes of and tabulating absentee ballots on the day of a primary, election, or runoff as provided in this subsection shall be a confidential process to maintain the secrecy of all ballots and to protect the disclosure of any balloting information before 7:00 P.M. on election day. No absentee ballots shall be tabulated before 7:00 A.M. on the day of a primary, election, or runoff.

(6) All persons conducting the tabulation of absentee ballots during the day of a primary, election, or runoff, including the vote review panel required by Code Section 21-2-483, and all monitors and observers shall be sequestered until the time for the closing of the polls. All such persons shall have no contact with the news media; shall have no contact with other persons not involved in monitoring, observing, or conducting the tabulation; shall not use any type of communication device including radios, telephones, and cellular telephones; shall not utilize computers for the purpose of e-mail, instant messaging, or other forms of communication; and shall not communicate any information concerning the tabulation until the time for the closing of the polls; provided, however, that supervisory and technical assistance personnel shall be permitted to enter and leave the area in which the tabulation is being conducted but shall not communicate any information concerning the tabulation to anyone other than the county election superintendent; the staff of the superintendent; those persons conducting, observing, or monitoring the tabulation; and those persons whose technical assistance is needed for the tabulation process to operate.

(7) The absentee ballots shall be tabulated in accordance with the procedures of this chapter for the tabulation of absentee ballots. As such ballots are tabulated, they shall be placed into locked ballot boxes and may be transferred to locked ballot bags, if needed, for security. The persons conducting the tabulation of the absentee ballots shall not cause the tabulating equipment to produce any count, partial or otherwise, of the absentee votes cast until the time for the closing of the polls.

(b) As soon as practicable after 7:00 A.M. on the day of the primary, election, or runoff, in precincts other than those in which optical scanning tabulators are used, a registrar or absentee ballot clerk shall deliver the official absentee ballot of each certified absentee elector, each rejected absentee ballot, applications for such ballots, and copies of the numbered lists of certified and rejected absentee electors to the manager in charge of the absentee ballot precinct of the county or municipality, which shall be located in the precincts containing the county courthouse or polling place designated by the municipal superintendent. In those precincts in which optical scanning tabulators are used, such absentee ballots shall be taken to the tabulation center or other place designated by the superintendent, and the official receiving such absentee ballots shall issue his or her receipt therefor. Except as otherwise provided in this Code section, in no event shall the counting of the ballots begin before the polls close.

(c) Except as otherwise provided in this Code section, after the close of the polls on the day of the primary, election, or runoff, a manager shall then open the outer envelope in such manner as not to destroy the oath printed thereon and shall deposit the inner envelope marked "Official Absentee Ballot" in a ballot box reserved for absentee ballots. In the event that an outer envelope is found to contain an absentee ballot that is not in an inner envelope, the ballot shall be sealed in an inner envelope, initialed and dated by the person sealing the inner envelope, and deposited in the ballot box and counted in the same manner as other absentee ballots, provided that such ballot is otherwise proper. Such manager with two assistant managers, appointed by the superintendent, with such clerks as the manager deems necessary shall count the absentee ballots following the procedures prescribed by this chapter for other ballots, insofar as practicable, and prepare an election return for the county or municipality showing the results of the absentee ballots cast in such county or municipality.

(d) All absentee ballots shall be counted and tabulated in such a manner that returns may be reported by precinct; and separate returns shall be made for each precinct in which absentee ballots were cast showing the results by each precinct in which the electors reside.

(e) If an absentee elector's right to vote has been challenged for cause, a poll officer shall write "Challenged," the elector's name, and the alleged cause of challenge on the outer envelope and shall deposit the ballot in a secure, sealed ballot box; and it shall be counted as other challenged ballots are counted. Where direct recording electronic voting systems are used for absentee balloting and a challenge to an elector's right to vote is made prior to the time that the elector votes, the elector shall vote on a paper or optical scanning ballot and such ballot shall be handled as provided in this subsection. The board of registrars or absentee ballot clerk shall promptly notify the elector of such challenge.

(f) It shall be unlawful at any time prior to the close of the polls for any person to disclose or for any person to receive any information regarding the results of the tabulation of absentee ballots except as expressly provided by law.

Credits

Laws 1924, p. 186, §§ 11, 12, 14; Laws 1955, p. 204, § 5; Laws 1964, Ex. Sess., p. 26, § 1; Laws 1969, p. 280, §§ 1, 2; Laws 1974, p. 71, §§ 9-11; Laws 1977, p. 725, § 2; Laws 1978, p. 1004, § 32; Laws 1979, p. 629, § 1; Laws 1982, p. 1512, § 5; Laws 1983, p. 140, § 1; Laws 1990, p. 143, § 6; Laws 1992, p. 1, § 4; Laws 1992, p. 1815, § 4; Laws 1993, p. 118, § 1; Laws 1997, p. 590, § 32; Laws 1997, p. 662, § 2; Laws 1998, p. 145, § 1; Laws 1998, p. 295, § 1; Laws 1998, p. 1231, §§ 16, 39; Laws 1999, p. 29, § 2; Laws 2001, p. 240, § 34; Laws 2001, p. 269, § 21; Laws 2003, Act 209, § 40, eff. July 1, 2003; Laws 2005, Act 53, § 54, eff. July 1, 2005; Laws 2006, Act 452, § 1, eff. April 14, 2006; Laws 2007, Act 261, § 4, eff. July 1, 2007; Laws 2008, Act 453, § 1, eff. May 6, 2008; Laws 2008, Act 531, § 4, eff. May 12, 2008; Laws 2009, Act 71, § 1, eff. July 1, 2009; Laws 2011, Act 193, § 1, eff. May 12, 2011; Laws 2011, Act 240, § 13, eff. July 1, 2011; Laws 2012, Act 719, § 27, eff. July 1, 2012; Laws 2012, Act 719, § 28, eff. July 1, 2012; Laws 2019, Act 24, § 32, eff. April 2, 2019.

Formerly Code 1933, §§ 34-3311, 34-3312, 34-3314; Code 1933, § 34-1407.

Ga. Code Ann., § 21-2-386, GA ST § 21-2-386

The statutes and Constitution are current through laws passed at the 2020 legislative sessions. Some statute sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.

KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted/Validity Called into Doubt by Common Cause/Georgia League of Women Voters of Georgia, Inc. v. Billups, N.D.Ga., July 14, 2006

KeyCite Yellow Flag - Negative Treatment/Proposed Legislation

West's Code of Georgia Annotated

Title 21. Elections (Refs & Annos)

Chapter 2. Elections and Primaries Generally (Refs & Annos)

Article 11. Preparation for and Conduct of Primaries and Elections (Refs & Annos)

Part 1. General Provisions

Ga. Code Ann., § 21-2-417

§ 21-2-417. Proper identification; presentation to poll
worker; provisional ballots; false affirmation; penalty

Effective: January 26, 2006

Currentness

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

- (1) A Georgia driver's license which was properly issued by the appropriate state agency;
- (2) A valid Georgia voter identification card issued under Code Section 21-2-417.1 or other valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector;
- (3) A valid United States passport;
- (4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;
- (5) A valid United States military identification card, provided that such identification card contains a photograph of the elector; or
- (6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional

ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

(c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

Credits

Laws 1997, p. 662, § 3; Laws 1998, p. 295, § 1; Laws 2001, p. 230, § 15; Laws 2003, Act 209, § 48, eff. July 1, 2003; Laws 2005, Act 53, § 59, eff. July 1, 2005; Laws 2006, Act 432, § 2, eff. Jan. 26, 2006.

Ga. Code Ann., § 21-2-417, GA ST § 21-2-417

The statutes and Constitution are current through laws passed at the 2020 legislative sessions. Some statute sections may be more current, see credits for details. The statutes are subject to changes by the Georgia Code Commission.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.



OFFICIAL ELECTION BULLETIN

May 1, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, State Elections Director

RE: Absentee Ballot Signature Review Guidance

Verifying that a voter's signature on his or her absentee ballot matches his or her signature on the absentee ballot application or in the voter registration record is required by Georgia law and is crucial to secure elections. Ensuring that signatures match is even more crucial in this time of increased absentee voting due to the COVID-19 crisis. The purpose of this OEB is to remind you of some recent updates to Georgia law and regulations regarding verifying signatures on absentee ballots and to make you aware of the procedures that should be followed when a signature on an absentee ballot does not match. HB 316, which passed in 2019, modified the absentee ballot laws and the design of the oath envelope. The State Election Board also adopted Rule 183-1-14.13 this year, which addresses how quickly and by what methods electors need to be notified concerning absentee ballot issues. What follows are the procedures that should be followed when the signature on the absentee ballot does not match the voter's signature on his or her application or voter registration record:

County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C).

When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.¹ If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks.

A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

¹ Once the registrar or clerk verifies a matching signature, they do not need to continue to review additional signatures for the same voter.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**VERIFIED AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

COMES NOW Plaintiff **L. Lin Wood, Jr.** (“Plaintiff”), by and through his undersigned counsel of record, and file this his Verified Amended Complaint for

Declaratory and Injunctive Relief (the “Complaint”), respectfully showing this honorable Court as follows:¹

INTRODUCTION

1.

The citizens of the State of Georgia deserve fair elections, untainted by violations of the United States Constitution and other federal and state laws governing elections.

2.

The validity of the results of the November 3, 2020 general election in Georgia are at stake as a result of Defendants’ unauthorized actions in the handling of absentee ballots within this state, actions that were contrary to the Georgia Election Code.

3.

Defendants’ unilaterally, and without the approval or direction of the Georgia General Assembly, changed the process for handling absentee ballots in Georgia, including those cast in the general election.

¹ Plaintiff’s Emergency Motion for Injunctive Relief and Memorandum of Law in Support Thereof will be filed tomorrow, Tuesday, November 17, 2020.

4.

As a result, the inclusion and tabulation of absentee ballots for the general election (and potentially, for all future elections held within this state) is improper and must not be permitted. To allow otherwise would erode the sacred and basic rights of Georgia citizens under the United States Constitution to participate in and rely upon a free and fair election.

JURISDICTION AND VENUE

5.

This action arises under 42 U.S.C. § 1983, Articles I and II of the United States Constitution, and the First and Fourteenth Amendments to the United States Constitution.

6.

This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this action arises under the United States Constitution and laws of the United States and involves a federal election for President of the United States. “A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” *Bush v. Gore*, 531 U.S. 98, 113 (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932). This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

7.

Venue is proper under 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claim occurred or will occur in this District. Alternatively, venue is proper under 28 U.S.C. § 1391(b) because at least one Defendant to this action resides in this District and all Defendants reside in this State.

PARTIES

8.

Plaintiff L. Lin Wood, Jr. is an adult individual who is a qualified registered elector residing in Fulton County, Georgia. Plaintiff constitutes an “elector” who possesses all of the qualifications for voting in the State of Georgia, as set forth in O.C.G.A. §§ 21-2-2(7) and 21-2-216(a). Plaintiff brings this suit in his capacity as a private citizen. As a qualified elector and registered voter, Plaintiff has Article III standing to bring this action. *See Meek v. Metro. Dade County*, 985 F.2d 1471, 1480 (11th Cir. 1993). Further, Plaintiff made donations to various Republican candidates on the ballot for the November 3, 2020 elections, and his interests are aligned with those of the Georgia Republican Party for the purposes of the instant lawsuit.

9.

Defendant Brad Raffensperger (“Secretary Raffensperger”) is named herein in his official capacity as Secretary of State of the State of Georgia. Secretary Raffensperger is a state official subject to suit in his official capacity because his office “imbues him with the responsibility to enforce the [election laws].” *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Secretary Raffensperger serves as the Chairperson of Georgia’s State Election Board, which promulgates and enforces rules and regulations to (i) obtain uniformity in the practices and proceedings of election officials as well as legality and purity in all primaries and general elections, and (ii) be conducive to the fair, legal, and orderly conduct of primaries and general elections. *See* O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Secretary Raffensperger, as Georgia’s chief elections officer, is further responsible for the administration of the state laws affecting voting, including the absentee voting system. *See* O.C.G.A. § 21-2-50(b).

10.

Defendants Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the “State Election Board”) are members of the State Election Board in Georgia, responsible for “formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair,

legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2). Further, the State Election Board “promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system” in Georgia. O.C.G.A. § 21-2-31(7). The State Election Board, personally and through the conduct of the Board’s employees, officers, agents, and servants, acted under color of state law at all times relevant to this action and are sued for declaratory and injunctive relief in their official capacities.

FACTS

I. Federal Constitutional Protections for Free and Fair Public Elections.

11.

Free, fair, and transparent public elections are crucial to democracy – a government of the people, by the people, and for the people.

12.

The Elections Clause of the United States Constitution states that “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives *shall be prescribed in each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.” U.S. Const. Art. I, § 4, cl. 1 (emphasis added).

13.

The Legislature is “the representative body which ma[kes] the laws of the people.” *Smiley*, 285 U.S. at 365. Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 807-08 (2015).

14.

In Georgia, the “legislature” is the General Assembly. *See* Ga. Const. Art. III, § I, Para. I.

15.

Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Raffensperger, have no authority to unilaterally exercise that power, much less flout existing legislation.

16.

Nor can the authority to ignore existing legislation be delegated to an executive officer. While the Elections Clause “was not adopted to diminish a State’s authority to determine its own lawmaking processes,” *Ariz. State*

Legislature, 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. “A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question.” *Bush*, 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley*, 285 U.S. at 365.

II. The Georgia Legislature’s Laws Governing the Handling of Absentee Ballots.

17.

The Georgia General Assembly (the “Georgia Legislature”) provided a generous absentee ballot statute, O.C.G.A. § 21-2-380(b), which provides, in pertinent part, “An elector who votes by absentee ballot shall not be required to provide a reason in order to cast an absentee ballot in any primary, election, or runoff.”

18.

The Georgia Legislature also established a clear and efficient process for handling absentee ballots. To the extent that any change in that process could or could be expected to change the process, that change must, under Article I, Section 4 of the United States Constitution, be prescribed by the Georgia Legislature.

19.

Under O.C.G.A. § 21-2-386(a)(1)(B), the Georgia Legislature instructed the county registrars and clerks (the “County Officials”) to handle the absentee ballots as directed therein. The Georgia Legislature set forth the procedures to be used by each municipality for appointing the absentee ballot clerks to ensure that such clerks would “perform the duties set forth in this Article.” *See* O.C.G.A. § 21-2-380.1.

20.

The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector’s voter card or the most recent update to such absentee elector’s voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and ***shall***, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter’s oath. Each elector’s name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.

O.C.G.A. § 21-2-386(a)(1)(B) (emphasis added).

21.

The Georgia Legislature's use of the word "shall" on three separate occasions indicates the clear process that ***must*** be followed by the County Officials in processing absentee ballots.

22.

Under O.C.G.A. § 21-2-386(a)(1)(C), the Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot").

23.

The Georgia Legislature also provided for the steps to be followed by County Officials with respect to defective absentee ballots:

If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added).

24.

The Georgia Legislature again used the word “shall” to indicate when a defective absentee ballot shall be “rejected.” The Georgia Legislature also contemplated the use of a written notification to be used by the county registrar or clerk in notifying the elector of the rejection.

III. Defendants’ Unauthorized Actions to Alter the Georgia Election Code and the Processing of Defective Absentee Ballots.

25.

Notwithstanding the clarity of the applicable statutes and the constitutional authority for the Georgia Legislature’s actions, on March 6, 2020, the Secretary of State of the State of Georgia, Secretary Raffensperger, and the State Election Board, who administer the state elections (the “Administrators”) entered into a “Compromise and Settlement Agreement and Release” (the “Litigation Settlement”) with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively, the “Democrat Party Agencies”), setting forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State

of Georgia.² A true and correct copy of the Litigation Settlement is attached hereto and incorporated herein as **Exhibit A**.

26.

The Litigation Settlement sets forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State of Georgia than those described above.

27.

Although Secretary Raffensperger, as the Secretary of State, is authorized to promulgate rules and regulations that are “conducive to the fair, legal, and orderly conduct of primaries and elections” but all such rules and regulations must be “consistent with law.” O.C.G.A. § 21-2-31(2).

28.

Under the Litigation Settlement, however, the Administrators agreed to change the statutorily-prescribed manner of handling absentee ballots in a manner that was not consistent with the laws promulgated by the Georgia Legislature for elections in this state.

² See *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1.

29.

The Litigation Settlement provides that the Secretary of State would issue an “Official Election Bulletin” to county Administrators overriding the statutory procedures prescribed for those officials. That power, however, does not belong to the Secretary of State under the United States Constitution.

30.

The Litigation Settlement procedure, set forth in pertinent part below, is more cumbersome, and makes it much more difficult to follow the statute with respect to defective absentee ballots.

31.

Because of the COVID-19 pandemic and the pressures created by a larger number of absentee ballots, County Officials were under great pressure to handle an historical level of absentee voting.

32.

Additionally, the County Officials were required to certify the speed with which they were handling absentee ballots on a daily basis, with the goal of processing absentee ballots faster than they had been processed in the past.

33.

Under the Litigation Settlement, the following language added to the pressures and complexity of processing defective absentee ballots, making it less likely that they would be identified or, if identified, processed for rejection:

County registrars and absentee ballot clerks ***are required***, upon receipt of each mail-in absentee ballot, to compare the signature or make of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. *If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under O.C.G.A. § 21-2-386(a)(1)(C).* Then, the registrar or absentee ballot clerk shall commence the notification procedure set

forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

(See Ex. A, Litigation Settlement, p. 3-4, ¶ 3, “Signature Match” (emphasis added).)

34.

The underlined language above is not consistent with the statute adopted by the Georgia Legislature.

35.

First, the Litigation Settlement overrides the clear statutory authorities granted to County Officials individually and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot.

36.

Such a procedure creates a cumbersome bureaucratic procedure to be followed with each defective absentee ballot – and makes it likely that such ballots will simply not be identified by the County Officials.

37.

Second, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature.

38.

The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector's identity. *See* O.C.G.A. § 21-2-381(b)(1) (providing, in pertinent part, "In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417...").

39.

Under O.C.G.A. § 21-2-220(c), the elector must present identification, but need not submit identification if the electors submit with their application information such that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system.

40.

The system for identifying absentee ballots was carefully constructed by the Georgia Legislature to ensure that electors were identified by acceptable identification (O.C.G.A. § 21-2-417 even permits the use of an expired driver's license), but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot.

41.

Under the Litigation Settlement, any determination of a signature mismatch would lead to the cumbersome process described in the settlement, which was not intended by the Georgia Legislature, which authorized those decisions to be made by single election officials.

42.

The Georgia Legislature also provided for the opportunity to cure (again, different from the opportunity to cure in the Litigation Settlement), but did not allocate funds for three County Officials for every mismatch decision.

43.

In the primary preceding the November 3, 2020 election, news stories recorded that many absentee ballots did not reach voters until after the polls were closed. *See, e.g.*, F. Bajak and C. Cassidy, “Vote-by-mail worries: A ‘leaky pipeline’ in many states,” Associated Press Aug. 8, 2020, <https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffcc64fc878e7>, retrieved Nov. 11, 2020).

44.

In response and to encourage confidence in absentee voting during the COVID-19 crisis, the Secretary of State launched Ballot Trax to track absentee

ballots, permitting electors to track the progress of absentee ballots as they were processed.

45.

Announcing Ballot Trax further increased pressure on County Officials to process absentee ballot applications quickly, so that they would not be perceived as “falling behind” in processing ballots.

46.

County Officials were not incentivized to spend additional time to check absentee ballot applications – by increasing the number of reviewers and complexity of the process, the Litigation Settlement procedures created further disincentives to accurate processing of signature matches.

47.

Finally, under paragraph 4 of the Litigation Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering in good faith “additional guidance and training materials” drafted by the “handwriting and signature review expert” of the Democrat Party Agencies. (See Ex. A, Litigation Settlement, p. 4, ¶ 4, “Consideration of Additional Guidance for Signature Matching.”)

48.

Allowing a single political party to write rules for reviewing signatures is not “conducive to the fair...conduct of primaries and elections” or “consistent with law” under O.C.G.A. § 21-2-31.

49.

The Litigation Settlement by itself has created confusion, misplaced incentives, and undermined the confidence of the voters of the State of Georgia in the electoral system.

50.

Neither it nor any of the activities spawned by it were authorized by the Georgia Legislature, as required by the United States Constitution.

IV. The November 3, 2020 General Election and “Hand” Recount.

51.

On November 3, 2020, the general election was held for the election of the United States President and two Georgia senate races for the United States Senate.

52.

According to Secretary Raffensperger, in the presidential general election, 2,457,880 votes were cast in Georgia for President Donald J. Trump, and 2,472,002 votes were cast for Joseph R. Biden.

53.

According to Secretary Raffensperger, in the general election for one of Georgia's United States Senators, 2,458,665 votes were cast for Senator David A. Perdue, and 2,372,086 votes were cast for Jon Ossoff. As a result, a run-off election between Senator Perdue and Mr. Ossoff will occur on January 5, 2021.

54.

According to Secretary Raffensperger, in the special election for the other of Georgia's United States Senators held on November 3, 2020, 1,271,106 votes were cast for Senator Kelly Loeffler, and 1,615,402 votes were cast for Reverend Raphael Warnock. As a result, a run-off election between Senator Loeffler and Rev. Warnock will occur on January 5, 2021.

55.

Secretary Raffensperger directed a "full hand recount" of all ballots in the State of Georgia to be completed by Wednesday, November 18, 2020 (the "Hand Recount"). *See* "Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process," Georgia Secretary of State, https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit-triggered_full_hand_recount_transparency_is_built_into_process, retrieved Nov. 16, 2020.

56.

Secretary Raffensperger declared that for the Hand Recount,

Per the instructions given to counties as they conduct their audit triggered full hand recounts, designated monitors will be given complete access to observe the process from the beginning. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely. The general public and the press will be restricted to a public viewing area. Designated monitors will be able to watch the recount while standing close to the elections workers conducting the recount.

Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county... Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted, providing monitors and the public an additional way to keep tabs on the process.

Id.

57.

Non-parties Amanda Coleman and Maria Diedrich are two individuals who volunteered to serve as designated monitors for the Donald J. Trump Presidential Campaign, Inc. (the “Trump Campaign”) on behalf of the Georgia Republican Party (the “Republican Party”) at the Hand Recount. Attached hereto and incorporated herein as **Exhibits B and C**, respectively, are true and correct copies of (1) the Affidavit of Amanda Coleman in Support of Plaintiffs’ Motion for Temporary Restraining Order (the “Coleman Affidavit”), and (2) the Affidavit of

Maria Diedrich in Support of Plaintiffs’ Motion for Temporary Restraining Order (the “Diedrich Affidavit”) (collectively the ”Affidavits”). (*See* Ex. B, Coleman Aff., ¶ 2; Ex. C, Diedrich Aff., ¶ 2.)

58.

The Affidavits set forth various improprieties, insufficiencies, and improper handling of ballots by County Officials and their employees that Ms. Coleman and Ms. Diedrich personally observed while monitoring the Hand Recount. (*See* Ex. B, Coleman Aff., ¶¶ 3-10; Ex. C, Diedrich Aff., ¶¶ 4-14.)

59.

For example, Ms. Coleman was directed to arrive at the Hand Recount between 8:00 a.m. and 9:00 a.m. on November 15, 2020. (*See* Ex. B, Coleman Aff., ¶ 3.) Ms. Coleman actually arrived at 9:00 a.m. (*See id.*, ¶ 4.) As she arrived, Ms. Coleman was informed by a large crowd that “they had ‘just finished’ the hand recount.” (*See id.*, ¶ 5.)

60.

Ms. Diedrich arrived at the Hand Recount at 8:00 a.m. on November 15, 2020. (*See* Ex. C, Diedrich Aff., ¶ 4.) Ms. Diedrich reports that, “By 9:15 a.m., officials announced that voting was complete and sent everyone home... The

officials announced that they had counted all the absentee [ballots] on November 14 at night and they were already boxed up.” (*See id.*, ¶¶ 4-5.)

61.

As a result of her observations of the Hand Recount as a Republican Party monitor, Ms. Diedrich declared, “There had been no meaningful way to review or audit any activity” at the Hand Recount. (*See Ex. C, Diedrich Aff.*, ¶ 14.)

62.

As a result of their observations of the Hand Recount as Republic Party monitors, Ms. Coleman likewise declared, “There was no way to tell if any counting was accurate or if the activity was proper.” (*See Ex. B, Coleman Aff.*, ¶ 10.)

63.

There was no actual “hand” recounting of the ballots during the Hand Recount, but rather, County Officials and their employees simply conducted another machine count of the ballots.

COUNT I
First Amendment and Equal Protection
U.S. Const. amend. XIV, 42 U.S.C. § 1983

64.

Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

65.

The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution, which prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

66.

The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights.

67.

The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

68.

The Equal Protection Clause requires states to “avoid arbitrary and disparate treatment of the members of its electorate.” *Charfauros v. Bd. of Elections*, 249 F.3d 941, 951 (9th Cir. 2001) (quoting *Bush*, 531 U.S. at 105).

69.

That is, each citizen “has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” *Dunn v. Bloomstein*, 405 U.S. 330, 336 (1972).

70.

“Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush*, 531 U.S. at 104-05. Among other things, this requires “specific rules designed to ensure uniform treatment” in order to prevent “arbitrary and disparate treatment to voters.” *Id.* at 106-07.

71.

“The right to vote extends to all phases of the voting process, from being permitted to place one’s vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the initial allocation of the franchise as well as the manner of its exercise. Once the right to vote is granted, a state may

not draw distinctions between voters that are inconsistent with the guarantees of the Fourteenth Amendment's equal protection clause." *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 695 (W.D. Pa. 2003) (citations and quotations omitted).

72.

"[T]reating voters differently" thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros*, 249 F.3d at 954. Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]." *Bush*, 531 U.S. at 105.

73.

Defendants are not part of the Georgia Legislature and cannot exercise legislative power to enact rules or regulations regarding the handling of defective absentee ballots that are contrary to the Georgia Election Code.

74.

By entering the Litigation Settlement and altering the process for handling defective absentee ballots in Georgia, Defendants unilaterally, and without authority, altered the Georgia Election Code.

75.

The result is that absentee ballots have been processed differently by County Officials than the process created by the Georgia Legislature and set forth in the Georgia Election Code.

76.

Further, allowing a single political party to write rules for reviewing signatures, as paragraph 4 of the Litigation Settlement provides, is not “conducive to the fair...conduct of primaries and elections” or “consistent with law” under O.C.G.A. § 21-2-31.

77.

The rules and regulations set forth in the Litigation Settlement created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots, contrary to Georgia law that was utilized in determining the results of the November 3, 2020 general election.

78.

This disparate treatment is not justified by, and is not necessary to promote, any substantial or compelling state interest that cannot be accomplished by other, less restrictive means.

79.

The foregoing injuries, burdens, and infringements that are caused by Defendants' conduct violates the Equal Protection Clause of the Fourteenth Amendment.

80.

The foregoing violations occurred as a consequence of Defendants acting under color of state law. Accordingly, Plaintiff is entitled to declaratory and injunctive relief against Defendants pursuant to 42 U.S.C. § 1983.

81.

As a result of Defendants' unauthorized actions and disparate treatment of defective absentee ballots, this Court should enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the 2020 general election in Georgia on a statewide basis.

82.

Alternatively, this Court should enter an order, declaration, and/or injunction prohibiting Defendants from certifying the results of the General Elections which include the tabulation of defective absentee ballots, regardless of whether said ballots were cured.

83.

Alternatively, this Court should enter an order, declaration, and/or injunction that the results of the 2020 general election in Georgia are defective as a result of the above-described constitutional violations, and that Defendants are required to cure said deficiencies in a manner consistent with federal and Georgia law, and without the taint of the procedures described in the Litigation Settlement.

84.

Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm unless the relief requested herein is granted.

COUNT II
Violation of the Electors & Election Clauses
U.S. Const. Art. I, § 4, cl. 1 & Art. II, § 1, cl. 2

85.

Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth fully herein.

86.

The Electors Clause states that “[e]ach State shall appoint, in such Manner as *the Legislature* thereof may direct, a Number of Electors” for President. U.S. Const. art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the United States Constitution states that “[t]he Times, Places, and Manner of holding

Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof.” U.S. Const. art. I, § 4, cl. 1 (emphasis added).

87.

Secretary Raffensperger is not part of the Georgia Legislature and cannot exercise legislative power.

88.

Further, because the United States Constitution reserves for the Georgia Legislature the power to set the “Times, Places, and Manner” of holding elections for President and Congress, the Administrators have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation. U.S. Const. Art. I, § 4, cl. 1.

89.

By entering the Litigation Settlement, Secretary Raffensperger imposed a different procedure for handling defective absentee ballots that is contrary to the Georgia Election Code. *See* O.C.G.A. § 21-2-386.

90.

The procedure set forth in the Litigation Settlement for the handling of defective absentee ballots is not consistent with the laws of the State of Georgia,

and thus, Defendants' actions under the Litigation Settlement exceed their authority. *See* O.C.G.A. § 21-2-31(2).

91.

Defendants are not the Georgia Legislature, and their unilateral decision to implement rules and procedures regarding absentee ballots that are contrary to the Georgia Election Code constitutes a violation of the Electors and Elections Clauses of the United States Constitution.

92.

The foregoing violations occurred as a consequence of Defendants acting under color of state law. Accordingly, Plaintiff is entitled to declaratory and injunctive relief against Defendants pursuant to 42 U.S.C. § 1983.

93.

As a result of Defendants' unauthorized actions and disparate treatment of defective absentee ballots, this Court should enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the 2020 general election in Georgia on a statewide basis.

94.

Alternatively, this Court should enter an order, declaration, and/or injunction prohibiting Defendants from certifying the results of the General Elections which

include the tabulation of defective absentee ballots, regardless of whether said ballots were cured.

95.

Alternatively, this Court should enter an order, declaration, and/or injunction that the results of the 2020 general election in Georgia are defective as a result of the above-described constitutional violations, and that Defendants are required to cure said deficiencies in a manner consistent with federal and Georgia law, and without the taint of the procedures described in the Litigation Settlement.

96.

Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm unless the relief requested herein is granted.

COUNT III
Due Process
U.S. Const. amend. XIV, 42 U.S.C. § 1983

97.

Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth full herein.

98.

Voting is a fundamental right protected by the Fourteenth Amendment to the United States Constitution.

99.

The Fourteenth Amendment protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *See Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065, 1077-78 (1st Cir. 1978). “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush*, 531 U.S. at 104-05. Among other things, this requires “specific rules designed to ensure uniform treatment” in order to prevent “arbitrary and disparate treatment to voters.” *Id.* at 106-07.

100.

“[T]reating voters differently” thus “violate[s] the Equal Protection Clause” when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros*, 249 F.3d at 954. Indeed, a “minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote].” *Bush*, 531 U.S. at 105.

101.

In statewide and federal elections conducted in the State of Georgia, including, without limitation, the November 3, 2020 general election, the Hand Recount, and the upcoming January 5, 2021 run-off election, all candidates,

political parties, and voters, including, without limitation, Plaintiff, have a vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and that is otherwise free, fair, and transparent.

102.

Defendants have a duty to guard against deprivation of the right to vote and to ensure that all candidates and political parties have meaningful access to observe and monitor the electoral process, including, without limitation, the November 3, 2020 general election, the Hand Recount, and the upcoming January 5, 2021 run-off election, in order to ensure that the electoral process is properly administered in every election district and is otherwise free, fair, and transparent.

103.

Rather than heeding these mandates and duties, Defendants arbitrarily and capriciously denied, or allowed County Officials to deny, the Trump Campaign meaningful access to observe and monitor the electoral process, as is further set forth in the Affidavits.

104.

Defendants intentionally and/or arbitrarily and capriciously denied Plaintiff and the Trump Campaign access to and/or obstructed actual observation and

monitoring of the absentee ballots being processed by Defendants and County Officials, both in the November 3, 2020 general election and the Hand Recount.

105.

Defendants have acted and will continue to act under color of state law to violate the right to vote and due process as secured by the Fourteenth Amendment to the United States Constitution.

106.

As a result of Defendants' improper actions described herein, this Court should enter an order, declaration, and/or injunction requiring as follows:

- a. That any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, be reperformed consistent with this Court's declaration;
- b. That monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the upcoming January 5, 2021 run-off election;
- c. That Plaintiff and the Republican Party be given at least 24 hours notice prior to any and all election activity;

- d. That all ballots cast in Georgia be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-designated monitors;
- e. That the Republican Party immediately receive certified copies of all ballot envelopes and requests for absentee ballots received by Defendants, and further, that the Republican Party has the right to compare voter or application signatures on ballot envelopes and requests for absentee ballots with eNet; and
- f. That, for the upcoming January 5, 2021 run-off election, the Republican Party has the right to have absentee ballot watchers/monitors present at all signature verification processes, from the receipt of the request for an absentee ballot to the opening of the absentee ballot and processing of the same.

107.

Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

(a) That, as a result of Defendants' violations of the United States Constitution and violations of other federal and state election laws, this Court should enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the 2020 general election in Georgia on a statewide basis;

(b) Alternatively, that, as a result of Defendants' violations of the United States Constitution and violations of other federal and state election laws, this Court should enter an order, declaration, and/or injunction prohibiting Defendants from certifying the results of the General Elections which include the tabulation of defective absentee ballots, regardless of whether said ballots were cured;

(c) Alternatively, that, as a result of Defendants' violations of the United States Constitution and violations of other federal and state election laws, this Court should enter an order, declaration, and/or injunction that the results of the 2020 general election in Georgia are defective as a result of the above-described constitutional violations, and that Defendants are required to cure said deficiencies in a manner consistent with federal and Georgia law, and without the taint of the procedures described in the Litigation Settlement;

(d) That this Court should enter an order, declaration, and/or injunction requiring as follows:

1. That any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, be reperformed consistent with this Court's declaration;
2. That monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the upcoming January 5, 2021 run-off election;
3. That Plaintiff and the Republican Party be given at least 24 hours notice prior to any and all election activity;
4. That all ballots cast in Georgia be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-designated monitors;
5. That the Republican Party immediately receive certified copies of all ballot envelopes and requests for absentee ballots received by Defendants, and further, that the Republican Party has the right to compare voter or application signatures on ballot envelopes and requests for absentee ballots with the eNet; and

6. That, for the upcoming January 5, 2021 run-off election, the Republican Party has the right to have absentee ballot watchers/monitors present at all signature verification processes, from the receipt of the request for an absentee ballot to the opening of the absentee ballot and processing of the same; and

(e) Any and other such further relief that this Court or the Finder of Fact deems equitable and just.

Respectfully submitted this 16th day of November, 2020.


SMITH & LISS, LLC
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1 (B).

Respectfully submitted this 16th day of November, 2020.


SMITH & LISS, LLC

Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing and all exhibits and attachments thereto in the above-captioned matter to be filed with the United States District Court for the Northern District of Georgia, Atlanta Division, via the Court's CM-ECF system. I also hereby certify that I caused the foregoing and all exhibits and attachments thereto in the above captioned matter to be served, via FedEx and email upon:

Secretary of State Brad Raffensperger
214 State Capitol
Atlanta, Georgia 30334
brad@sos.ga.gov
soscontact@sos.ga.gov


Rebecca N. Sullivan
Georgia Department of Administrative Services
200 Piedmont Avenue SE
Suite 1804, West Tower
Atlanta, Georgia 30334-9010
rebecca.sullivan@doas.ga.gov

David J. Worley
Evangelista Worley LLC
500 Sugar Mill Road
Suite 245A
Atlanta, Georgia 30350
david@ewlawllc.com

Matthew Mashburn
Aldridge Pite, LLP
3575 Piedmont Road, N.E.
Suite 500
Atlanta, Georgia 30305
mmashburn@aldridgepite.com

Anh Le
Harley, Rowe & Fowler, P.C.
2700 Cumberland Parkway
Suite 525
Atlanta, Georgia 30339
ale@hrflegal.com

This 16th day of November, 2020.


SMITH & LISS, LLC
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

This **Compromise Settlement Agreement and Release** (“Agreement”) is made and entered into by and between the Democratic Party of Georgia, Inc. (“DPG”), the DSCC, and the DCCC (collectively, the “Political Party Committees”), on one side, and Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Seth Harp, and Anh Le (collectively, “State Defendants”), on the other side. The parties to this Agreement may be referred to individually as a “Party” or collectively as the “Parties.” The Agreement will take effect when each and every Party has signed it, as of the date of the last signature (the “Effective Date”).

WHEREAS, in the lawsuit styled as *Democratic Party of Georgia, et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-5028-WMR (the “Lawsuit”), the Political Party Committees have asserted claims in their Amended Complaint [Doc. 30] that the State Defendants’ (i) absentee ballot signature matching procedure, (ii) notification process when an absentee ballot is rejected for any reason, and (iii) procedure for curing a rejected absentee ballot, violate the First and Fourteenth Amendments to the United States Constitution by unduly burdening the right to vote, subjecting similarly situated voters to disparate treatment, and failing to afford Georgia voters due process (the “Claims”), which the State Defendants deny;

WHEREAS, the State Defendants, in their capacity as members of the State Election Board, adopted on February 28, 2020 Rule 183-1-14-.13, which sets forth specific and standard notification procedures that all counties must follow after rejection of a timely mail-in absentee ballot;

WHEREAS, the State Defendants have a Motion to Dismiss [Doc. 45] pending before the Court, which sets forth various grounds for dismissal of the Amended Complaint, including mootness in light of the State Election Board’s promulgation subsequent to adoption on February 28, 2020 of Rule 183-1-14-.13, which Motion the Political Party Committees deny is meritorious;

WHEREAS, all Parties desire to compromise and settle all disputed issues and claims arising from the Lawsuit, finally and fully, without admission of liability, having agreed on the procedures and guidance set forth below with respect to the signature matching and absentee ballot rejection notification and cure procedures; and

WHEREAS, by entering into this Agreement, the Political Party Committees do not concede that the challenged laws and procedures are constitutional, and

similarly, the State Defendants do not concede that the challenged laws and procedures are unconstitutional.

NOW THEREFORE, for and in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Dismissal. Within five (5) business days of March 22, 2020, the effective date of the Prompt Notification of Absentee Ballot Rejection rule specified in paragraph 2(a), the Political Party Committees shall dismiss the Lawsuit with prejudice as to the State Defendants.

2. Prompt Notification of Absentee Ballot Rejection.

(a) The State Defendants, in their capacity as members of the State Election Board, agree to promulgate and enforce, in accordance with the Georgia Administrative Procedures Act and State Election Board policy, the following State Election Board Rule 183-1-14-.13 of the Georgia Rules and Regulations:

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.

Ga. R. & Reg. § 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

(b) Unless otherwise required by law, State Defendants agree that any amendments to Rule 183-1-14-.13 will be made in good faith in the spirit of ensuring that voters are notified of rejection of their absentee ballots with ample time to cure

their ballots. The Political Party Committees agree that the State Election Board's proposed amendment to Rule 183-1-14-.13 to use contact information on absentee ballot applications to notify the voter fits within that spirit.

3. Signature Match.

(a) Secretary of State Raffensperger, in his official capacity as Secretary of State, agrees to issue an Official Election Bulletin containing the following procedure applicable to the review of signatures on absentee ballot envelopes by county elections officials and to incorporate the procedure below in training materials regarding the review of absentee ballot signatures for county registrars:

County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall

commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

(b) The Parties agree that the guidance in paragraph 3(a) shall be issued in advance of all statewide elections in 2020, including the March 24, 2020 Presidential Primary Elections and the November 3, 2020 General Election.

4. Consideration of Additional Guidance for Signature Matching. The State Defendants agree to consider in good faith providing county registrars and absentee ballot clerks with additional guidance and training materials to follow when comparing voters' signatures that will be drafted by the Political Party Committees' handwriting and signature review expert.

5. Attorneys' Fees and Expenses. The Parties to this Agreement shall bear their own attorney's fees and costs incurred in bringing or defending this action, and no party shall be considered to be a prevailing party for the purpose of any law, statute, or regulation providing for the award or recovery of attorney's fees and/or costs.

6. Release by The Political Party Committees. The Political Party Committees, on behalf of themselves and their successors, affiliates, and representatives, release and forever discharge the State Defendants, and each of their successors and representatives, from the prompt notification of absentee ballot rejection and signature match claims and causes of action, whether legal or equitable, in the Lawsuit.

7. No Admission of Liability. It is understood and agreed by the Parties that this Agreement is a compromise and is being executed to settle a dispute. Nothing contained herein may be construed as an admission of liability on the part of any of the Parties.

8. Authority to Bind; No Prior Assignment of Released Claims. The Parties represent and warrant that they have full authority to enter into this Agreement and bind themselves to its terms.

9. No Presumptions. The Parties acknowledge that they have had input into the drafting of this Agreement or, alternatively, have had an opportunity to have input into the drafting of this Agreement. The Parties agree that this Agreement is and shall be deemed jointly drafted and written by all Parties to it, and it shall be interpreted fairly, reasonably, and not more strongly against one Party than the other.

Accordingly, if a dispute arises about the meaning, construction, or interpretation of this Agreement, no presumption will apply to construe the language of this Agreement for or against any Party.

10. Knowing and Voluntary Agreement. Each Party to this Agreement acknowledges that it is entering into this Agreement voluntarily and of its own free will and accord, and seeks to be bound hereunder. The Parties further acknowledge that they have retained their own legal counsel in this matter or have had the opportunity to retain legal counsel to review this Agreement.

11. Choice of Law, Jurisdiction and Venue. This Agreement will be construed in accordance with the laws of the State of Georgia. In the event of any dispute arising out of or in any way related to this Agreement, the Parties consent to the sole and exclusive jurisdiction of the state courts located in Fulton County, Georgia. The Parties waive any objection to jurisdiction and venue of those courts.

12. Entire Agreement; Modification. This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to accept this Agreement, except for those set forth in this Agreement.

13. Counterparts. This Agreement may be executed in counterparts which, taken together, will constitute one and the same Agreement and will be effective as of the date last set forth below, and signatures by facsimile and electronic mail will have the same effect as the originals.

IN WITNESS WHEREOF, the Parties have set their hands and seals to this instrument on the date set forth below.

Dated: March 6, 2020

/s/ Bruce V. Spiva

Marc E. Elias*
Bruce V. Spiva*
John Devaney*
Amanda R. Callais*
K'Shaani Smith*
Emily R. Brailey*
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
MElias@perkinscoie.com
BSpiva@perkinscoie.com
ACallais@perkinscoie.com
KShaaniSmith@perkinscoie.com
EBrailey@perkinscoie.com

**Admitted Pro Hac Vice*

Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN & HORST, LLC
One Atlantic Center
1201 W. Peachtree St., NW, Suite 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
sparks@khlawfirm.com

Counsel for Plaintiffs

/s/ Vincent R. Russo

Christopher M. Carr 112505
Attorney General
Bryan K. Webb 743580
Deputy Attorney General
Russell D. Willard 760280
Senior Assistant Attorney General
Charlene S. McGowan 697316
Assistant Attorney General
Office of the Georgia Attorney General
40 Capitol Square S.W.
Atlanta, GA 30334
cmcgowan@law.ga.gov
Telephone: (404) 656-3389
Facsimile: (404) 651-9325

Vincent R. Russo
Georgia Bar No. 242628
vrusso@robbinsfirm.com
Josh Belinfante
Georgia Bar No. 047399
jbelinfante@robbinsfirm.com
**ROBBINS ROSS ALLOY
BELINFANTE LITTLEFIELD
LLC**
500 14th Street, N.W.
Atlanta, Georgia 30318
Telephone: (678) 701-9381
Facsimile: (404) 856-3250

Counsel for State Defendants

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF AMANDA COLEMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Amanda Coleman, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 15, 2020 by Alyssa Specht from the Trump Campaign, on behalf of the Georgia Republican Party (the "Republican Party").
3. Ms. Edmunds of the Republican Party told to arrive at 285 Andrew Young International Blvd. between 8:00 a.m. and 9:00 am on the morning of November 15. The address was for the Georgia World Congress Center, and there was no exterior activity at that address when I arrived. There were no instructional or directional signs.
4. After I made a series of phone calls ending with Matthew Honeycutt, he gave me directions to go to the bottom rear of the building to an "employee entrance." I arrived at 9:00 a.m.
5. As I arrived, a large crowd was leaving, saying that they had "just finished" the hand recount.
6. Another volunteer and I walked into the counting area to verify what had been said and to observe any activity, as we had been requested to do. Some counting activity appeared to still be going on.

7. We signed in, and then were told that there were “too many” volunteers on the floor and that we would not be permitted to walk the floor and observe.
8. I saw a few people here and there walking the floor. But there were no other observers at the tables where counting activity was happening. There were two people per table and they appeared to be sticking ballots into piles. We were not close enough to see much of anything else because we were not allowed.
9. I believed that we were there to watch actual “hand counting” as had been announced in the newspapers and by the Secretary of State when he requested a “hand count.”
10. There was no way to tell if any counting was accurate or if the activity was proper.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct

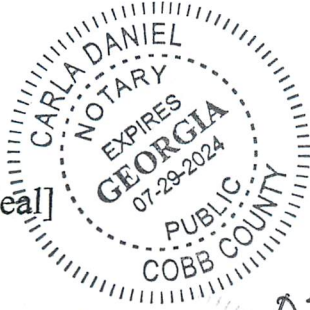
Amanda Coleman
Amanda Coleman

STATE OF GEORGIA

COUNTY OF FULTON

Amanda Coleman, appeared before me, a Notary Public in and for the above jurisdiction, this 16th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]



Carla Daniel
Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)

Defendants.

CIVIL ACTION
FILE NO. _____

**AFFIDAVIT OF MARIA DIEDRICH IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Maria Diedrich, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal
knowledge of the matters stated herein. I am a resident of Fulton County.

{00583831.}

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 14 and 15, 2020 by Alyssa Specht from the Trump Campaign, on behalf of the Georgia Republican Party (the "Republican Party").
3. I believed that we were there to watch actual "hand counting" as had been announced in the newspapers and by the Secretary of State when he requested a "hand count."
4. On November 15, 2020, I arrived at the Georgia World Congress Center at 8:00 a.m. to monitor the hand counting. By 9:15 a.m., officials announced that voting was complete and sent everyone home. I spoke to a security guard who was shocked because he planned to be there until 10 p.m. He had been at that location until 10:00 p.m. on the previous night.
5. The officials announced that they had counted all the absentee on November 14 at night and they were already boxed up.
6. The only ballots left to count (for me to observe) were electronic ones, which were being counted in stacks or rows (not consistent).

7. There was no consistency on counting. Only a few tables (of the 170+) were verbally doing the pass count, so there was no way to see that the correct candidate was being put into the correct pile.
8. I observed (and told an election worker) that one counter seemed to be making piles of 9 (but counting them as 10). It took a while for me to get someone to help me, so by the time they came to observe him, the batch was counted and they did not make him recount the stack.
9. Counters were writing the number of ballots for each candidate on scrap paper (no one had the same paper, some was torn, some was colored) and then adding manually. This is where I noticed some manual entry errors, specifically when an elderly counter wrote down the number ballots, she couldn't remember the number, the person with her said a different number, they finally agreed on a number, she added numbers on a scratch paper before putting the number onto the official Audit Board Batch Sheet.
10. The batch sheets were taken to Arlo to input but there was no independent verification or monitoring of the numbers being input.
11. Five times between 8:00 a.m. and 9:00 a.m., I noticed tables with ballots on the table, but both workers had gone to get food. The ballots were left unattended. Drinks were on the tables with ballots. I noticed two tables of a

single person counting, the partner had gone to get food. After I mentioned this to the election official, they told both tables to wait.

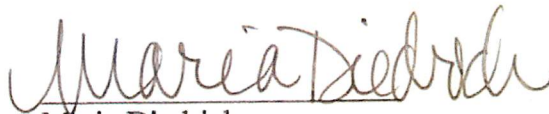
12. At 9:00 a.m., county officials announced that there were too many party monitors and asked the Republican watchers to gather and decide which 17 would be on the floor. There were only 2 paid Republican campaign workers and they tried to organize 17 from about 30 total personnel who had volunteered. Within 10 minutes, we had completed the reorganization.

13. At that point, county officials told most of the counters to go home. There were probably 10 tables still counting.

14. There had been no meaningful way to review or audit any activity.

[SIGNATURE AND OATH ON NEXT PAGE]

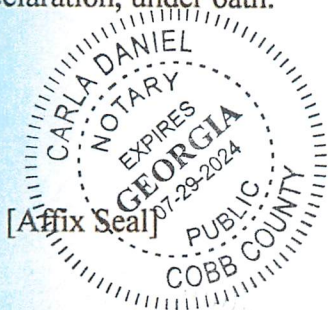
I declare under penalty of perjury that the foregoing statements are true and correct.



Maria Diedrich

STATE OF GEORGIA

COUNTY OF FULTON

Maria Diedrich , appeared before me, a Notary Public in and for the above jurisdiction, this 16th day of November 2020, and after being duly sworn, made this Declaration, under oath.




Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)

Defendants.)

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG


VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

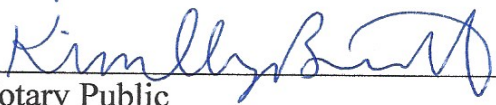
Personally appeared before me, an officer duly authorized by law to administer oaths, L. Lin Wood, Jr., who after first being duly sworn, states that the

facts contained in the within and foregoing Verified Amended Complaint for
Declaratory and Injunctive Relief are true and correct.



L. Lin Wood, Jr.

Sworn to and subscribed before me
this 16 day of November, 2020.



Notary Public

My Commission Expires:

3/4/2021



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, et al.,**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**PLAINTIFF’S EMERGENCY MOTION FOR INJUNCTIVE RELIEF AND
MEMORANDUM OF LAW IN SUPPORT THEREOF**

COMES NOW Plaintiff **L. Lin Wood, Jr.** (“Plaintiff”), by and through his undersigned counsel of record, and files this his Emergency Motion for Injunctive Relief and Memorandum of Law in Support Thereof (the “Motion”), respectfully showing this honorable Court as follows:¹

Plaintiff, an individual residing in Fulton County, Georgia, is a qualified, registered “elector” who possesses all of the qualifications for voting in the State of

¹ This action and the instant Motion pertain to the certification of Georgia’s results from the November 3, 2020 general election. The results are to be certified on November 20, 2020, and as such, Plaintiff request an immediate hearing on this Motion and that review of the Motion otherwise be expedited pursuant to Local Rule 7.2(B).

Georgia. *See* O.C.G.A. §§ 21-2-2(7), 21-2-216(a); (*see also* Verified Am. Compl. for Decl. and Inj. Relief (the “Complaint”), ¶ 8). Plaintiff seeks declaratory relief and an emergency injunction from this Court halting the certification of Georgia’s results for the November 3, 2020 presidential election. As a result of the defendants’ violations of the United States Constitution and other election laws, Georgia’s election tallies are suspect and tainted with impropriety. Thus, this Court should issue an injunction to bar the certification of those results until Plaintiff’s substantive claims can be heard to ensure that Georgia’s electoral process is restored to a system of fairness.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.

A. The Complaint.

On November 13, 2020, Plaintiff filed his original Verified Complaint for Declaratory and Injunctive Relief, which was subsequently amended. The named defendants include Defendant Brad Raffensperger, in his official capacity as Secretary of State of Georgia and as Chairperson of Georgia’s State Election Board, as well as the other members of the State Election Board in their official capacities – Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the “State Election Board”). (*See* Compl., ¶¶ 9-10.)

The Complaint alleges violations of the United States Constitution and the

amendments thereto in the regards to the November 3, 2020 general election, as well as the “full hand recount” of all ballots cast in that election, to be completed by November 18, 2020 (the “Hand Recount”), with those same violations likely to occur again in the January 5, 2021 run-off election for Georgia’s United States Senators. (*See generally id.*) The Complaint sets forth the following:

B. Federal Constitutional Protections for Free and Fair Elections.

The Elections Clause of the United States Constitution states that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives *shall be prescribed in each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. Const. Art. I, § 4, cl. 1 (emphasis added); (*see* Compl., ¶ 12). Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” *Smiley v. Holm*, 285 U.S. 355, 367 (1932); *see also Ariz. St. Leg. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 807-08 (2015); (*see* Compl., ¶ 13). In Georgia, the “legislature” is the General Assembly (the “Georgia Legislature”). *See* Ga. Const. Art. III, § I, Para. I; (*see* Compl., ¶ 14).

Because the Constitution reserves for state legislatures the power to set the time, place, and manner of holding federal elections, state executive officers have

no authority to unilaterally exercise that power, much less flout existing legislation, nor to ignore existing legislation. (*See* Compl., ¶ 15.) While the Elections Clause “was not adopted to diminish a State’s authority to determine its own lawmaking processes,” it does hold states accountable to their chosen processes in regulating federal elections. *Ariz. St. Leg.*, 135 S.Ct. at 2677, 2668.

C. Georgia Law Governing the Handling of Absentee Ballots.

The Georgia Legislature established a clear an efficient process for handling absentee ballots. To the extent that there is any change in that process, that change must, under Article I, Section 4 of the Constitution, be prescribed by the Georgia Legislature. (*See* Compl., ¶¶ 17-18.)

The Georgia Legislature instructed county registrars and clerks (the “County Officials”) regarding the handling of absentee ballots in O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-380.1. (*See* Compl., ¶ 19.) The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector’s voter card or the most recent update to such absentee elector’s voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and ***shall***, if the information and signature appear to be valid and other identifying information appears to be correct, so

certify by signing or initialing his or her name below the voter's oath...

O.C.G.A. § 21-2-386(a)(1)(B) (emphasis added); (*see* Compl., ¶ 20).

The Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot"). *See* O.C.G.A. § 21-2-386(a)(1)(C); (Compl., ¶ 22.) With respect to defective absentee ballots:

If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added); (*see* Compl., ¶ 23). The Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. (*See* Compl., ¶ 24.)

D. Defendants' Unauthorized Actions to Alter the Georgia Election Code and the Processing of Defective Absentee Ballots.

In March 2020, Secretary Raffensperger, and the State Election Board, who

administer the state elections (collectively the “Administrators”) entered into a “Compromise and Settlement Agreement and Release” (the “Litigation Settlement”) with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (the “Democrat Agencies”), *setting forth different standards to be followed by County Officials in processing absentee ballots in Georgia.*² (See Compl., ¶¶ 25-26.) Although Secretary Raffensperger is authorized to promulgate rules and regulations that are “conducive to the fair, legal, and orderly conduct of primaries and elections,” all such rules and regulations must be “consistent with law.” O.C.G.A. § 21-2-31(2); (see Compl., ¶ 28).

Under the Litigation Settlement, the Administrators agreed to change the statutorily-prescribed process of handling absentee ballots in a manner that was not consistent with the laws promulgated by the Georgia Legislature. (See Compl., ¶ 28.) The Litigation Settlement provides that the Secretary of State would issue an “Official Election Bulletin” to County Officials overriding the prescribed statutory procedures. The unauthorized Litigation Settlement procedure, set forth below, is more cumbersome, and makes it much more difficult to follow the statute

² See *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1. A true and correct copy of the Litigation Settlement is attached hereto and incorporated herein as **Exhibit A**.

with respect to defective absentee ballots. (See Compl., ¶¶ 30-32.)

Under the Litigation Settlement, the following language added to the pressures and complexity of processing defective absentee ballots, making it less likely that they would be identified or, if identified, processed for rejection:

County registrars and absentee ballot clerks ***are required***, upon receipt of each mail-in absentee ballot, to compare the signature or make of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. ***If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under O.C.G.A. § 21-2-386(a)(1)(C).*** Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule

183-1-14-.13.

(*See* Compl., ¶ 33; *see* Ex. A, Litigation Settlement, p. 3-4, ¶ 3, “Signature Match” (emphasis added).)

The underlined language above is not consistent with the statute adopted by the Georgia Legislature. (*See* Compl., ¶ 34.) First, the Litigation Settlement overrides the clear statutory authorities granted to County Officials individually and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot. (*See* Compl., ¶ 35.) Such a procedure creates a cumbersome bureaucratic procedure to be followed with each defective absentee ballot – and makes it likely that such ballots will simply not be identified by the County Officials. (*See id.*, ¶ 36.)

Second, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature. (*See id.*, ¶ 37.) The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector’s identity. *See* O.C.G.A. § 21-2-381(b)(1) (providing, in pertinent part, “In order to be found eligible to vote an absentee ballot in person at the registrar’s office or absentee ballot clerk’s office, such person shall show one of the forms of identification listed in Code Section 21-2-417...”); (*see* Compl.,

¶ 38.) Under O.C.G.A. § 21-2-220(c), the elector must present identification, but need not submit identification if the electors submit with their application information such that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system. (*See* Compl., ¶ 39.) The system for identifying absentee ballots was carefully constructed by the Georgia Legislature to ensure that electors were identified by acceptable identification, but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot. (*See* Compl., ¶ 40.) Under the Litigation Settlement, any determination of a signature mismatch would lead to the cumbersome process described in the settlement, which was not intended by the Georgia Legislature, which authorized those decisions to be made by single election officials. (*See id.*, ¶ 41.) The Georgia Legislature also provided for the opportunity to cure (again, different from the opportunity to cure in the Litigation Settlement), but did not allocate funds for three County Officials for every mismatch decision. (*See id.*, ¶ 42.)

Finally, under paragraph 4 of the Litigation Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering in good faith “additional guidance and training materials” drafted by the “handwriting and signature review expert” of the Democrat

Agencies. (*See* Compl., ¶ 47; *see* Ex. A, Litigation Settlement, p. 4, ¶ 4, “Consideration of Additional Guidance for Signature Matching.”) Allowing a single political party to write rules for reviewing signatures is not “conducive to the fair...conduct of primaries and elections” or “consistent with law” under O.C.G.A. § 21-2-31. (*See* Compl., ¶ 48.)

In short, the Litigation Settlement by itself has created confusion, misplaced incentives, and undermined the confidence of the voters of the State of Georgia in the electoral system. (*See* Compl., ¶ 49.) Neither it nor any of the activities spawned by it were authorized by the Georgia Legislature, as required by the United States Constitution. (*See* Compl., ¶ 50.)

E. The November 3, 2020 Election and “Full Hand Recount.”

According to Secretary Raffensperger, in the November 3, 2020 general election: (1) in the presidential race, 2,457,880 votes were cast for President Donald J. Trump, and 2,472,002 for Joseph R. Biden; (2) in one U.S. Senate race, 2,458,665 votes were cast for Senator David A. Perdue, and 2,372,086 for Jon Ossoff; and (3) in the special election for the other of Georgia’s U.S. Senators, 1,271,106 votes were cast for Senator Kelly Loeffler, and 1,615,402 for Reverend Raphael Warnock. (*See* Compl., ¶¶ 52-54.) A run-off election for the U.S. Senators will occur on January 5, 2021. (*See id.*, ¶¶ 53-54.)

Secretary Raffensperger directed a “full [H]and [R]ecount” of all ballots in the State of Georgia to be completed by Wednesday, November 18, 2020. (*See* Compl., ¶ 55.) Secretary Raffensperger declared that for the Hand Recount,

Per the instructions given to counties as they conduct their audit triggered *full hand recounts*, designated monitors will be given *complete access to observe the process from the beginning*. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely... Designated monitors will be able to *watch the recount while standing close to the elections workers conducting the recount*.

Political parties are allowed to designate *a minimum of two monitors per county* at a ratio of one monitor per party for every ten audit boards in a county... Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted, providing monitors and the public an additional way to keep tabs on the process.

(*See* Compl., ¶ 56 (emphasis added).)

Non-parties Amanda Coleman and Maria Diedrich are two individuals who volunteered to serve as designated monitors for the Donald J. Trump Presidential Campaign, Inc. (the “Trump Campaign”) on behalf of the Georgia Republican Party (the “Republican Party”) at the Hand Recount.³ (*See* Compl., ¶ 57; Ex. B, Coleman Aff., ¶ 2; Ex. C, Diedrich Aff., ¶ 2.) Non-party Susan Voyles is a poll

³ Attached hereto and incorporated herein as **Exhibits B and C**, respectively, are true and correct copies of (1) the Affidavit of Amanda Coleman (the “Coleman Affidavit”), and (2) the Affidavit of Maria Diedrich (the “Diedrich Affidavit”).

manager for Fulton County and participated in the Hand Recount as an auditor.⁴ (See Ex. D, Voyles Aff., ¶ 2.)

The Affidavits set forth various improprieties and improper handling of ballots by County Officials and their employees that were personally observed while monitoring the Hand Recount. (See Compl., ¶ 58; Ex. B, Coleman Aff., ¶¶ 3-10; Ex. C, Diedrich Aff., ¶¶ 4-14; Ex. D, Voyles Aff., ¶¶ 4-28.) For example, Ms. Coleman was directed to arrive at the Hand Recount between 8:00 a.m. and 9:00 a.m. on November 15, 2020, and arrived at 9:00 a.m. (See Ex. B, Coleman Aff., ¶¶ 3-4.) As she arrived, Ms. Coleman was informed by a large crowd that “they had ‘just finished’ the hand recount.” (See *id.*, ¶ 5.)

Ms. Diedrich arrived at the Hand Recount at 8:00 a.m. on November 15, 2020. (See Compl., ¶ 60; Ex. C, Diedrich Aff., ¶ 4.) Ms. Diedrich reports that, “By 9:15 a.m., officials announced that voting was complete and sent everyone home... The officials announced that they had counted all the absentee [ballots] on November 14 at night and they were already boxed up.” (See *id.*, ¶¶ 4-5.) As a result of her observations of the Hand Recount as a Republican Party monitor, Ms.

⁴ Attached hereto and incorporated herein as **Exhibit D** is the Affidavit of Susan Voyles (the “Voyles Affidavit”). Further, attached hereto and incorporated herein as **Exhibits E through M and R through U** are ten (10) additional affidavits of individuals who personally observed the irregularities occurring during the Hand Recount and the Georgia election process. Together with the Coleman, Diedrich, and Voyles Affidavits, these are collectively referred to as the “Affidavits.”

Diedrich declared, “There had been no meaningful way to review or audit any activity” at the Hand Recount. (*See* Compl., ¶ 61; Ex. C, Diedrich Aff., ¶ 14.) Ms. Coleman likewise declared, “There was no way to tell if any counting was accurate or if the activity was proper.” (*See* Compl., ¶ 62; Ex. B, Coleman Aff., ¶ 10.) Ms. Voyles, a Hand Recount auditor, observed numerous irregularities, including a batch of “pristine” ballots that appeared to be machine-marked, with the vast majority of those ballots being votes for Joseph Biden. (*See* Ex. D, Voyles Aff., ¶¶ 12-16.) There was no actual “hand” recounting of the ballots during the Hand Recount, but rather, County Officials and their employees simply conducted another machine count of the ballots.⁵ (*See* Compl., ¶ 63.)

III. ARGUMENT AND CITATION OF AUTHORITIES.

A. The Standard for Relief.

The United States Supreme Court summarized the test for the granting of a

⁵ Additional areas of investigation are underway regarding the legitimacy and validity of Georgia’s election results, as evidenced by: (1) the redacted Declaration dated November 15, 2020, attached hereto and incorporated herein as **Exhibit N** (the “Redacted Declaration”); (2) the Declaration of Christos A. Makridis dated November 16, 2020, attached hereto and incorporated herein as **Exhibit O** (the “Makridis Declaration”); and (3) the article entitled “Ballot-Marking Devices Cannot Ensure the Will of the Voters,” published in the *Election Law Journal* on November 3, 2020, a true and correct copy of which is attached hereto and incorporated herein as **Exhibit P** (the “Ballot Marking Devices Failure Study”); *see generally* the Affidavit of Russell James Ramsland, Jr., attached hereto and incorporated herein as **Exhibit Q**.

preliminary injunction in *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008):

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

See also Alabama v. U.S. Army Corps of Eng's, 424 F.3d 1117, 1131 (11th Cir. 2005). These are not rigid requirements to be applied by rote. “The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). “[T]he granting of [a] preliminary injunction rests in the sound discretion of the district court.” *Harris Corp. v. Nat’l Iranian Radio & Television*, 691 F.2d 1344, 1354 (11th Cir. 1982).

“[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.” *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1994) (at the “preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction”).

B. This Court Should Enter Emergency Injunctive Relief.

Plaintiff demonstrates herein all four elements for equitable relief. “When

the state legislature vests the right to vote for President in its people, the right to vote *as the legislature has prescribed is fundamental*; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasis added). The evidence here shows not only that Defendants failed to administer the November 3, 2020 election and Hand Recount in compliance with the manner prescribed by the Georgia Legislature, but also that Defendants violated Plaintiff’s equal protection and due process rights. Unless Defendants are enjoined from certifying the results of the election, Plaintiff will be left with no remedy because Georgia’s electoral votes for President will not be awarded to the proper candidate.

1. Plaintiff has a substantial likelihood of success.

Plaintiff has made a credible showing that Defendants’ intentional actions jeopardized the rights of Georgia citizens to select their leaders under the process set out by the Georgia Legislature. Defendants’ conduct violated Plaintiff’s constitutional rights in at least three separate ways.

a. Defendants violated the Equal Protection Clause.

When deciding a constitutional challenge to state election laws, the flexible standard outlined in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992) applies. Under *Anderson* and *Burdick*, courts must

“weigh the character and magnitude of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (citations and quotations omitted). “[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318-19 (11th Cir. 2019).

“To establish an undue burden on the right to vote under the *Anderson-Burdick* test, Plaintiffs need not demonstrate discriminatory intent behind the signature-match scheme or the notice provisions because we are considering the constitutionality of a generalized burden on the fundamental right to vote, for which we apply the *Anderson-Burdick* balancing test instead of a traditional equal-protection inquiry.” *Lee*, 915 F.3d at 1319.

Plaintiff’s equal protection claim is straightforward: states may not, by arbitrary action or other unreasonable impairment, burden a citizen’s right to vote. *See Baker v. Carr*, 369 U.S. 186, 208 (1962) (“citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution”). “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value on

person's vote over that of another.” *Bush*, 531 U.S. at 104-05. Among other things, this requires “specific rules designed to ensure uniform treatment” in order to prevent “arbitrary and disparate treatment to voters.” *Id.* at 106-07; *see also Dunn v. Bloomstein*, 405 U.S. 330, 336 (1972) (providing that each citizen “has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction”).

“The right to vote extends to all phases of the voting process, from being permitted to place one's vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the initial allocation of the franchise as well as the manner of its exercise. Once the right to vote is granted, a state may not draw distinctions between voters that are inconsistent with the guarantees of the Fourteenth Amendment's equal protection clause.” *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 695 (W.D. Pa. 2003) (citations and quotations omitted). “[T]reating voters differently” thus “violate[s] the Equal Protection Clause” when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros v. Bd. of Elections*, 249 F.3d 941, 954 (9th Cir. 2001). Indeed, a “minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote].” *Bush*, 531 U.S. at 105.

Defendants are not part of the Georgia Legislature and cannot exercise

legislative power to enact rules or regulations regarding the handling of defective absentee ballots that are contrary to the Georgia Election Code. By entering the Litigation Settlement, however, Defendants unilaterally and without authority altered the Georgia Election Code and the procedure for processing defective absentee ballots. The result is that absentee ballots have been processed differently by County Officials than the process created by the Georgia Legislature and set forth in the Georgia Election Code. Further, allowing a single political party to write rules for reviewing signatures, as paragraph 4 of the Litigation Settlement provides, is not “conducive to the fair...conduct of primaries and elections” or “consistent with law” under O.C.G.A. § 21-2-31.

The rules and regulations set forth in the Litigation Settlement created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots, and for determining which of such ballots should be “rejected,” contrary to Georgia law. *See* O.C.G.A. § 21-2-386; (*see also* Ex. A, Litigation Settlement, p. 3-4, ¶ 3, “Signature Match”). This disparate treatment is not justified by, and is not necessary to promote, any substantial or compelling state interest that cannot be accomplished by other, less restrictive means. As such, there is a substantial likelihood that Plaintiff will be successful in demonstrating that he has been harmed by Defendants’ violations of his equal protection rights, and an injunction

should be issued to temporarily stay the certification of Georgia's election results.

b. *Defendants violated the Electors Clause.*

Defendants further violated the Constitution by improperly requiring the use of a system for processing defective absentee ballots that is different from the procedures prescribed by the Georgia Legislature. Article II of the Constitution provides that the rules for presidential elections be established by each state “in such Manner as the Legislature thereof may direct.” U.S. Const. Art. II § 1, cl. 2. Where, as here, the Georgia Legislature has enacted a specific election code, “the clearly expressed intent of the legislature must prevail.” *Bush*, 531 U.S. at 120 (Rehnquist, C.J., concurring).

The Georgia Legislature provided the steps to be followed by County Officials with respect to defective absentee ballots, and the repeated use of the word “shall” in that section demonstrates the Georgia Legislature’s intent that the requirements are mandatory, not discretionary. *See* O.C.G.A. § 21-2-386(a)(1)(C). By requiring County Officials to utilize the procedure set forth in the Litigation Settlement, however, Defendants altered the otherwise statutorily mandated procedure contrary to the Georgia Election Code and the United States Constitution. *See* U.S. Const. Art. II § 1, cl. 2; O.C.G.A. § 21-2-31(2); (*see also* Ex. A, Litigation Settlement, p. 3-4, ¶ 3, “Signature Match”). As such, Georgia’s

results for the November 3, 2020 election are tainted with the improper handling and tabulation of defective absentee ballots in violation of the Electors and Election Clauses of the Constitution. Thus, Plaintiff has a substantial likelihood of success, and an emergency injunction should be issued to prevent the certification of any vote tabulation that includes improperly handled defective absentee ballots.

c. *The Hand Recount was violated Due Process.*

Secretary Raffensperger announced that a “full [H]and [R]ecount” of Georgia’s November 3, 2020 election results would occur. (*See* Compl., ¶ 55.) For the full Hand Recount, “Political parties are allowed to designate a minimum of two monitors per county” in order to “watch the recount while standing close to the elections workers conducting the recount” and provide “an additional way to keep tabs on the process” to “ensure the recount is conducted fairly and securely.” (*See* Compl., ¶ 56.) The Georgia Election Code also sets forth the means in which a recount is to be conducted, and permits “each such party or body” to “send two representatives to be present at such recount.” O.C.G.A. § 21-2-495(a)-(b).

Having declared that a full hand recount of Georgia’s election results would occur, Secretary Raffensberger is required to comply with the procedures for the Hand Recount. The Affidavits attached hereto, however, demonstrate that the Hand Recount has not been conducted in a manner consistent with the Georgia Election

Code. Monitors have been denied the opportunity to be present throughout the entire Hand Recount, and when allowed to be present, they were denied the opportunity to observe the Hand Recount in any meaningful way. Further, monitors have been denied the ability to seek redress of the irregularities they have observed during their limited ability to monitor the Hand Recount.

The failure of Defendants to ensure that the Hand Recount is conducted fairly and in compliance with the Georgia Election Code is a deprivation of the Fourteenth Amendment's protection of the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *See Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994). Defendants have a duty to guard against the deprivation of the right to vote and ensure that the public has meaningful access to observe and monitor the electoral process.

Rather than heeding these mandates and duties, however, Defendants intentionally and/or arbitrarily and capriciously denied election monitors meaningful access to observe and monitor the electoral process. Defendants' failures constitute a deprivation of Plaintiff's due process rights and result in an election result that is tainted with constitutional violations and unfairness. As such, this Court should enjoin Defendants from certifying Georgia's election results, and should require that the Hand Recount be reperformed in a manner

consistent with the Georgia Election Code.

2. Plaintiff will suffer irreparable harm.

The irreparable nature of the harm to Plaintiff is apparent. “It is well-settled that an infringement on the fundamental right to vote amounts in an irreparable injury.” *New Ga. Project v. Raffensperger*, 2020 U.S. Dist. LEXIS 159901, at *86 (N.D. Ga. Aug. 31, 2020). If the Georgia vote count, including defective absentee ballots that were not processed according to the Georgia Election Code, is certified, and if the Hand Recount is not properly reconducted, then Georgia’s election results are improper and suspect, resulting in Georgia’s electoral college votes going to Joseph R. Biden contrary to the votes of the majority of Georgia qualified electors. Plainly, there is no adequate remedy at law if this occurs.

3. The Balance of Harms and Public Interest.

The remaining two factors for the preliminary injunction test, “harm to the opposing party and weighing the public interest merge when the Government is the opposing party.” *New Ga. Project*, 2020 U.S. Dist. LEXIS 159901, at *86 (*quoting Nken v. Holder*, 556 U.S. 418, 435 (2009)) (alterations and punctuation omitted). Plaintiff seeks a stay in the certification of Georgia’s election results to preserve the status quo while this case proceeds. Defendants will bear little harm so long as they certify the Georgia election results by November 20, 2020, the

federal safe-harbor date. If Defendants prevail by or before that date, the same electors will be appointed with ample time to vote in the Electoral College. If Plaintiff prevails, it can only be because Defendants had no legitimate interest in certifying a constitutionally flawed election outcome. Either way, Defendants will not suffer harm from a slight delay.

By contrast, Plaintiff (and the citizens of Georgia) could lose his opportunity for meaningful relief entirely if the vote total is certified, since it is not clear what remedies would remain after that point. *See New Ga. Project*, 2020 U.S. Dis. LEXIS 15901, at *86-87 (concluding that movant satisfied balance of harms/public interest factors, as “Plaintiffs will be forever harmed if they are unconstitutionally deprived of their right to vote”). The low costs to Defendants and high potential harm to Plaintiff make this a case with substantial net harm an injunction can prevent. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017).

Moreover, the public will be served by this injunction. “[T]he public has a strong interest in exercising the fundamental political right to vote. That interest is best served by favoring enfranchisement and ensuring that qualified voters’ exercise of their right to vote is successful. The public interest therefore favors permitting as many qualified voters to vote as possible,” and having those votes properly processed and tallied pursuant to Georgia law. *Obama for Am. v. Husted*,

697 F.3d 423, 436-37 (2012) (citations and quotations omitted).

WHEREFORE, Plaintiff prays that this Court enter an emergency injunction as to the following:

1. Prohibiting the certification of the results of the 2020 general election in Georgia on a statewide basis; or
2. Alternatively, prohibiting the certification of said results which include the tabulation of defective absentee ballots; and
3. Declaring that:
 - a. Any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, must be reperformed in a manner consistent with the Georgia Election Code;
 - b. Monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the January 5, 2021 run-off election;
 - c. That Plaintiff and the Republican Party by given at least 24 hours notice prior to any and all election activity;
 - d. That all ballots in Georgia must be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-

designated monitors;

e. That the Republican Party immediately receive certified copies of all ballot envelopes and requests for absentee ballots received by Defendants, and further, that the Republican Party has the right to compare voter or application signatures on ballot envelopes and requests for absentee ballots with eNet, particularly as to the January 5, 2021 run-off election;

f. That for the January 5, 2021 run-off election, the Republican Party has the right to have absentee ballot watchers/monitors present at all signature verification processes, from the receipt of the request for an absentee ballot to the opening and processing of the same; and

4. Any and other such further relief that this Court deems equitable and just.

Respectfully submitted this 17th day of November, 2020.

SMITH & LISS, LLC

/s/
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

designated monitors;

e. That the Republican Party immediately receive certified copies of all ballot envelopes and requests for absentee ballots received by Defendants, and further, that the Republican Party has the right to compare voter or application signatures on ballot envelopes and requests for absentee ballots with eNet, particularly as to the January 5, 2021 run-off election;

f. That for the January 5, 2021 run-off election, the Republican Party has the right to have absentee ballot watchers/monitors present at all signature verification processes, from the receipt of the request for an absentee ballot to the opening and processing of the same; and

4. Any and other such further relief that this Court deems equitable and just.

Respectfully submitted this 17th day of November, 2020.


SMITH & LISS, LLC

Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com


CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1 (B).

Respectfully submitted this 16th day of November, 2020.

SMITH & LISS, LLC

/s/


Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing and all exhibits and attachments thereto in the above-captioned matter to be filed with the United States District Court for the Northern District of Georgia, Atlanta Division, via the Court's CM-ECF system. I also hereby certify that I caused the foregoing and all exhibits and attachments thereto in the above captioned matter to be served, via FedEx and email, upon:

Secretary of State Brad Raffensperger
214 State Capitol
Atlanta, Georgia 30334
brad@sos.ga.gov
soscontact@sos.ga.gov

Rebecca N. Sullivan
Georgia Department of Administrative Services
200 Piedmont Avenue SE
Suite 1804, West Tower
Atlanta, Georgia 30334-9010
rebecca.sullivan@doas.ga.gov


David J. Worley
Evangelista Worley LLC
500 Sugar Mill Road
Suite 245A
Atlanta, Georgia 30350
david@ewlawllc.com

Matthew Mashburn
Aldridge Pite, LLP
3575 Piedmont Road, N.E.
Suite 500
Atlanta, Georgia 30305
mmashburn@aldridgepite.com

Anh Le
Harley, Rowe & Fowler, P.C.
2700 Cumberland Parkway
Suite 525
Atlanta, Georgia 30339
ale@hrflegal.com

This 16th day of November, 2020.


SMITH & LISS, LLC

/s/ 
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

This **Compromise Settlement Agreement and Release** (“Agreement”) is made and entered into by and between the Democratic Party of Georgia, Inc. (“DPG”), the DSCC, and the DCCC (collectively, the “Political Party Committees”), on one side, and Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Seth Harp, and Anh Le (collectively, “State Defendants”), on the other side. The parties to this Agreement may be referred to individually as a “Party” or collectively as the “Parties.” The Agreement will take effect when each and every Party has signed it, as of the date of the last signature (the “Effective Date”).

WHEREAS, in the lawsuit styled as *Democratic Party of Georgia, et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-5028-WMR (the “Lawsuit”), the Political Party Committees have asserted claims in their Amended Complaint [Doc. 30] that the State Defendants’ (i) absentee ballot signature matching procedure, (ii) notification process when an absentee ballot is rejected for any reason, and (iii) procedure for curing a rejected absentee ballot, violate the First and Fourteenth Amendments to the United States Constitution by unduly burdening the right to vote, subjecting similarly situated voters to disparate treatment, and failing to afford Georgia voters due process (the “Claims”), which the State Defendants deny;

WHEREAS, the State Defendants, in their capacity as members of the State Election Board, adopted on February 28, 2020 Rule 183-1-14-.13, which sets forth specific and standard notification procedures that all counties must follow after rejection of a timely mail-in absentee ballot;

WHEREAS, the State Defendants have a Motion to Dismiss [Doc. 45] pending before the Court, which sets forth various grounds for dismissal of the Amended Complaint, including mootness in light of the State Election Board’s promulgation subsequent to adoption on February 28, 2020 of Rule 183-1-14-.13, which Motion the Political Party Committees deny is meritorious;

WHEREAS, all Parties desire to compromise and settle all disputed issues and claims arising from the Lawsuit, finally and fully, without admission of liability, having agreed on the procedures and guidance set forth below with respect to the signature matching and absentee ballot rejection notification and cure procedures; and

WHEREAS, by entering into this Agreement, the Political Party Committees do not concede that the challenged laws and procedures are constitutional, and

similarly, the State Defendants do not concede that the challenged laws and procedures are unconstitutional.

NOW THEREFORE, for and in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Dismissal. Within five (5) business days of March 22, 2020, the effective date of the Prompt Notification of Absentee Ballot Rejection rule specified in paragraph 2(a), the Political Party Committees shall dismiss the Lawsuit with prejudice as to the State Defendants.

2. Prompt Notification of Absentee Ballot Rejection.

(a) The State Defendants, in their capacity as members of the State Election Board, agree to promulgate and enforce, in accordance with the Georgia Administrative Procedures Act and State Election Board policy, the following State Election Board Rule 183-1-14-.13 of the Georgia Rules and Regulations:

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.

Ga. R. & Reg. § 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

(b) Unless otherwise required by law, State Defendants agree that any amendments to Rule 183-1-14-.13 will be made in good faith in the spirit of ensuring that voters are notified of rejection of their absentee ballots with ample time to cure

their ballots. The Political Party Committees agree that the State Election Board's proposed amendment to Rule 183-1-14-.13 to use contact information on absentee ballot applications to notify the voter fits within that spirit.

3. Signature Match.

(a) Secretary of State Raffensperger, in his official capacity as Secretary of State, agrees to issue an Official Election Bulletin containing the following procedure applicable to the review of signatures on absentee ballot envelopes by county elections officials and to incorporate the procedure below in training materials regarding the review of absentee ballot signatures for county registrars:

County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall

commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

(b) The Parties agree that the guidance in paragraph 3(a) shall be issued in advance of all statewide elections in 2020, including the March 24, 2020 Presidential Primary Elections and the November 3, 2020 General Election.

4. Consideration of Additional Guidance for Signature Matching. The State Defendants agree to consider in good faith providing county registrars and absentee ballot clerks with additional guidance and training materials to follow when comparing voters' signatures that will be drafted by the Political Party Committees' handwriting and signature review expert.

5. Attorneys' Fees and Expenses. The Parties to this Agreement shall bear their own attorney's fees and costs incurred in bringing or defending this action, and no party shall be considered to be a prevailing party for the purpose of any law, statute, or regulation providing for the award or recovery of attorney's fees and/or costs.

6. Release by The Political Party Committees. The Political Party Committees, on behalf of themselves and their successors, affiliates, and representatives, release and forever discharge the State Defendants, and each of their successors and representatives, from the prompt notification of absentee ballot rejection and signature match claims and causes of action, whether legal or equitable, in the Lawsuit.

7. No Admission of Liability. It is understood and agreed by the Parties that this Agreement is a compromise and is being executed to settle a dispute. Nothing contained herein may be construed as an admission of liability on the part of any of the Parties.

8. Authority to Bind; No Prior Assignment of Released Claims. The Parties represent and warrant that they have full authority to enter into this Agreement and bind themselves to its terms.

9. No Presumptions. The Parties acknowledge that they have had input into the drafting of this Agreement or, alternatively, have had an opportunity to have input into the drafting of this Agreement. The Parties agree that this Agreement is and shall be deemed jointly drafted and written by all Parties to it, and it shall be interpreted fairly, reasonably, and not more strongly against one Party than the other.

Accordingly, if a dispute arises about the meaning, construction, or interpretation of this Agreement, no presumption will apply to construe the language of this Agreement for or against any Party.

10. Knowing and Voluntary Agreement. Each Party to this Agreement acknowledges that it is entering into this Agreement voluntarily and of its own free will and accord, and seeks to be bound hereunder. The Parties further acknowledge that they have retained their own legal counsel in this matter or have had the opportunity to retain legal counsel to review this Agreement.

11. Choice of Law, Jurisdiction and Venue. This Agreement will be construed in accordance with the laws of the State of Georgia. In the event of any dispute arising out of or in any way related to this Agreement, the Parties consent to the sole and exclusive jurisdiction of the state courts located in Fulton County, Georgia. The Parties waive any objection to jurisdiction and venue of those courts.

12. Entire Agreement; Modification. This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any prior agreements or understandings between the Parties. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to accept this Agreement, except for those set forth in this Agreement.

13. Counterparts. This Agreement may be executed in counterparts which, taken together, will constitute one and the same Agreement and will be effective as of the date last set forth below, and signatures by facsimile and electronic mail will have the same effect as the originals.

IN WITNESS WHEREOF, the Parties have set their hands and seals to this instrument on the date set forth below.

Dated: March 6, 2020

/s/ Bruce V. Spiva

Marc E. Elias*
Bruce V. Spiva*
John Devaney*
Amanda R. Callais*
K'Shaani Smith*
Emily R. Brailey*
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
MElias@perkinscoie.com
BSpiva@perkinscoie.com
ACallais@perkinscoie.com
KShaaniSmith@perkinscoie.com
EBrailey@perkinscoie.com

**Admitted Pro Hac Vice*

Halsey G. Knapp, Jr.
Georgia Bar No. 425320
Joyce Gist Lewis
Georgia Bar No. 296261
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN & HORST, LLC
One Atlantic Center
1201 W. Peachtree St., NW, Suite 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
sparks@khlawfirm.com

Counsel for Plaintiffs

/s/ Vincent R. Russo

Christopher M. Carr 112505
Attorney General
Bryan K. Webb 743580
Deputy Attorney General
Russell D. Willard 760280
Senior Assistant Attorney General
Charlene S. McGowan 697316
Assistant Attorney General
Office of the Georgia Attorney General
40 Capitol Square S.W.
Atlanta, GA 30334
cmcgowan@law.ga.gov
Telephone: (404) 656-3389
Facsimile: (404) 651-9325

Vincent R. Russo
Georgia Bar No. 242628
vrusso@robbinsfirm.com
Josh Belinfante
Georgia Bar No. 047399
jbelinfante@robbinsfirm.com
**ROBBINS ROSS ALLOY
BELINFANTE LITTLEFIELD
LLC**
500 14th Street, N.W.
Atlanta, Georgia 30318
Telephone: (678) 701-9381
Facsimile: (404) 856-3250

Counsel for State Defendants

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF AMANDA COLEMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Amanda Coleman, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 15, 2020 by Alyssa Specht from the Trump Campaign, on behalf of the Georgia Republican Party (the "Republican Party").
3. Ms. Edmunds of the Republican Party told to arrive at 285 Andrew Young International Blvd. between 8:00 a.m. and 9:00 am on the morning of November 15. The address was for the Georgia World Congress Center, and there was no exterior activity at that address when I arrived. There were no instructional or directional signs.
4. After I made a series of phone calls ending with Matthew Honeycutt, he gave me directions to go to the bottom rear of the building to an "employee entrance." I arrived at 9:00 a.m.
5. As I arrived, a large crowd was leaving, saying that they had "just finished" the hand recount.
6. Another volunteer and I walked into the counting area to verify what had been said and to observe any activity, as we had been requested to do. Some counting activity appeared to still be going on.

7. We signed in, and then were told that there were “too many” volunteers on the floor and that we would not be permitted to walk the floor and observe.
8. I saw a few people here and there walking the floor. But there were no other observers at the tables where counting activity was happening. There were two people per table and they appeared to be sticking ballots into piles. We were not close enough to see much of anything else because we were not allowed.
9. I believed that we were there to watch actual “hand counting” as had been announced in the newspapers and by the Secretary of State when he requested a “hand count.”
10. There was no way to tell if any counting was accurate or if the activity was proper.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct

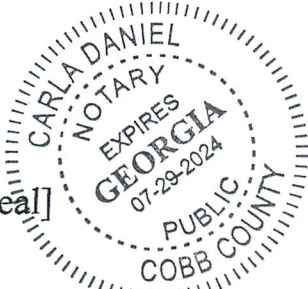
Amanda Coleman
Amanda Coleman

STATE OF GEORGIA

COUNTY OF FULTON

Amanda Coleman, appeared before me, a Notary Public in and for the above jurisdiction, this 16th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]



Carla Daniel
Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)

Defendants.

CIVIL ACTION
FILE NO. _____

**AFFIDAVIT OF MARIA DIEDRICH IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Maria Diedrich, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal
knowledge of the matters stated herein. I am a resident of Fulton County.

{00583831.}

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 14 and 15, 2020 by Alyssa Specht from the Trump Campaign, on behalf of the Georgia Republican Party (the "Republican Party").
3. I believed that we were there to watch actual "hand counting" as had been announced in the newspapers and by the Secretary of State when he requested a "hand count."
4. On November 15, 2020, I arrived at the Georgia world Congress Center at 8:00 a.m. to monitor the hand counting. By 9:15 a.m., officials announced that voting was complete and sent everyone home. I spoke to a security guard who was shocked because he planned to be there until 10 p.m. He had been at that location until 10:00 p.m. on the previous night.
5. The officials announced that they had counted all the absentee on November 14 at night and they were already boxed up.
6. The only ballots left to count (for me to observe) were electronic ones, which were being counted in stacks or rows (not consistent).

7. There was no consistency on counting. Only a few tables (of the 170+) were verbally doing the pass count, so there was no way to see that the correct candidate was being put into the correct pile.
8. I observed (and told an election worker) that one counter seemed to be making piles of 9 (but counting them as 10). It took a while for me to get someone to help me, so by the time they came to observe him, the batch was counted and they did not make him recount the stack.
9. Counters were writing the number of ballots for each candidate on scrap paper (no one had the same paper, some was torn, some was colored) and then adding manually. This is where I noticed some manual entry errors, specifically when an elderly counter wrote down the number ballots, she couldn't remember the number, the person with her said a different number, they finally agreed on a number, she added numbers on a scratch paper before putting the number onto the official Audit Board Batch Sheet.
10. The batch sheets were taken to Arlo to input but there was no independent verification or monitoring of the numbers being input.
11. Five times between 8:00 a.m. and 9:00 a.m., I noticed tables with ballots on the table, but both workers had gone to get food. The ballots were left unattended. Drinks were on the tables with ballots. I noticed two tables of a

single person counting, the partner had gone to get food. After I mentioned this to the election official, they told both tables to wait.

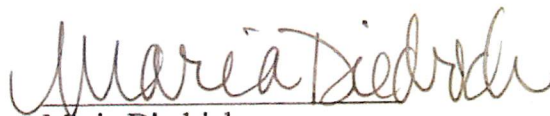
12. At 9:00 a.m., county officials announced that there were too many party monitors and asked the Republican watchers to gather and decide which 17 would be on the floor. There were only 2 paid Republican campaign workers and they tried to organize 17 from about 30 total personnel who had volunteered. Within 10 minutes, we had completed the reorganization.

13. At that point, county officials told most of the counters to go home. There were probably 10 tables still counting.

14. There had been no meaningful way to review or audit any activity.

[SIGNATURE AND OATH ON NEXT PAGE]

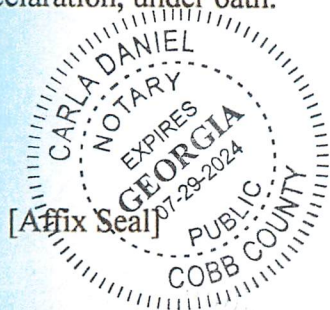
I declare under penalty of perjury that the foregoing statements are true and correct.



Maria Diedrich

STATE OF GEORGIA

COUNTY OF FULTON

Maria Diedrich , appeared before me, a Notary Public in and for the above jurisdiction, this 16th day of November 2020, and after being duly sworn, made this Declaration, under oath.




Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF SUSAN VOYLES IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Susan Voyles, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal
knowledge of the matters stated herein.

2. I am a poll manager at Precinct SS02 A and B (Sandy Springs). The Fulton County Board of Elections (“BOE”) sent an email soliciting poll managers and assistant poll managers for the purpose of participating in the “hand count” audit of votes cast in the November 3, 2020 presidential election. I accepted the assignment.
3. My direct supervisor, Marie Wright, asked me if I could confirm that I could show up to participate as an auditor in the recount from Saturday, November 14 until Wednesday, November 18, 2020. I was told that it was a requirement of the accepting the assignment to be available from 7:00 a.m. until 5:00 p.m on each of those five days. I was to be paid \$200 per day.
4. The BOE also solicited Fulton County employees generally, such as workers from the public libraries. Most had no election experience (other than perhaps voting themselves).
5. On Saturday at 7:00 a.m., I showed up to the Georgia World Congress Center at 285 Andrew Young International Blvd. in downtown Atlanta. We had to watch a very short training video (probably less than 5 minutes) -- there was no audio, but there were captions. I watched it three times to ensure I had captured all the information, but there were some things that were not

covered, like what an auditor should do if he or she saw matters of concern.

I did not see any helpful written materials on that issue.

6. We were required to sign an oath saying that we would conduct an audit impartially and fairly to the best of our ability, and were told that if we did anything wrong we would have to go before the State Board of Elections.
7. The BOE did not appear to have standardized operating procedures for the conduct of the audit. Everything was in total disarray at the counting location. The organizers did not have sufficient tables for all the committed volunteers. (When I arrived at 7:00 a.m., 134 tables were set up and I was assigned to table 136; ultimately, I believe 170 tables were set up.)
8. Counting began shortly after 7:00 a.m., as best as I could tell, but we were held to the side. After 90 minutes of counting had passed, we were assigned a table from additional tables that had been brought into the counting area.
9. Signs taped to the table indicated a place for ballots for Trump, Biden, and Jorgenson and to make a separate pile for "Blanks" (no vote for President) or overvotes (multiple votes for President). One person was to pick up the ballot and state the vote out loud, and the other was to confirm that selection and place the ballot in the appropriate location.

10. After counting, we were instructed to pick up each individual “pile” and count the ballots in each pile and place them in alternating stacks of 10 each. After counting the final tally, we were instructed to compare the number with the original number from the opening tally sheet. (The tally sheet provided a road map to the number that was needed to reconcile with the original reported results.)
11. We began counting around 9:00 a.m. We were given a tally sheet to record our findings, and manila envelopes for write-in candidates and disputed ballots. Again, we were not given any information or standards on how to interpret spoiled ballots or other discrepancies.
12. We noticed that the supervisors seemed selective as to how to allocate the assignments. For our first assignment, we were given a cardboard box that contained only absentee ballots. It was taped shut with packing tape with the seal of the Secretary of State. But the seal was blank, signed by no one, and no information had been supplied. There were no markings indicating the provenance of the box. The box was marked as Box No. 5 – Absentee – Batch Numbers 28-36.
13. Inside the box were stacks of ballots of approximately 100 ballots each. Each stack contained an original tally sheet that said the location where the

ballots were picked up. I am assuming these ballots came from the pervasive ballot boxes that had been placed throughout Fulton County.

14. Most of the ballots had already been handled; they had been written on by people, and the edges were worn. They showed obvious use. However, one batch stood out. It was pristine. There was a difference in the texture of the paper – it was if they were intended for absentee use but had not been used for that purposes. There was a difference in the feel.

15. These different ballots included a slight depressed pre-fold so they could be easily folded and unfolded for use in the scanning machines. There were no markings on the ballots to show where they had come from, or where they had been processed. These stood out.

16. In my 20 years' of experience of handling ballots, I observed that the markings for the candidates on these ballots were unusually uniform, perhaps even with a ballot-marking device. By my estimate in observing these ballots, approximately 98% constituted votes for Joseph Biden. I only observed two of these ballots as votes for President Donald J. Trump.

17. We left at approximately 4:45 on Saturday. There will still much to be done. We were told to come back on Sunday. It was estimated at that time that the

ballot recount would not be completed until Monday evening at the earliest – that’s how many ballots were left.

18. On our way out, we spoke to a GWCC officer and thanked him for being there and his service. We asked him if he would be leaving shortly, and he said he was not scheduled to leave until 11:00 p.m. At that point, other officers would come and guard the room from 11:00 p.m. to 7:00 a.m.

19. On Sunday morning we arrived at approximately 6:45 a.m. Initially, the fact that there were so few auditors in the room indicated that others were just late. However, by 7:15 a.m., we realized that because so few additional auditors had arrived, there would not be a lot of auditors present for the Sunday count.

20. Interestingly, we were told to go back to our original table. Even though the room was sparsely occupied, we were surrounded with two auditors immediately in front of us and two auditors immediately behind us. We began to notice a greater disparity in the distribution of workloads. Although the auditing tables surrounding us arrived later, they were assigned large boxes of ballots before we were given. When our box arrived – after a 45 minute wait – I opened the ballot box to find only 60 ballots from the Quality Living Center in South Atlanta, a men’s housing facility for recovering

addicts. The other auditing tables received boxes with over 3,000 ballots each.

21. After we completed our first ballot box, we raised our “check card” for more ballots. After waiting for an extended period, we were told our assistance was no longer needed and thanked for our work. We were told to go home.

22. We offered to help on some larger piles that were still evident, and the officials present were adamant that they did not need any help. I sat at the table for a while longer and noticed how other auditors were treated. We were explicitly told we could not have drinks or food of any kind on the table -- that was understandable. The people behind us and in front of us however had open water bottles, breakfast burritos supplied by the BOE, and snacks on their table.

23. Also, those tables were not counting as a team, with a pass-off from one to the other. Each auditor was counting individually. The purpose of the pass-off was to make sure that each auditor agreed that the call for each ballot was accurate.

24. This recount process was consistent with the lack of preparation, contingency plans, and proper procedures that I experienced in this unusual election. For example, in the setup for Election Day, we typically receive

the machines – the ballot marking devices – on the Friday before the election, with a chain of custody letter to be signed on Sunday, indicating that we had received the machines and the counts on the machines when received, and that the machines have been sealed. In this case, we were asked to sign the chain of custody letter on Sunday, even though the machines were not delivered until 2:00 a.m. in the morning on Election Day. The Milton precinct received its machines at 1:00 a.m. in the morning on Election Day. This is unacceptable and voting machines should not be out of custody immediately prior to an Election Day. It is possible that these ballot marking devices could have been used for other purposes during that period.

25. When I was asked to sign the chain of custody letter, I only signed the letter with the added language to state that I was accepting chain of custody for equipment, BMDs, and pole pads that had not been delivered.

26. My precinct should have received the poll pads on Sunday and should have been able to store them inside the ballot marking devices. We could not do that, since we did not receive the ballot marking devices in a timely manner.

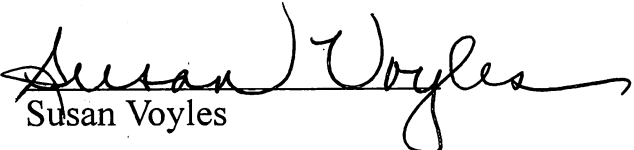
27. When we did receive the machines, they were not sealed or locked, the serial numbers were not what were reflected on the related documentation, and the

green bar coded tags that are supposed to cover the door covering the memory card was broken. The supervisor told us to use the machines in that condition. As a poll manager of over 20 years, I knew this was not the standard operating procedure for the BMDs and therefore I did not put them into service.

28. I believe my honesty in this affidavit will lead to my arrangement as a poll worker in Fulton County being compromised. However, the BOE operations were sloppy and led me, in the case of at least one box I reviewed, to believe that additional absentee ballots had been added in a fraudulent manner. This is my personal experience.

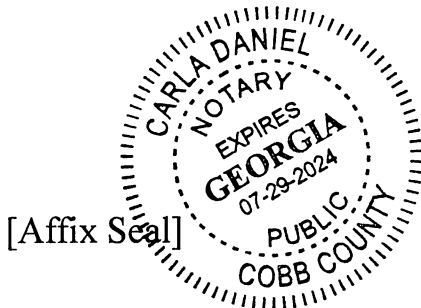
[SIGNATURE AND OATH ON NEXT PAGE]

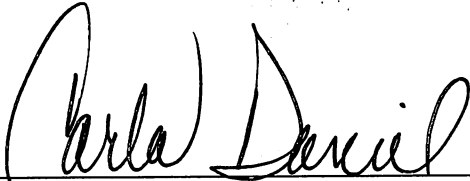
I declare under penalty of perjury that the foregoing statements are true and correct


Susan Voyles

STATE OF GEORGIA
COUNTY OF FULTON

Susan Voyles, appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.




Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF NICHOLAS J. ZEHER IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Nicholas J. Zeher, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

2. I am an attorney licensed to practice law in the state of Florida.
3. On Sunday November 15, 2020 Alyssa Specht appointed me to serve as a Monitor for the duration of the Risk Limiting Audit in DeKalb County (the “DeKalb Appointment Letter”). A true and accurate copy of the appointment letter is attached to this Affidavit as **Exhibit “A.”**
4. On Sunday at around 12:30 p.m., I showed up to 2994 Turner Hill Road, Stonecrest, Georgia 30038 to begin observing as a Monitor. Prior to my arrival, I was sent a handout titled “Audit/Recount Monitor and Vote Review Panel Handout” which outlined the rules in place as well as provided guidelines for observation. A true and accurate copy of the Audit/Recount Monitor and Vote Review Panel Handout is attached to this Affidavit as **Exhibit “B.”**
5. After signing in and providing the DeKalb appointment letter to the check-in desk, I was permitted to roam throughout the facility to conduct observations.
6. The first thing I noticed was signs taped to each table (the “Review Table” or “Review Tables”) indicated a place for ballots for Trump, Biden, and Jorgenson and other signs for “Blanks” (no vote for President) or overvotes (multiple votes for President). At each Review Table were two people

manually reviewing each ballot (the “Recounter”). The first Recounter would pick up the ballot and orally announce which candidate the ballot was cast for. The first Recounter would then pass the ballot to the second Recounter who would again orally announce which candidate the ballot was cast for. The ballot was subsequently placed in the pile designated for that candidate as discussed above.

7. Due to the COVID restrictions, we were instructed to stay a minimum of six feet away from any Recounter sitting at one of the Review Tables.
8. The ballots would be brought to the Review Table in a cardboard box by another worker. I was never able to get close enough to read any writing on any of the cardboard boxes. After the cardboard box was opened, stacks of ballots were removed and placed on the Review Table. There were notes on each stack but again, I was never able to get close enough to read what was written.
9. Once the stack of ballots was on the Review Table, the process of reviewing the ballot began in the manner outlined above in paragraph 6.
10. At no time did I witness any Recounter or any individual participating in the recount verifying signatures.

11. If one of the Recounters encountered a ballot that was questionable, he or she raised a piece of paper with a “?” and what seemed to be a supervisor would come to that Review Table. A short conversation was had and the supervisor would provide the Recounters with instructions. Again, I was never able to get close enough to hear what was said.
12. When a Review Table completed reviewing a cardboard box full of ballots, one of the Recounters would write some information (I assume it was the number of ballots for each candidate the box contained) on a piece of paper and place it on top of the cardboard box. Then one of the Recounters would hold a piece of paper with a “√” (check mark) on it in the air and someone would come pick up the box full of ballots.
13. There was no person verifying the number of votes that the Recounter would write on the paper.
14. At one point, I was able to get close enough to a Review Table to see the ballots and the markings on them. It was strange—there were many ballots where just Joseph Biden was filled in and no other candidate whatsoever.
15. At another table, I watched the Recounters pull out a stack of ballots that appeared to be strange too. The bubble filled out for Joseph Biden looked to be a perfect black mark.

16. I spoke to other Observers present that day and they had witnessed the same thing. Other Observers also informed me that fellow Observers were removed for getting too close to the Review Tables. That when they would get close enough to see what was actually filled in on the ballot, one of the Recounters would begin making a big scene and call over a supervisor. The supervisor would then remove the Monitor permanently.
17. While in DeKalb County, I saw a lot of hostility towards Republicans and none towards Democrats.
18. On the evening of November 15, 2020, Alyssa Specht appointed me as an Monitor in Henry County for the whole duration of the Risk Limiting Audit (“Henry County Appointment Letter”). A true and accurate copy of the Henry County Appointment Letter is attached to this Affidavit as **Exhibit** “C.”
19. I arrived at 562 Industrial Boulevard, McDonough, Georgia 30253 at around 9:30 a.m.
20. When I entered the building, I was halted by a woman at the door who immediately informed me that I was not needed and that all the position had been filled. At this time, the woman neither asked who I was nor why I was present. I asked this woman to speak to the person in charge.

21. Within a few seconds, I was greeted by Ameika Pitts (“Ms. Pitts”), Henry County’s Elections Director. Ms. Pitts informed me that my assistance was not needed, and I was free to go. Again, this was told to me prior to her asked why I was there and who I was.
22. I then pulled the Henry County Appointment Letter up on my phone and presented it to her. Ms. Pitts immediately told me that I was not able to have my phone inside the building even though the recount was allegedly being “live streamed.” After a brief conversation, I send Ms. Pitts a copy of the letter and was permitted to enter the building, but only in the public observation area.
23. Fortunately, after speaking to several Republican Party volunteers, Ms. Pitts was provided my name from the Henry County Republican Chairwoman and I was permitted to enter into the observation area.
24. Once inside the observation area, I saw that it was set up very similar to DeKalb County with the Review Tables having the same designations and each Review table having two Recounters as described in paragraph 6 above.
25. As I began walking around, I noticed several differences between DeKalb County and Henry County. In Henry County, the ballots were brought to each Review Table in a red, plastic box with security ties used to hold the

box closed. Those ties were cut, and the ballots were then removed and placed on top of the Review Table in stacks that were wrapped in a rubber bands and had a pink sticky note on each stack which displayed the number of ballots each stack contained. The Recounter would then remove the rubber band and sticky note and begin counting the same was described in paragraph 6 above.

26. At around 12:05 p.m. I was observing table "G" when the two recount workers sorted a pile of ballots that had a note which said "93" as the number of ballots. When the two workers finished sorting and counting the ballots, there were only 92. The director of the election committee, Ms. Pitts came to the two workers and simply signed a separate sheet of paper saying that there were only 92 ballots. Ms. Pitts never recounted to make sure. This happened several times and Ms. Pitts informed us that she has been directed to just sign off on the number of ballots the recount worker said was there.

27. While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden. I witnessed this happen at table "A."

28. I interviewed a few Observers that same day who informed me that on multiple occasions, Recounters at tables "A," "B," "G," and "O" were seen

placing ballots cast for Donald Trump placed in the pile for Joseph Biden.

When this was brought to Ms. Pitts attention, it was met with extreme hostility. At no time did I witness any ballot cast for Joseph Biden be placed in the pile for Donald Trump.

29. Based on my personal observations, I believe that additional absentee ballots were cast for Donald Trump but counted for Joseph Biden. I further believe that there was widespread fraud favoring Joseph Biden. This is my personal experience.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct



Nicholas J. Zeher

STATE OF FLORIDA

COUNTY OF PALM BEACH

Nicholas Zeher, appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]


Notary Public

My Commission Expires _____

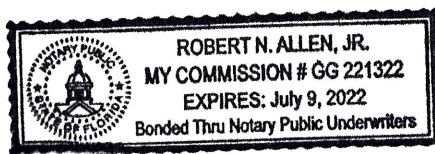


Exhibit A



November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

This letter serves as proper notice, pursuant to O.C.G.A. § 21-2-408, § O.C.G.A. 21-2-483, State Election Board Rule 183-1-13-.06, and/or State Election Board Rule 183-1-14-0.9-.15. The listed designees are to serve as a Monitor for the whole duration of the Risk Limiting Audit in DeKalb County:

- William McElligott
- Oleg Otten
- Kevin Peterford
- Nicholas Zeher
- Scott Strauss
- Michael Sasso

A handwritten signature in black ink, appearing to read "D. Shafer".

David J. Shafer
Chairman

A handwritten signature in black ink, appearing to read "Michael Welsh".

Michael Welsh
Secretary

Exhibit B

Audit/Recount Monitor and Vote Review Panel Handout

Audit Observer Handout

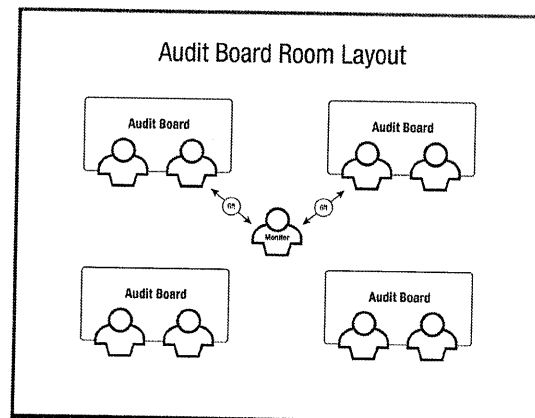
Arrival:

- Arrive 30 minutes prior to the start of your shift.
- The public is to watch the opening procedures before the audit begins and after the audit ends for the day.
- Be respectful and professional, not adversarial.

Audit Observers/Designated Monitors:

- Each political party may have one designated monitor per 10 Audit Teams or a minimum of two designated monitors per room.
- Designated monitors may roam the audit room and observe the audit process
- Observe the Check-in and Check-out process of the ballots
- Must wear badges that identify them by name.
- Are allowed to observe but may not obstruct orderly conduct of election.
- May not speak to or otherwise interact with election workers.
- Are not allowed to wear campaign buttons, shirts, hats or other campaign items.
- Do not touch any ballot or ballot container
- Observe and ensure the room is properly set-up, the Audit Teams are completing their tasks, and the Table is set up properly (see below).
- **Must pose questions regarding procedures to the clerk/election worker for resolution.**

Room Set up



Audit Teams Responsibilities

When reviewing a ballot and determining the voter's mark, audit boards must consider "if the elector has marked his or her ballot in such a manner that he or she has indicated clearly and without question the candidate for whom he or she desires to cast his or her vote." O.C.G.A. 21-2-438(c).

As a batch is delivered from the check-in/out station:

- Record the County Name, Batch Name, and Batch Type (Absentee, Advanced Voting, Provisional, Election Day), and verify the container was sealed on the Audit Board Batch Sheet.

- Unseal the container.
- Recount the Ballots using the "Sort and Stack" method:
 - Pull the ballots out of the container and stack neatly on the table.
 - If the container contains more than 1000 ballots, ballots should be removed from the container and sorted in manageable stacks (using an Audit Board Batch Sheet for each stack), leaving the rest of the ballots in the container until the previous stack is done.
 - For each ballot: audit board member (ABM) #1 picks up a single ballot from the stack and reads the vote for the Presidential contest aloud, then hands the ballot to ABM #2. ABM #2 verifies the vote that is on the ballot is indeed what ABM #1 read, then places the ballot in the "stack" that corresponds to the vote. ABM #1 should watch to make sure the ballot is placed in the right stack. There will be 8 stacks as follows:
 - Trump
 - Biden
 - Jorgensen
 - Overvoted ballots - one pile for any ballot where the voter made more than one selection for President.
 - Blank/Undervoted ballots - one pile for any ballot where the voter made no selection for President.
 - Write-In - one pile for any ballot containing a write-in vote for President. (The board does *NOT* need to determine whether the write-in is for a qualified candidate: the Vote Review Panel does that.)
 - Duplicated ballots - one pile for ballots marked as duplicated.
 - Undetermined - one pile for any ballot where the audit board cannot agree on the voter's intent.
 - Candidate Ballot Tallies – Count the ballots in each stack by having one member of the audit board verbally count the ballot while handing it to the other member for verification. Count the ballots in groups of 10, stacking the groups at right angles to each other, so you can easily count the complete groups when you are done. (For instance, if you have seven groups of 10 ballots each plus an extra 3 ballots, the total tally would be 73.) Record the total tally for each candidate on the Audit Board Batch Sheet.
 - Write-In, Duplicated, and Undetermined Ballots - count the ballots in the write-in duplicated, and undetermined ballot piles and record on the Audit Board Batch Sheet. Each type should go in a designated folder or envelope by batch.
 - Write-in, Duplicated, and Undetermined ballot folders must be set aside for delivery to the Vote Review Panel.
 - Return the other ballots to the original container and seal the container.
 - Sign the Audit Board Batch Sheet.
 - Raise your check mark sign for the check-in/out station to come retrieve your container, batch sheet, and any ballots for the Vote Review Panel.

Audit Board Batch Sheet

County _____

Batch Name _____

Batch Type: ☐ Absentee ☐ Advance ☐ Election Day ☐ Provisional ☐ Other

Was the container sealed when received by the audit board? ☐ Yes

Candidates	Enter Audit Totals
Donald J. Trump	
Joseph R. Biden	
Jo Jorgenson	
Overvote	
Blank/Undervote	

Ballots sent to the Vote Review Panel (if any)

Write-In	
Duplicated	
Undetermined	

When work is completed, return all ballots (except Vote Review Panel ballots) to the ballot container and seal container.

Was the container resealed by the audit board? ☐ Yes

X _____ X
 (Audit Board Member) (Audit Board Member)

Check In/Out Station

☐ Recorded batch return on Ballot Container Inventory Sheet

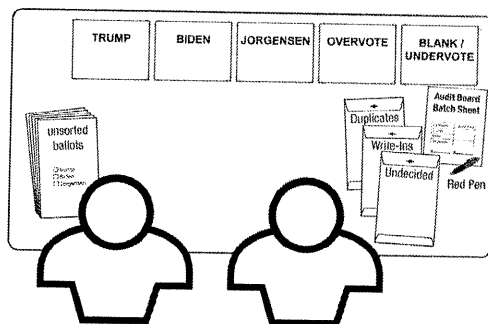
☐ Delivered Vote Review Panel ballots (if any)

☐ Entered tallies into Arlo

_____ Initials of check in/out station member

Table Set up

Audit Board Table Top Organization



No Photography is allowed in the observation area.

Check-in/out Process

- Two election workers are required to observe the check in and check out process of ballots to ensure there is a secure chain of custody and inventory of ballots is kept proper.
 - One person is to be kept with the ballot containers
 - One person delivers the containers to and from the audit boards ("runner")
- There should be at least one "runner" for every 5 audit boards
- When a new container arrives, the election works must record:

- batch name
 - audit board number
- Upon completion, the election worker must:
 - Verify proper completion of the *Audit Board Batch Sheet*
 - Ensure contain is resealed
 - Return the container and batch sheet to the check-in/out station
 - Note the return of the container of the Ballot Container Inventory Sheet
 - Deliver any necessary ballots/envelopes to the Vote Review Panel
 - Duplicates, write-ins, and undermined
 - Enter candidate totals for the batch in Arlo, mark as “entered”

Closing of Audit Room:

- All eligible monitors are able to observe the closing and conclusion of the audit.

Monitor Observes Issue...What to Do?

1. Respectfully raise issue with precinct clerk for resolution.
2. Do NOT speak to or interact with election workers.
3. Do NOT take pictures or videos.
4. If unresolved, leave polling room and call GOP GA Legal Hotline with your name, county, and location.

Be on the lookout for:

1. Lapses in procedure
2. Food or beverage on audit tables (it should be under the table)
3. Any ballots not being delivered from the runners in the regular course

Statewide Observer and VRP member Hotline: 470-410-8762

Incident Report Form (attached) and at: <https://gagop.org/auditreport/>

The Vote Review Panel

Vote Review Panel (VRP) Member:

- Each political party must have 1 member per VRP
- You must object when you cannot agree
 - If there is a disagreement between the two VRP members, the Superintendent or their designee breaks the tie.
- Manually log each ballot that should be adjudicated
- Must wear badges that identify them by name.
- May not speak to or otherwise interact with election workers.
- Are not allowed to wear campaign buttons, shirts, hats or other campaign items.
- **Must pose questions regarding procedures to the clerk/election worker for resolution.**

Three types of Ballots:

- **Duplicated Ballots**
 - Retrieve the original ballot and compare the duplicated ballot to ensure proper duplication. Using the original ballot, record the vote tally for the duplicated ballots using the Vote Review Panel Tally Sheet.
- **Undetermined Ballots**
 - Review the undetermined ballots where the audit board could not agree on the voter's intent to make a determination. Record the vote tally for the undetermined ballots using the Vote Review Panel Tally Sheet.
- **Write-In Ballots**
 - Review the write-in ballots to determine if a voter has voted for a qualified or invalid write-in candidate. Record the number of votes for each qualified write-in candidate on the Qualified Write-In Candidate Tally Sheet.

[illegible]

Common Adjudication Scenarios

Common Adjudication Scenarios

OVERVOTES

With corrections from voters

County / Condado / 郡
Supervisor, District 1
Supervisor, Distrito 1
第一區主席

Vote for One
投票給一人

✓ Alfred Hitchcock
For District
第一區主席

✗ Vincent Price
For District
第一區主席

County / Condado / 郡
Supervisor, District 1
Supervisor, Distrito 1
第一區主席

Vote for One
投票給一人

✓ Alfred Hitchcock
For District
第一區主席

✗ Vincent Price
For District
第一區主席

HESITATION MARKS

County / Condado / 郡
Supervisor, District 1
Supervisor, Distrito 1
第一區主席

Vote for One
投票給一人

✓ Alfred Hitchcock
For District
第一區主席

✗ Vincent Price
For District
第一區主席

MARKING ERRORS

Consistent patterns

County / Condado / 郡
Supervisor, District 1
Supervisor, Distrito 1
第一區主席

Vote for One
投票給一人

✓ Alfred Hitchcock
For District
第一區主席

✗ Vincent Price
For District
第一區主席

Inconsistent patterns

County / Condado / 郡
Supervisor, District 1
Supervisor, Distrito 1
第一區主席

Vote for One
投票給一人

✓ Alfred Hitchcock
For District
第一區主席

✗ Vincent Price
For District
第一區主席

STRAY MARKS IN TARGET AREAS

County / Condado / 郡
Supervisor, District 1
Supervisor, Distrito 1
第一區主席

Vote for One
投票給一人

✓ Alfred Hitchcock
For District
第一區主席

✗ Vincent Price
For District
第一區主席

Exhibit C



November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

This letter serves as proper notice, pursuant to O.C.G.A. § 21-2-408, § O.C.G.A. 21-2-483, State Election Board Rule 183-1-13-.06, and/or State Election Board Rule 183-1-14-0.9-.15. The listed designees are to serve as a Monitor for the whole duration of the Risk Limiting Audit in Henry County:

- William McElligott
- Oleg Otten
- Kevin Peterford
- Nicholas Zeher
- Ibrahim Reyes-Gandara
- Juan Carlos Elso
- Carlos Silva
- Mayra Romera

A handwritten signature in black ink, appearing to read "David J. Shafer".

David J. Shafer
Chairman

A handwritten signature in black ink, appearing to read "Michael Welsh".

Michael Welsh
Secretary

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF MAYRA ROMERA IN SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Mayra Romera, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. I am a Florida Bar licensed paralegal.
3. I am a registered Democrat.
4. I was interested in the election process in this country and wanted to be an observer in the Georgia recount process.
5. On Monday, November 16, 2020, I presented myself to Cobb County Poll Precinct located at 2245 Callaway Road SW, Marietta, GA. I was able to be on the floor observing the recount process in Room C. I observed the poll workers not calling out verbally the names on each ballot. They simply passed each ballot to each other in silence.
6. It was of particular interest to me that hundreds of these ballots seemed impeccable, with no folds or creases. The bubble selections were perfectly made (all within the circle), only observed selections in black ink, and all happened to be selections for Biden.
7. It was also of particular interest to me to see that signatures were not being verified and there were no corresponding envelopes seen in site.

8. At one point in time, while on the floor, I overheard a woman tell someone else that they should keep an eye on the guy with a blue blazer and a pocket square, that he was not allowed to come on the floor and observe past the yellow tape. They also kept an eye on him as he took photographs and video of some boxes being stored on a rack. Shortly thereafter, I observed a police officer standing at the door. I had not observed a police officer present up until that moment. They began to walk towards him to stop him as he was photographing those boxes, but at that point, he walked away from that area.
9. Based on my observations, I believe there was fraud was committed in the presidential election and question the validity of the Georgia recount process.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct.

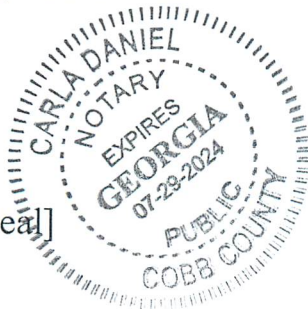

Mayra L. Romera

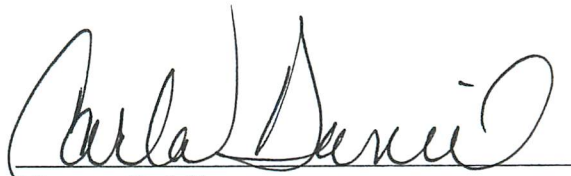
STATE OF GEORGIA

COUNTY OF FULTON

Mayra L. Romera appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]




Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF IBRAHIM REYES, ESQUIRE IN
SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY
RESTRAINING ORDER**

I, Ibrahim Reyes, declare under penalty of perjury that the following is true and correct:

1. My name is Ibrahim Reyes. I am an attorney licensed to practice law in the State of Florida since 2002, my office address is 236 Valencia Avenue, Coral Gables, FL 33134, and my email address is ireyes@reyeslawyers.com.

2. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

3. I volunteered to assist in the manual recount in the State of Georgia and was assigned to work as a Monitor and as a member of the Vote Review Panel.

4. On November 16, 2020, I went to Clayton County from 8:00 A.M. to 6:00 P.M.

5. I identified myself as a Monitor and Vote Review Panel associated with the Republican Party, and the person in charge of the Clayton County precinct, Erica Johnston, said that I could not be present on the floor until I received a badge with my name, that it would be printed shortly, within thirty minutes, but could stand in the observers area, away from the counting tables.

6. I did not receive my identification badge until three hours, so I was prevented from acting as a Monitor all morning.

7. However, as an observer, I observed that the precinct had twelve (12) counting tables, but only one (1) monitor from the Republican Party. I brought it up to Erica Johnston since the recount rules provided for one (1) monitor from each Party per ten (10) tables or part thereof.

8. Erica Johnston said that I was wrong, that there were only ten tables counting and explained that because there were ten tables, not twenty, only one monitor was allowed. I explained to her that there were twelve tables counting, and

that the rules did not state what she said, and read to her the rule, which I had on my phone.

9. Erica Johnston proceeded to tell me that it did not matter, that she was in charge, and that unless there were twenty tables, one monitor for twelve tables was fine because of the limited space. I explained that I did not note an exception where due to limited space, she could individually determine how many Monitors to allow, and that she had created her own rules for the manual recount, which precluded Republican Monitors from monitoring the recount. Erica Johnston said that if I continued to insist on having one more Monitor for the Republican Party, she would call the Police.

10. We were inside the Clayton County Police Department. I pointed her where a Police officer was and asked her to call her over. I explained to the female police officer that the Clayton County precinct was not counting ballots following the rules for counting ballots, and I was requesting Erica Johnston to follow the rules. The police officer told me that she could not do anything about it.

11. A Clayton County journalist named Robin Kemp of @RKempNews, overheard the exchange, as a member of the media went in and photographed the twelve (12) counting tables, confirmed to me that she had seen twelve counting tables, and published it in Twitter.

12. Soon thereafter, before noon, we were notified that the location would close, and the recount would be moved to Jackson Elementary to allow for more space and more monitors.

13. The recount resumed at Jackson Elementary on or about 1:30 P.M., after boxes of ballots were brought in a Clayton County white van with tag GV57976 and taken into Jackson Elementary.

14. I had my identification badge by then, so I went in and noticed that one Republican Monitor was allowed, yet now there were twenty six (26) tables, and informed Erica Johnston that, again, if there were twenty six tables for recounting, three (3) monitors from each Party were to be permitted.

15. Erica Johnston told me that she was in charge, and that I should stop interfering with the process. I informed Erica Johnston that she was interfering with the process, since she was not following the recount rules, knowingly.

16. At that point in time, a young man named Trevin McKoy, associated with the Georgia Republican Party, told Erica Johnston that the Republicans were entitled to three, not one, Monitor, since there were twenty-six tables. Erica Johnston called over a Police officer, Officer Johnson, and Erica Johnston asked Officer Johnson to remove Mr. McKoy from the building.

17.I intervened and explained to Officer Johnson that Erica Johnston was not following the rules, and Officer Johnson replied that Erica Johnston was in charge, and that we were not in a Courtroom.

18.I walked outside with Trevin McKoy, and so did the journalist, Robin Kemp, who proceeded to publish the violation of rules on her Twitter account.

19.Within five minutes of the Twitter having been published, Erica Johnston approached me and told me that the Republicans could have two additional Monitors, and two additional Monitors went on the floor.

20.She also offered me to participate in the Voting Review Panel, which I did until 6:00 P.M.

21.As a Voting Review Panel member, I sat next to two counting tables, and monitored whether counters were following the rules.

22.For example, the procedure required that the two counters sitting next to each other would recite the name of the candidate for whom the vote was cast, one first, the second after, to confirm agreement, and then place the 'ballot' on the appropriate stack, Trump, Biden, etc.

23.The counters on the two tables next to my table were not doing that, and I served as a next to them for over three hours. One would give a 'ballot' to the next, and the next would place it on top of one of the stacks, without confirmation from counter 2 to counter 1.


24.I witnessed that Erica Johnston did not follow the rules until I complained, and journalist Robin Kemp published the violations on her Twitter account.

25.I also witnessed that Officer Johnson, of the Clayton County Police Department, removed Trevin McKoy from the Jackson Elementary precinct only because Erica Johnston told him to remove him, even though Trevin McKoy had not done or said anything improper.

26.I also observed that the precinct had Democratic Party monitors, Republican Party monitors, and Carter Center monitors, and only Republican Monitors were being mistreated by Erica Johnston and by Officer Johnson.

[SIGNATURE AND OATH ON NEXT PAGE]

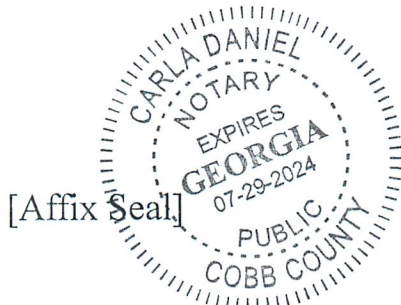
I declare under penalty of perjury that the foregoing statements are true and correct



Ibrahim Reyes

STATE OF GEORGIA

COUNTY OF FULTON

Ibrahim Reyes appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.




Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, REBECCA N. SULLIVAN,
in her official capacity as Vice Chair of
the Georgia State Election Board,
DAVID J. WORLEY, in his official
capacity as a Member of the Georgia
State Election Board, MATTHEW
MASHBURN, in his official capacity as
a Member of the Georgia State Election
Board, and ANH LE, in her official
capacity as a Member of the Georgia
State Election Board,**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF CONSETTA S. JOHNSON IN SUPPORT OF
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Consetta S. Johnson, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

2. I was a volunteer audit monitor at the Jim R. Miller Park for the recount process on November 16, 2020.
3. As a floor monitor, I could see by the markings that the ballots being audited were absentee ballots.
4. I witnessed two poll workers placing already separated paper machine receipt ballots with barcodes in the Trump tray, placing them in to the Biden tray.
5. I also witnessed the same two poll workers putting the already separated paper receipt ballots in the "No Vote" and "Jorgensen" tray, and removing them and putting them inside the Biden tray.
6. They then took out all of the ballots out of the Biden tray and stacked them on the table, writing on the count ballot sheet. A copy of the video reflecting this is attached as **Exhibit A**.
7. Although I observed a supervisor provide guidance and instructions, the process was not uniform, and most poll workers were working in their own format and style.
8. I also observed the poll workers not calling out verbally the names of each ballot. They simply passed each ballot to each other in silence.
9. I believe the Board of Elections operations were sloppy, unorganized, and suspicious. As an observer I could not observe presidential vote preference

because the font size of the machine paper printed ballots were difficult to read from my distance. This is my personal experience.

I declare under penalty of perjury that the foregoing statements are true and correct

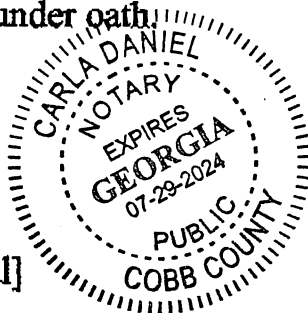

Consetta S. Johnson

STATE OF GEORGIA

COUNTY OF COBB

Consetta S. Johnson appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]




Notary Public

My Commission Expires

07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF CARLOS E. SILVA IN SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Carlos E. Silva, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. I am and have been a Florida trial lawyer for over 26 years.
3. I am a registered Democrat.
4. Me and several people from my firm were very interested in the election process in this country and wanted to be observers in the Georgia recount process to see if we had a valid, secure and non-biased voting system.
5. On Sunday, November 15, 2020 I arrived to Dekalb County Poll Precinct located at 2998 Turner Hill Road, Stonecrest, GA 30038.
6. I was allowed to be an observer and walked over to a table of two women counting votes.
7. I watched them pull out a pile of what I observed to be absentee ballots and noticed two very distinct characteristics that these ballots had. One, I noticed that they all had a perfect black bubble and were all Biden select. I was able to observe the perfect bubble for a few minutes before they made me move away from the table. At no time did I speak to the poll workers or obstruct them in any way. I heard them go through the stack and call out Biden's name over 500 times in a row.

8. On the following day, on November 16, 2020, I presented myself to Cobb County Poll Precinct located at 2245 Callaway Road SW, Marietta, GA. At first, I was standing next to the panel reviewers in Room B, where I observed absentee ballots being reviewed with the same perfect bubble that I had seen the night before at Dekalb County. All of these ballots had the same two characteristics: they were all for Biden and had the same perfect black bubble.
9. After being there for over an hour, I walked over to Room C where the absentee ballots were being manually recounted (audited). While in this room, I did not hear a verbal callout as to each ballot as I had heard the day before in Dekalb County. It was instead, done in a silent manner between both poll workers.
10. I was able to visualize the perfect bubble with the name Biden on it for approximately ten minutes before a female middle aged (blonde hair with glasses) supervisor in a ski jacket asked me to move ten feet away and refused to give me her name. Later on, one of the people traveling with me from my office, heard her say to keep an eye on the guy with a blue blazer and a pocket square, he is not allowed to come on the floor and observe past the yellow tape. I was the only one wearing a blue blazer with a pocket square.

11. I also observed a dispute at one of the tables between an observer and a male supervisor (perhaps in his mid-thirties) who stated that a box had been certified incorrectly because the recount number was different than the original number. The observer was also upset because nothing was done about it.
12. I also saw absentee ballots for Trump inserted into Biden's stack and were counted as Biden votes. This occurred a few times.
13. I also observed throughout my three days in Atlanta, not once did anyone verify signatures on these ballots. In fact, there was no authentication process in place and no envelopes were observed or allowed to be observed.
14. I saw hostility towards Republican observers but never towards Democrat observers. Both were identified by badges.
15. Lastly, after my frustrating experience, I decided to try to speak one of the poll workers after hours. I identified myself as an observer that wanted to know more about the process and any pressure he may have been under. He advised that they, as poll workers, have been prohibited to speak to observers at any time, and that the pressure they have been under by their supervisors has been great. Not only in the speed of counting, but in reference to

irregularities that he was not at liberty to discuss with me. I asked him if he could find some time to speak with me after he was done counting and relieved of his duties and he said he was advised to never speak to anyone about the process.

16. Based on my observations, I have reached the conclusion that in the counties I have observed, there is widespread fraud favoring candidate Biden only. There were thousands of ballots that just had the perfect bubble marked for Biden and no other markings in the rest of the ballot.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct.

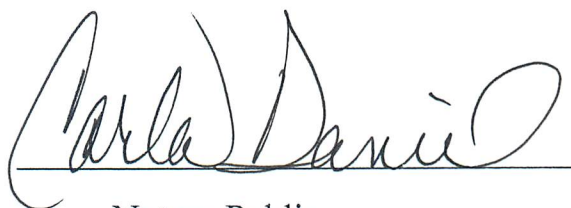
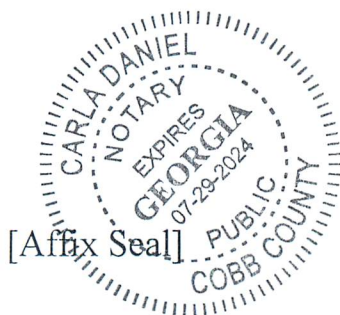


Carlos E. Silva

STATE OF GEORGIA

COUNTY OF FULTON

Carlos E. Silva appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.



Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF ANDREA O'NEAL IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Andrea O'Neal, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal
knowledge of the matters stated herein.

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the “Trump Campaign”) in connection with what was identified to me as the “hand count” of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 14, 2020 at the Lithonia Voting Facility in Lithonia, Georgia.
3. I voted early on October 12 at the precinct at Lynwood Park in Brookhaven. Because of irregularities at the polling location, I called the voter fraud line to ask why persons were discussing my ballot and reviewing it to decide where to place it. When I called the state fraud line, I was redirected to a worker in the office of the Secretary of State.
4. I asked to speak with a person in charge of fraud. The worker said he didn’t really have anyone to forward me to. He gave me the number to someone named Leigh at the State level, and then the DeKalb voting office. I left a message with Leigh, I never received a call back. I called DeKalb, again it was given an administrative worker, then a supervisor, but there was no dedicated resource against the fraud.
5. I became alarmed at what I was seeing and volunteered to watch in the hand recount. At the Lithonia location, I was originally scheduled to watch from 1:00 p.m. until 5:00 p.m. on November 16th. I initially saw counters who were

separated and not reading to each other, as was required by the instructions for the hand recount. A supervisor came over and told the workers to work together.

6. Around 3:00 p.m., I observed an auditor incorrectly collecting batches into odd numbers. I told a supervisor and she made the auditors at that table start over again.
7. We were too far away from the ballots to see who they were being voted for. If the auditors were not recording correctly, we would have no one of knowing whether the call out of any name was what was reflected on the ballot.
8. Around 4:00 pm. I saw another auditor incorrectly sort Biden votes without verification from another auditor. That auditor was collecting ballots that he said were voted for Biden and sorting them into 10 ballot stacks. But he did not show the ballots to anyone else. This violated the whole purpose of verifying the ballots as counted.
9. I was the only poll monitor near the table at the time. I went and told one of the supervisors who immediately went over to check and then went and spoke with "Gavin," the Republican supervisor/attorney. By the time I went back over the original Republican monitor was there with a different poll supervisor ("Twyla") and a group of 4 Democratic monitors had formed around the table.

10. The Republican poll monitor was recalling what she had seen, but confronted by the Audit Board members, who were refuting her comments vigorously. I stated that I had observed the exact same thing. The 4 Democratic monitors that were standing around the table accused us of ganging up on the table to watch them. They also stated that they were there watching and I was lying. None of them were there for the 5 minutes that I observed the improper actions, but they may have observed proper counting at a prior time, and I allowed this.

11. Nonetheless, Twyla stated that we were ganging up with "malice". I stated to Twyla that the table was not following proper procedure. She argued that a counted stack is a counted stack, no matter how they did it.

12. Two other Republican monitors firmly stated that all tables needed to be following proper procedure and this table was in clear violation. The workers were relieved from their shift and Twyla stated that the box they had been working on would get recounted.

13. I told Twyla that I had noticed each table counting its own way – some independently, some not, some out loud, some without discussion – and each table was sorting stacks by different counts. There was no uniform system. Written instructions state that stacks should be sorted in batches of 10. I


observed tables counting by 25, and one table that was counting stacks by 100s.

14. All of this may have been a problem with the limited training that the workers received, or the limitations of the mission – it is not clear what the “hand recount” is supposed to generate.

15. These problems may have been avoided with more training. I told Twyla that they needed to make sure everyone had proper training to follow the protocols as written. It was not easy to monitor where in the process of sorting and counting each table was at due to lack of consistency.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct

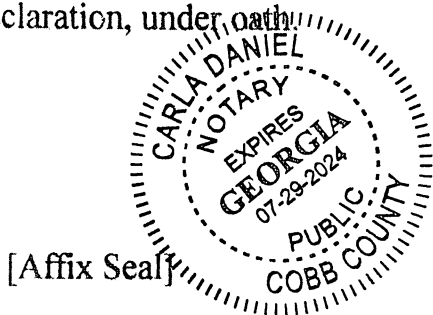

Andrea O'Neal

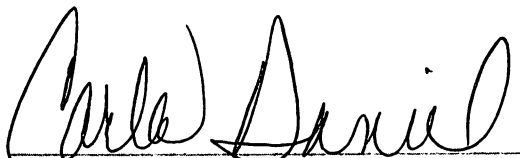
STATE OF GEORGIA

COUNTY OF FULTON

Andrea O'Neal, appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this

Declaration, under oath.




Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, REBECCA N. SULLIVAN,
in her official capacity as Vice Chair of
the Georgia State Election Board,
DAVID J. WORLEY, in his official
capacity as a Member of the Georgia
State Election Board, MATTHEW
MASHBURN, in his official capacity as
a Member of the Georgia State Election
Board, and ANH LE, in her official
capacity as a Member of the Georgia
State Election Board,**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF DEBRA J. FISHER IN SUPPORT OF
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**


I, Debra J. Fisher, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. On November 16, 2020 I witnessed the various issues on military and overseas ballots.
3. All military and overseas ballots I reviewed were very clean. No bubbles were colored outside of the line. Not one ballot used an “x” or check mark. The ballots I observed were marked in black ink and were for Biden. Not one ballot had a selection crossed out to change the vote selection.
4. I noticed that almost all of the ballots I reviewed were for Biden. Many batches went 100% for Biden.
5. I also observed that the watermark on at least 3 ballots were solid gray instead of transparent, leading me to believe the ballot was counterfeit. I challenged this and the Elections Director said it was a legitimate ballot and was due to the use of different printers.
6. Many ballots had markings for Biden only, and no markings on the rest of the ballot. This did not occur on any of the Trump ballots I observed.
7. Ballots were rejected because people chose 2 or more candidates. I found it odd that none of this happened with the military ballots.

8. The military ballots did not have one specific precinct code on them. Instead, they had multiple precincts printed on it (a “combo”). I challenged this as when this is done, you do not know what precinct the voter is registered in.
 9. Based on my observations above and the fact that signatures on the ballots were not being verified, I believe the military ballots are highly suspicious of fraud.
- I declare under penalty of perjury that the foregoing statements are true and correct.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct



Debra J. Fisher

STATE OF GEORGIA

COUNTY OF COBB

Debra J. Fisher appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.




Notary Public

My Commission Expires 07-29-2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, REBECCA N. SULLIVAN,
in her official capacity as Vice Chair of
the Georgia State Election Board,
DAVID J. WORLEY, in his official
capacity as a Member of the Georgia
State Election Board, MATTHEW
MASHBURN, in his official capacity as
a Member of the Georgia State Election
Board, and ANH LE, in her official
capacity as a Member of the Georgia
State Election Board,**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF TIFFANY SAVAGE IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Tiffany Savage, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein. I am a resident of Gwinnett County. My husband and I own two small businesses in Gwinnett County.

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the “Trump Campaign”) in connection with what was identified to me as the “hand count” of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 14 through 17.
3. I was assigned to be an official monitor at the location at Beauty P. Baldwin Voter Registrations and Elections Building in Lawrenceville. I believed that we were there to watch actual “hand counting” as had been announced in the newspapers and by the Secretary of State when he requested a “hand count.”
4. In the course of monitoring on November 14, I noticed some major red flags that undermined the fairness of the process. I do not see these being addressed in a way that is fair and equitable.
5. Ballots were being grouped into batches. It was not clear for what purpose. They were not being counted, as far as I could tell. I do not know what training or instruction had been given to these groupers, but the activity seemed meaningless.
6. Envelopes from mail in ballots had been separated from the signatures on the absentee ballot eternal envelopes. Electors during in-person early voting or on Election Day were required to show identification; signature verification was not available for audit in the recount.

7. Batches of ballots were marked with discrepancies on post it notes. See picture on Annex 1. Ballots were placed in unmarked bins that are unattended or just placed randomly on a counter just lying around. There appeared to be little, if any, supervision, or control. I saw at least one open ballot box (container ABM5B/ 31148252). See picture on Annex 1.
8. Four hours after a shift change, at many stations (at least 4 that I could see), the counters were not counting ballots correctly. Instead of the “pass count” for dual control purposes, counters were opening ballot batches independently and “fast counting.”
9. I reported the fast counting, and announcement was made to cause the counters to use a confirmed process for reviewing and counting the ballots. Perhaps there had been some training, but it seemed inconsistent. But even after an announcement was made asking them to resume “pass counting.” they continued to batch and group “just get it over with.”
10. Unsecured, completed ballot boxes were left all day when they should have been secured by the (green) numbered lock tags. The security tags were being used to lock the bags of ballots, but they were lying around in the open and could have been used by anyone. See picture on Annex 1. There was no permanent processing of assigning a tag number to a bag, so every bag was

vulnerable to opening, tampering, and relocking at any point in time when the room was not being monitored.

11. The counters did not note the time verification on the machine-read voting ballots.

12. I overheard a poll official saying that damaged ballots were being or had been “duplicated.” I am not allowed to directly interact with a poll official, so I could not ask what that official meant by that statement. There were hundreds of damaged or voided ballots (which were all duplicated).

13. On November 15, 2020, the counting continued in the same haphazard way until 2:48 p.m., when counting was stopped because the laptops all “went down.” The official counting did not resume that day but at 5:00 p.m., the counters were dismissed due to “counter fatigue.”

14. Batches of ballots were sitting around unattended. The ballot boxes were locked with green security tags on the front but could be opened from the other side without cutting the green security tag. The boxes are not secured.

15. *Gwinnett Election informed that the Green security tag numbers are not documented and maintained anywhere except on a Post-it note inside the box. The bag numbers are not kept in an independent location, so the ballots are subject to tampering. The tags can be cut, the ballot box opened, ballots can

be manipulated. And a new Post-it note can be placed inside the box with the new (not original) green security tag when the boxes are unmonitored.

16.The “24 hour camera feed” only shows ballot counters, not the voter review or “secured ballot boxes.” The 24 hour camera feed is closed off after hours and appears dark.

17.All officers, who work for sheriff office, left the building when the counters left. Yet persons with badges were exiting and entering the building and walking out with folders.

18.After hours, anyone with a key to the building can have access to the open room and this counting area.

19.I returned on November 16 and witnessed the same level of confusion as the 14th and 15th. On the 16th, we were not permitted in the counting area until 9:30. At 8:30, all poll workers were released (approximately 75% of all counters). The remaining counters did not appear to be aware of the rules, and even when instructed, continued to blatantly disregard the counting procedures.

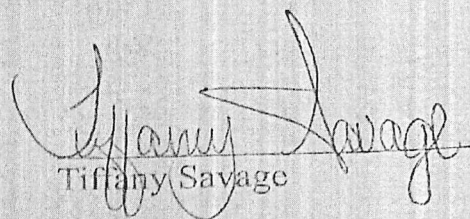
20.The ballot box that had been left unsecured on November 14 was still unsecured two days later. Green security tags were cut and replacement tags were not being recorded properly.

21. Some ballot batch tally sheets have no number written at all in the Trump column but include numbers for Biden; I regarded those as not likely to be 100% Biden votes in a given batch, but just incomplete.
22. A laptop with access to the data entry system was left in the open area with the password for the wifi and the laptop on a Post-it note affixed to the laptop. When informed of this security breach, the supervisor simply said, "I know." The "secured ballot counting area" was wide open to many people, even some without a security badge.
23. One worker was entering numbers and writing on ballot sheets alone and out of sight of the security camera. When informed, the supervisor simply moved her to another table.
24. The ballot batch tally sheets that are then given to the data entry tables were marked in red pen. Red pens were left on the table, which would permit the auditors to correct the ballot batch tally sheets they were auditing.
25. On November 17, the lack of security, confusion, and hostility to Republican poll watchers continued. The supervisor placed a red line in tape across the floor and instructed the poll watchers to stand behind the gold tape. There was no way to see if the ballots were being read correctly. See picture on Annex 1.

26. We saw further instances of gross violations of the rules that were established to this recount. Auditors who were informed they had violated the rules did not change their behavior. There was no way to tell if any counting was accurate.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct

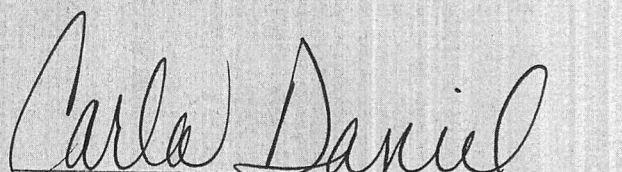

Tiffany Savage

STATE OF GEORGIA

COUNTY OF GWINNETT

Tiffany Savage, appeared before me, a Notary Public in and for the above jurisdiction, this 16th day of November 2020, and after being duly sworn, made this Declaration, under oath.

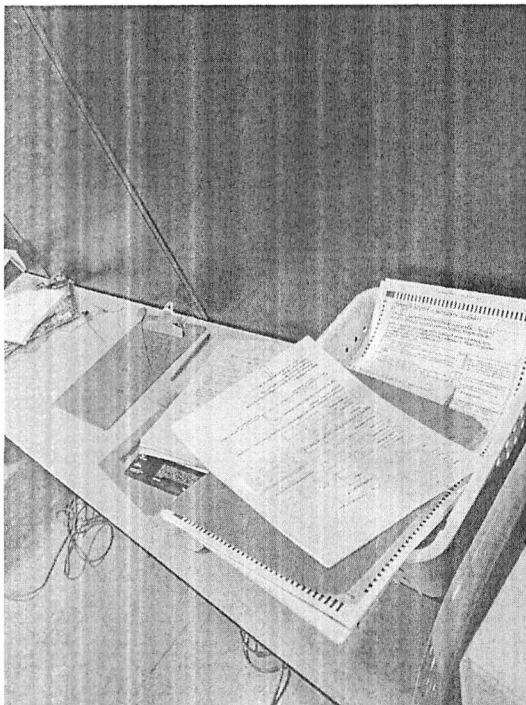



Notary Public

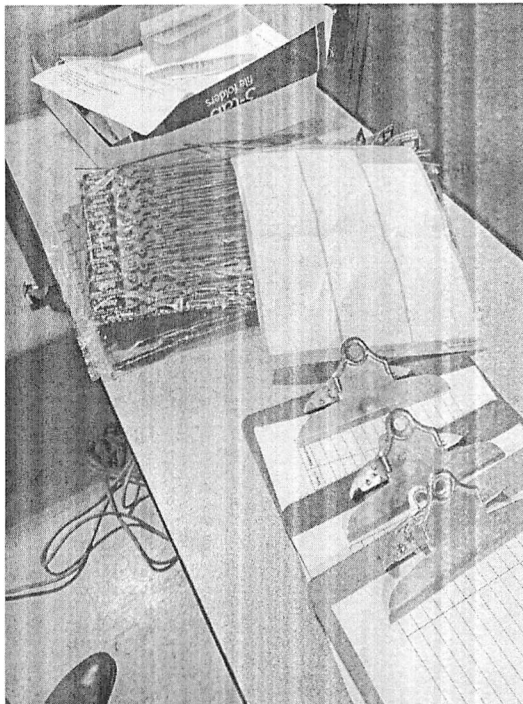
My Commission Expires 07-29-2024

Annex 1

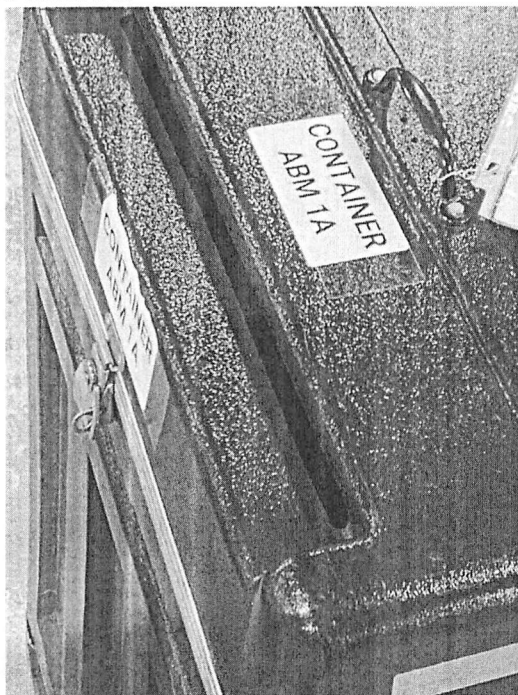
Picture 1



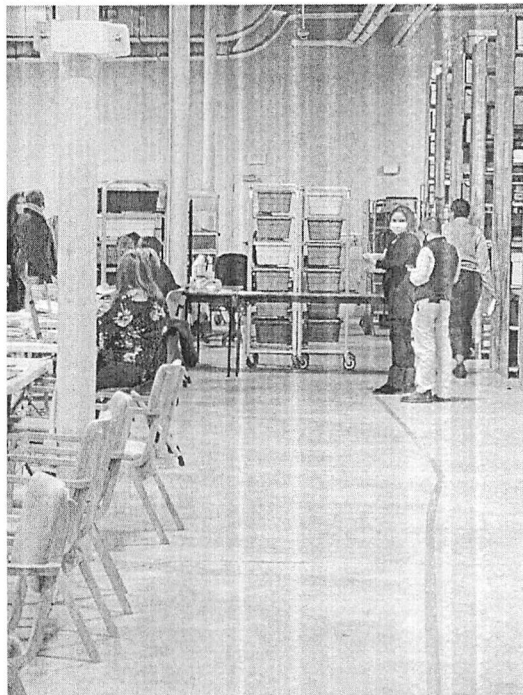
Picture 3



Picture 2



Picture 4



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, REBECCA N. SULLIVAN,
in her official capacity as Vice Chair of
the Georgia State Election Board,
DAVID J. WORLEY, in his official
capacity as a Member of the Georgia
State Election Board, MATTHEW
MASHBURN, in his official capacity as
a Member of the Georgia State Election
Board, and ANH LE, in her official
capacity as a Member of the Georgia
State Election Board,**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF KEVIN P. PETERFORD IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

I, Kevin P. Peterford, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

2. I am an attorney licensed to practice law in the state of Florida.
3. On Sunday November 15, 2020 Alyssa Specht appointed me to serve as a Monitor for the duration of the Risk Limiting Audit in DeKalb County (the “DeKalb Appointment Letter”). A true and accurate copy of the appointment letter is attached to this Affidavit as **Exhibit “A.”**
4. On Sunday at around 12:30 p.m., I showed up to 2994 Turner Hill Road, Stonecrest, Georgia 30038 to begin observing as a Monitor. Prior to my arrival, I was sent a handout titled “Audit/Recount Monitor and Vote Review Panel Handout” which outlined the rules in place as well as provided guidelines for observation. A true and accurate copy of the Audit/Recount Monitor and Vote Review Panel Handout is attached to this Affidavit as **Exhibit “B.”**
5. After signing in and providing the DeKalb appointment letter to the check-in desk, I was permitted to roam throughout the facility to conduct observations.
6. The first thing I noticed was signs taped to each table (the “Review Table” or “Review Tables”) indicated a place for ballots for Trump, Biden, and Jorgenson and other signs for “Blanks” (no vote for President) or overvotes (multiple votes for President). At each Review Table were two people

manually reviewing each ballot (the “Recounter”). The first Recounter would pick up the ballot and orally announce which candidate the ballot was cast for. The first Recounter would then pass the ballot to the second Recounter who would again orally announce which candidate the ballot was cast for. The ballot was subsequently placed in the pile designated for that candidate as discussed above.

7. Due to the COVID restrictions, we were instructed to stay a minimum of six feet away from any Recounter sitting at one of the Review Tables.
8. The ballots would be brought to the Review Table in a cardboard box by another worker. I was never able to get close enough to read any writing on any of the cardboard boxes. After the cardboard box was opened, stacks of ballots were removed and placed on the Review Table. There were notes on each stack but again, I was never able to get close enough to read what was written.
9. Once the stack of ballots was on the Review Table, the process of reviewing the ballot began in the manner outlined above in paragraph 6.
10. At no time did I witness any Recounter or any individual participating in the recount verifying signatures.

11. If one of the Recounters encountered a ballot that was questionable, he or she raised a piece of paper with a “?” and what seemed to be a supervisor would come to that Review Table. A short conversation was had and the supervisor would provide the Recounters with instructions. Again, I was never able to get close enough to hear what was said.
12. When a Review Table completed reviewing a cardboard box full of ballots, one of the Recounters would write some information (I assume it was the number of ballots for each candidate the box contained) on a piece of paper and place it on top of the cardboard box. Then one of the Recounters would hold a piece of paper with a “√” (check mark) on it in the air and someone would come pick up the box full of ballots.
13. There was no person verifying the number of votes that the Recounter would write on the paper.
14. At one point, I witnessed a fellow monitor chase after a ballot box that was supposedly finished being counted.
15. Once this monitor was towards the back of the room, with this ballot box, the supervisor in charge chased after him, directing him to go back to the main part of the room and to leave the ballot box.

16. It was later learned that this ballot box needed to be recounted because a 0 (zero) had been incorrectly added to the Biden count, making it approximately 10,000 plus votes for Biden, when it should only have been in the thousands.
17. I spoke to other Observers present that day and they had witnessed the same thing. Other Observers also informed me that fellow Observers were removed for getting too close to the Review Tables. That when they would get close enough to see what was actually filled in on the ballot, one of the Recounters would begin making a big scene and call over a supervisor. The supervisor would then remove the Monitor permanently.
18. While in DeKalb County, I saw a lot of hostility towards Republicans and none towards Democrats.
19. Further, I noticed a Democrat Monitor speaking to a Recounter, which was strictly against the rules of conduct during the recount.
20. On the evening of November 15, 2020, Alyssa Specht appointed me as an Monitor in Henry County for the whole duration of the Risk Limiting Audit ("Henry County Appointment Letter"). A true and accurate copy of the Henry County Appointment Letter is attached to this Affidavit as Exhibit "C."

21. I arrived at 562 Industrial Boulevard, McDonough, Georgia 30253 at around 9:30 a.m.
22. When I entered the building, I was halted by a woman at the door who immediately informed me that I was not needed and that all the position had been filled. At this time, the woman neither asked who I was nor why I was present. I asked this woman to speak to the person in charge.
23. Within a few seconds, I was greeted by Ameika Pitts ("Ms. Pitts"), Henry County's Elections Director. Ms. Pitts informed me that my assistance was not needed, and I was free to go. Again, this was told to me prior to her asked why I was there and who I was.
24. I then pulled the Henry County Appointment Letter up on my phone and presented it to her. Ms. Pitts immediately told me that I was not able to have my phone inside the building even though the recount was allegedly being "live streamed." After a brief conversation, I send Ms. Pitts a copy of the letter and was permitted to enter the building, but only in the public observation area.
25. Fortunately, after speaking to several Republican Party volunteers, Ms. Pitts was provided my name from the Henry County Republican Chairwoman and I was permitted to enter into the observation area.

26. Once inside the observation area, I saw that it was set up very similar to DeKalb County with the Review Tables having the same designations and each Review table having two Recounters as described in paragraph 6 above.

27. As I began walking around, I noticed several differences between DeKalb County and Henry County. In Henry County, the ballots were brought to each Review Table in a red, plastic box with security ties used to hold the box closed. Those ties were cut, and the ballots were then removed and placed on top of the Review Table in stacks that were wrapped in a rubber bands and had a pink sticky note on each stack which displayed the number of ballots each stack contained. The Recounter would then remove the rubber band and sticky note and begin counting the same was described in paragraph 6 above.

28. At around 12:05 p.m. I was observing table "G" when the two recount workers sorted a pile of ballots that had a note which said "93" as the number of ballots. When the two workers finished sorting and counting the ballots, there were only 92. The director of the election committee, Ms. Pitts came to the two workers and simply signed a separate sheet of paper saying that there were only 92 ballots. Ms. Pitts never recounted to make sure. This

happened several times and Ms. Pitts informed us that she has been directed to just sign off on the number of ballots the recount worker said was there.

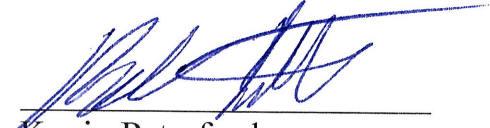
29. While in Henry County, I personally witnessed ballots cast for Donald Trump being placed in the pile for Joseph Biden. I witnessed this happen at table "A."

30. I interviewed a few Observers that same day who informed me that on multiple occasions, Recounters at tables "A," "B," "G," and "O" were seen placing ballots cast for Donald Trump placed in the pile for Joseph Biden. When this was brought to Ms. Pitts attention, it was met with extreme hostility. At no time did I witness any ballot cast for Joseph Biden be placed in the pile for Donald Trump.

31. Based on my personal observations, I believe that additional absentee ballots were cast for Donald Trump but counted for Joseph Biden. I further believe that there was widespread fraud favoring Joseph Biden. This is my personal experience.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct

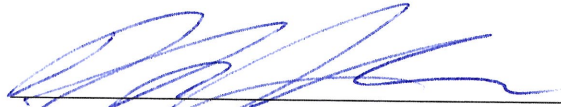

Kevin Peterford

STATE OF FLORIDA

COUNTY OF PALM BEACH

Kevin Peterford, appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]


Notary Public

My Commission Expires _____

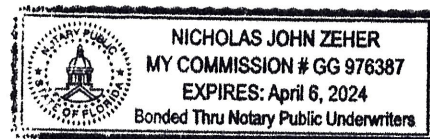


Exhibit A



November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

This letter serves as proper notice, pursuant to O.C.G.A. § 21-2-408, § O.C.G.A. 21-2-483, State Election Board Rule 183-1-13-.06, and/or State Election Board Rule 183-1-14-0.9-.15. The listed designees are to serve as a Monitor for the whole duration of the Risk Limiting Audit in DeKalb County:

- William McElligott
- Oleg Otten
- Kevin Peterford
- Nicholas Zeher
- Scott Strauss
- Michael Sasso

A handwritten signature in black ink, appearing to read "D. Shafer".

David J. Shafer
Chairman

A handwritten signature in black ink, appearing to read "Michael Welsh".

Michael Welsh
Secretary

Exhibit B

Audit/Recount Monitor and Vote Review Panel Handout

Audit Observer Handout

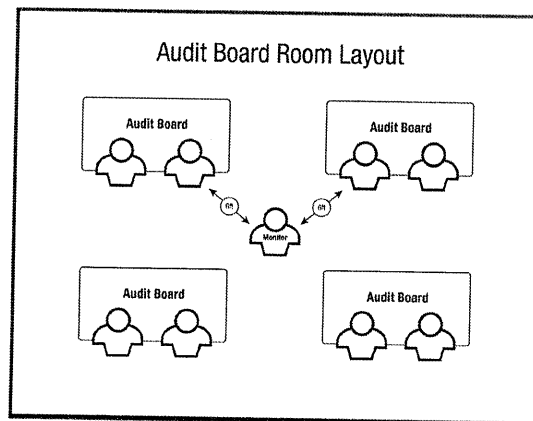
Arrival:

- Arrive 30 minutes prior to the start of your shift.
- The public is to watch the opening procedures before the audit begins and after the audit ends for the day.
- Be respectful and professional, not adversarial.

Audit Observers/Designated Monitors:

- Each political party may have one designated monitor per 10 Audit Teams or a minimum of two designated monitors per room.
- Designated monitors may roam the audit room and observe the audit process
- Observe the Check-in and Check-out process of the ballots
- Must wear badges that identify them by name.
- Are allowed to observe but may not obstruct orderly conduct of election.
- May not speak to or otherwise interact with election workers.
- Are not allowed to wear campaign buttons, shirts, hats or other campaign items.
- Do not touch any ballot or ballot container
- Observe and ensure the room is properly set-up, the Audit Teams are completing their tasks, and the Table is set up properly (see below).
- **Must pose questions regarding procedures to the clerk/election worker for resolution.**

Room Set up



Audit Teams Responsibilities

When reviewing a ballot and determining the voter's mark, audit boards must consider "if the elector has marked his or her ballot in such a manner that he or she has indicated clearly and without question the candidate for whom he or she desires to cast his or her vote." O.C.G.A. 21-2-438(c).

As a batch is delivered from the check-in/out station:

- Record the County Name, Batch Name, and Batch Type (Absentee, Advanced Voting, Provisional, Election Day), and verify the container was sealed on the Audit Board Batch Sheet.

- Unseal the container.
- Recount the Ballots using the "Sort and Stack" method:
 - Pull the ballots out of the container and stack neatly on the table.
 - If the container contains more than 1000 ballots, ballots should be removed from the container and sorted in manageable stacks (using an Audit Board Batch Sheet for each stack), leaving the rest of the ballots in the container until the previous stack is done.
 - For each ballot: audit board member (ABM) #1 picks up a single ballot from the stack and reads the vote for the Presidential contest aloud, then hands the ballot to ABM #2. ABM #2 verifies the vote that is on the ballot is indeed what ABM #1 read, then places the ballot in the "stack" that corresponds to the vote. ABM #1 should watch to make sure the ballot is placed in the right stack. There will be 8 stacks as follows:
 - Trump
 - Biden
 - Jorgensen
 - Overvoted ballots - one pile for any ballot where the voter made more than one selection for President.
 - Blank/Undervoted ballots - one pile for any ballot where the voter made no selection for President.
 - Write-In - one pile for any ballot containing a write-in vote for President. (The board does *NOT* need to determine whether the write-in is for a qualified candidate: the Vote Review Panel does that.)
 - Duplicated ballots - one pile for ballots marked as duplicated.
 - Undetermined - one pile for any ballot where the audit board cannot agree on the voter's intent.
 - Candidate Ballot Tallies – Count the ballots in each stack by having one member of the audit board verbally count the ballot while handing it to the other member for verification. Count the ballots in groups of 10, stacking the groups at right angles to each other, so you can easily count the complete groups when you are done. (For instance, if you have seven groups of 10 ballots each plus an extra 3 ballots, the total tally would be 73.) Record the total tally for each candidate on the Audit Board Batch Sheet.
 - Write-In, Duplicated, and Undetermined Ballots - count the ballots in the write-in duplicated, and undetermined ballot piles and record on the Audit Board Batch Sheet. Each type should go in a designated folder or envelope by batch.
 - Write-in, Duplicated, and Undetermined ballot folders must be set aside for delivery to the Vote Review Panel.
 - Return the other ballots to the original container and seal the container.
 - Sign the Audit Board Batch Sheet.
 - Raise your check mark sign for the check-in/out station to come retrieve your container, batch sheet, and any ballots for the Vote Review Panel.

Audit Board Batch Sheet

County _____

Batch Name _____

Batch Type: ☐ Absentee ☐ Advance ☐ Election Day ☐ Provisional ☐ Other

Was the container sealed when received by the audit board? ☐ Yes

Candidates	Enter Audit Totals
Donald J. Trump	
Joseph R. Biden	
Jo Jorgenson	
Overvote	
Blank/Undervote	

Ballots sent to the Vote Review Panel (if any)

Write-In	
Duplicated	
Undetermined	

When work is completed, return all ballots (except Vote Review Panel ballots) to the ballot container and seal container.

Was the container resealed by the audit board? ☐ Yes

X _____ X _____
(Audit Board Member) (Audit Board Member)

Check In/Out Station

☐ Recorded batch return on Ballot Container Inventory Sheet

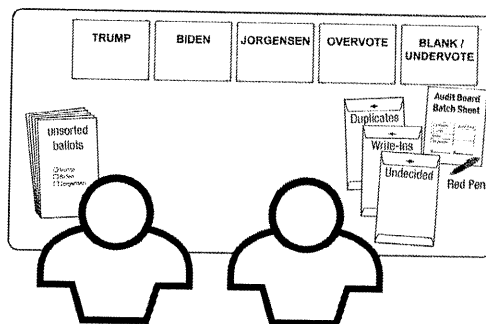
☐ Delivered Vote Review Panel ballots (if any)

☐ Entered tallies into Arlo

_____ Initials of check in/out station member

Table Set up

Audit Board Table Top Organization



No Photography is allowed in the observation area.

Check-in/out Process

- Two election workers are required to observe the check in and check out process of ballots to ensure there is a secure chain of custody and inventory of ballots is kept proper.
 - One person is to be kept with the ballot containers
 - One person delivers the containers to and from the audit boards ("runner")
- There should be at least one "runner" for every 5 audit boards
- When a new container arrives, the election works must record:

- batch name
 - audit board number
- Upon completion, the election worker must:
 - Verify proper completion of the *Audit Board Batch Sheet*
 - Ensure contain is resealed
 - Return the container and batch sheet to the check-in/out station
 - Note the return of the container of the Ballot Container Inventory Sheet
 - Deliver any necessary ballots/envelopes to the Vote Review Panel
 - Duplicates, write-ins, and undermined
 - Enter candidate totals for the batch in Arlo, mark as “entered”

Closing of Audit Room:

- All eligible monitors are able to observe the closing and conclusion of the audit.

Monitor Observes Issue...What to Do?

1. Respectfully raise issue with precinct clerk for resolution.
2. Do NOT speak to or interact with election workers.
3. Do NOT take pictures or videos.
4. If unresolved, leave polling room and call GOP GA Legal Hotline with your name, county, and location.

Be on the lookout for:

1. Lapses in procedure
2. Food or beverage on audit tables (it should be under the table)
3. Any ballots not being delivered from the runners in the regular course

Statewide Observer and VRP member Hotline: 470-410-8762

Incident Report Form (attached) and at: <https://gagop.org/auditreport/>

The Vote Review Panel

Vote Review Panel (VRP) Member:

- Each political party must have 1 member per VRP
- You must object when you cannot agree
 - If there is a disagreement between the two VRP members, the Superintendent or their designee breaks the tie.
- Manually log each ballot that should be adjudicated
- Must wear badges that identify them by name.
- May not speak to or otherwise interact with election workers.
- Are not allowed to wear campaign buttons, shirts, hats or other campaign items.
- **Must pose questions regarding procedures to the clerk/election worker for resolution.**

Three types of Ballots:

- **Duplicated Ballots**
 - Retrieve the original ballot and compare the duplicated ballot to ensure proper duplication. Using the original ballot, record the vote tally for the duplicated ballots using the Vote Review Panel Tally Sheet.
- **Undetermined Ballots**
 - Review the undetermined ballots where the audit board could not agree on the voter's intent to make a determination. Record the vote tally for the undetermined ballots using the Vote Review Panel Tally Sheet.
- **Write-In Ballots**
 - Review the write-in ballots to determine if a voter has voted for a qualified or invalid write-in candidate. Record the number of votes for each qualified write-in candidate on the Qualified Write-In Candidate Tally Sheet.

[illegible]

Common Adjudication Scenarios

Common Adjudication Scenarios

OVERVOTES
With corrections from voters

HESITATION MARKS

STRAY MARKS IN TARGET AREAS

MARKING ERRORS
Consistent patterns

Inconsistent patterns

Ex. M to TRO Motion:
Peterford Affidavit

Exhibit C



November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

This letter serves as proper notice, pursuant to O.C.G.A. § 21-2-408, § O.C.G.A. 21-2-483, State Election Board Rule 183-1-13-.06, and/or State Election Board Rule 183-1-14-0.9-.15. The listed designees are to serve as a Monitor for the whole duration of the Risk Limiting Audit in Henry County:

- William McElligott
- Oleg Otten
- Kevin Peterford
- Nicholas Zeher
- Ibrahim Reyes-Gandara
- Juan Carlos Elso
- Carlos Silva
- Mayra Romera

A handwritten signature in black ink, appearing to read "David J. Shafer".

David J. Shafer
Chairman

A handwritten signature in black ink, appearing to read "Michael Welsh".

Michael Welsh
Secretary

DECLARATION OF [REDACTED]

I, [REDACTED], hereby state the following:

1. [REDACTED]
[REDACTED]
[REDACTED]
2. I am an adult of sound mind. All statements in this declaration are based on my personal knowledge and are true and correct.
3. I am making this statement voluntarily and on my own initiative. I have not been promised, nor do I expect to receive, anything in exchange for my testimony and giving this statement. I have no expectation of any profit or reward and understand that there are those who may seek to harm me for what I say in this statement. I have not participated in any political process in the United States, have not supported any candidate for office in the United States, am not legally permitted to vote in the United States, and have never attempted to vote in the United States.
4. I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.
5. [REDACTED]
[REDACTED] Over the course of my career, I specialized in the marines [REDACTED]
[REDACTED]
[REDACTED]
6. Due to my training in special operations and my extensive military and academic formations, I was selected for the national security guard detail of the President of Venezuela. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

7. [REDACTED]
- [REDACTED] Señor Cabello was a long-time confederate of President Chavez and instrumental in his gaining power. In 2002, Señor Cabello had very briefly taken over the duties of the presidency while Hugo Chavez was imprisoned. Within hours of Señor Cabello taking over the presidency, Hugo Chavez was released from prison and regained the office of President. On December 11, 2011, Cabello was installed as the Vice-President of the United Socialist Party – the party of President Chávez and became the second most powerful figure in the party after Hugo Chávez. Cabello was appointed president of the National Assembly in early 2012 and was re-elected to that post in January 2013. After Hugo Chávez's death, Cabello was next in line for the presidency of the country, but he remained president of the National Assembly and yielded to Nicolás Maduro holding the position of President of Venezuela.

8. [REDACTED]
- [REDACTED] President Chavez was very precise and exacting in his instructions in the details about meetings he wanted, where the meeting was to occur, who was to attend, what was to be done. [REDACTED]

9. [REDACTED]
- [REDACTED] I was witness to the creation and operation of a

sophisticated electronic voting system that permitted the leaders of the Venezuelan government to manipulate the tabulation of votes for national and local elections and select the winner of those elections in order to gain and maintain their power.

10. Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, representatives, and personnel from Smartmatic which included [REDACTED]. The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes *against* persons running the Venezuelan government to votes *in their favor* in order to maintain control of the government.
11. In mid-February of 2009, there was a national referendum to change the Constitution of Venezuela to end term limits for elected officials, including the President of Venezuela. The referendum passed. This permitted Hugo Chavez to be re-elected an unlimited number of times.
12. After passage of the referendum, President Chavez instructed me to make arrangements for him to meet with Jorge Rodriguez, then President of the National Electoral Council, and three executives from Smartmatic. Among the three Smartmatic representatives were [REDACTED]
[REDACTED] President Chavez had multiple meetings with Rodriguez and the Smartmatic team at which I was present. In the first of four meetings, Jorge Rodriguez promoted the idea to create software that would manipulate elections. Chavez was very excited and made it clear that he would provide whatever Smartmatic needed. He wanted them immediately to create a voting system which would ensure that any time anything was going to be voted on the voting system would guarantee results that Chavez wanted. Chavez offered Smartmatic many inducements, including large sums of money, for Smartmatic to create or modify the voting system so that it would guarantee Chavez would win every election cycle. Smartmatic's team agreed to create such a system and did so.
13. I arranged and attended three more meetings between President Chavez and the representatives from Smartmatic at which details of the new

voting system were discussed and agreed upon. For each of these meetings, I communicated directly with [REDACTED] on details of where and when to meet, where the participants would be picked up and delivered to the meetings, and what was to be accomplished. At these meetings, the participants called their project the “Chavez revolution.” From that point on, Chavez never lost any election. In fact, he was able to ensure wins for himself, his party, Congress persons and mayors from townships.

14. Smartmatic’s electoral technology was called “Sistema de Gestión Electoral” (the “Electoral Management System”). Smartmatic was a pioneer in this area of computing systems. Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter’s ballot. The voter’s thumbprint was linked to a computerized record of that voter’s identity. Smartmatic created and operated the entire system.
15. Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter’s name and identity as having voted, but that voter would not tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software and hardware that accomplished that result for President Chavez.
16. After the Smartmatic Electoral Management System was put in place, I closely observed several elections where the results were manipulated using Smartmatic software. One such election was in December 2006 when Chavez was running against Rosales. Chavez won with a landslide over Manuel Rosales - a margin of nearly 6 million votes for Chavez versus 3.7 million for Rosales.
17. On April 14, 2013, I witnessed another Venezuelan national election in which the Smartmatic Electoral Management System was used to manipulate and change the results for the person to succeed Hugo Chávez

as President. In that election, Nicolás Maduro ran against Capriles Radonsky. [REDACTED]

[REDACTED] Inside that location was a control room in which there were multiple digital display screens – TV screens – for results of voting in each state in Venezuela. The actual voting results were fed into that room and onto the displays over an internet feed, which was connected to a sophisticated computer system created by Smartmatic. People in that room were able to see in “real time” whether the vote that came through the electronic voting system was in their favor or against them. If one looked at any particular screen, they could determine that the vote from any specific area or as a national total was going against either candidate. Persons controlling the vote tabulation computer had the ability to change the reporting of votes by moving votes from one candidate to another by using the Smartmatic software.

18. By two o'clock in the afternoon on that election day Capriles Radonsky was ahead of Nicolás Maduro by two million votes. When Maduro and his supporters realized the size of Radonsky's lead they were worried that they were in a crisis mode and would lose the election. The Smartmatic machines used for voting in each state were connected to the internet and reported their information over the internet to the Caracas control center in real-time. So, the decision was made to reset the entire system. Maduro's and his supporters ordered the network controllers to take the internet itself offline in practically all parts in Venezuela and to change the results.
19. It took the voting system operators approximately two hours to make the adjustments in the vote from Radonsky to Maduro. Then, when they turned the internet back on and the on-line reporting was up and running again, they checked each screen state by state to be certain where they could see that each vote was changed in favor of Nicholas Maduro. At that moment the Smartmatic system changed votes that were for Capriles Radonsky to Maduro. By the time the system operators finish, they had achieved a convincing, but narrow victory of 200,000 votes for Maduro.
20. After Smartmatic created the voting system President Chavez wanted, he exported the software and system all over Latin America. It was sent to Bolivia, Nicaragua, Argentina, Ecuador, and Chile – countries that were in alliance with President Chavez. This was a group of leaders who wanted to be able to guarantee they maintained power in their countries. When Chavez died, Smartmatic was in a position of being the only

company that could guarantee results in Venezuelan elections for the party in power.

21. I want to point out that the software and fundamental design of the electronic electoral system and software of Dominion and other election tabulating companies relies upon software that is a descendant of the Smartmatic Electoral Management System. In short, the Smartmatic software is in the DNA of every vote tabulating company's software and system.
22. Dominion is one of three major companies that tabulates votes in the United States. Dominion uses the same methods and fundamentally same software design for the storage, transfer and computation of voter identification data and voting data. Dominion and Smartmatic did business together. The software, hardware and system have the same fundamental flaws which allow multiple opportunities to corrupt the data and mask the process in a way that the average person cannot detect any fraud or manipulation. The fact that the voting machine displays a voting result that the voter intends and then prints out a paper ballot which reflects that change does not matter. It is the software that counts the digitized vote and reports the results. The software itself is the one that changes the information electronically to the result that the operator of the software and vote counting system intends to produce that counts. That's how it is done. So the software, the software itself configures the vote and voting result -- changing the selection made by the voter. The software decides the result regardless of what the voter votes.
23. All of the computer controlled voting tabulation is done in a closed environment so that the voter and any observer cannot detect what is taking place unless there is a malfunction or other event which causes the observer to question the process. I saw first-hand that the manipulation and changing of votes can be done in real-time at the secret counting center which existed in Caracas, Venezuela. For me it was something very surprising and disturbing. I was in awe because I had never been present to actually see it occur and I saw it happen. So, I learned first-hand that it doesn't matter what the voter decides or what the paper ballot says. It's the software operator and the software that decides what counts – not the voter.
24. If one questions the reliability of my observations, they only have to read the words of [REDACTED] [REDACTED]
[REDACTED] a time period in

which Smartmatic had possession of all the votes and the voting, the votes themselves and the voting information at their disposition in Venezuela.

██████████ he was assuring that the voting system implemented or used by Smartmatic was completely secure, that it could not be compromised, was not able to be altered.

25. But later, in 2017 when there were elections where Maduro was running and elections for legislators in Venezuela, [REDACTED] and Smartmatic broke their secrecy pact with the government of Venezuela. He made a public announcement through the media in which he stated that all the Smartmatic voting machines used during those elections were totally manipulated and they were manipulated by the electoral council of Venezuela back then. [REDACTED] stated that all of the votes for Nicholas Maduro and the other persons running for the legislature were manipulated and they actually had lost. So I think that's the greatest proof that the fraud can be carried out and will be denied by the software company that [REDACTED] admitted publicly that Smartmatic had created, used and still uses vote counting software that can be manipulated or altered.
26. I am alarmed because of what is occurring in plain sight during this 2020 election for President of the United States. The circumstances and events are eerily reminiscent of what happened with Smartmatic software electronically changing votes in the 2013 presidential election in Venezuela. What happened in the United States was that the vote counting was abruptly stopped in five states using Dominion software. At the time that vote counting was stopped, Donald Trump was significantly ahead in the votes. Then during the wee hours of the morning, when there was no voting occurring and the vote count reporting was off-line, something significantly changed. When the vote reporting resumed the very next morning there was a very pronounced change in voting in favor of the opposing candidate, Joe Biden.
27. [REDACTED] I have worked in gathering information, researching, and working with information technology. That's what I know how to do and the special knowledge that I have. Due to these recent election events, I contacted a number of reliable and intelligent ex-co-workers of mine that are still informants and work with the intelligence community. I asked for them to give me information that was up-to-date information in as far as how all these businesses are acting, what actions they are taking.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was prepared in Dallas County, State of Texas, and executed on November 15, 2020.

Declaration of Christos A. Makridis

Pursuant to 28 U.S.C Section 1746, I, Christos A. Makridis, make the following declaration.

1. I am over the age of 21 years, and I am under no legal disability, which would prevent me from giving this declaration.
2. I hold dual Doctorates and dual Masters in Economics and Management Science & Engineering from Stanford University and a BS in Economics from Arizona State University. I hold roles in the public sector, private sector, and higher education.
3. I reside at 875 10th Street NW, Washington, DC, 20001.
4. Georgia uses Dominion Voting Systems (DVS), which has a history of technical glitches that have not been fixed. DVS was rejected three times in Texas because of its inherent defects. It has caused multiple anomalies and delays. In Gwinnett County alone, these software glitches have affected roughly 80,000 absentee mail-in ballots.

Although election officials have said that these glitches have been corrected and are not reflected in the final tallies, it is hard to take these statements on faith without any evidence, particularly given DVS' bad track record. Moreover, it is also possible that there are many other instances of "glitches" that were not caught.

5. These glitches are on top of those that occurred in Morgan and Spalding counties. Marcia Ridley, elections supervisor at Spalding County Board of Elections, said that the company "uploaded something last night, which is not normal, and it caused a glitch," preventing poll workers from "using the pollbooks to program the

smart cards that voters insert into voting machines” and causing delays for voters.

6. Roughly 1.5 million Georgia voters requested absentee ballots, which is far above the 200,000 absentee ballots from 2016, and is 30% of their estimated 5 million voter turnout. As of November 6th at 6pm, Georgia election officials said that more than 14,200 provisional ballots needed to be counted. Jeff Greenburg, a former Mercer County elections director, remarked that over his 13 years in the role, he had only processed 200 provisional ballots in total and it would take his county 2.5 days to process 650 provision ballots. That implies nearly 55 days to approve, which suggests that the current pace they are approving provisional ballots is implausibly fast if they intend to call the election soon.

It is also curious that the correlation between the number of mail-in votes for Biden net of Trump and the 2016 share of votes for Clinton is stronger than the total votes for Biden net of Trump. This evidence is consistent with the view that manipulation is easier with mail-in votes and more likely to occur where there is less Republican competitive oversight (e.g., poll watchers turned away).

7. The counties with the greatest reported software glitches and delays are also the counties with the biggest swings in votes for Biden. The list of numbers below tabulates the percent change in Democrat votes from one election to the other for some of the most Democrat counties in the state. Importantly, the increase between 2020 and 2016 is systematically larger than the 2008 to 2012 or 2012 to 2016 increases: for example, the median (mean) increase from 2016 to

2020 for these counties was 27% (30.6%), whereas they were only 11.5% (9.8%) and -4% (-2.8%).

These are anomalies that evidence a high likelihood of fraudulent alterations within the software or the system.

Increase in Democrat Votes from Election-to-Election, in %

County 2008-2012 / 2012-2016 / 2016-2020

Fulton -6% 16% 28%

DeKalb -6% 6% 22%

Gwinnett 3% 25% 45%

Cobb -6% 20% 38%

Chatham -4% 3% 26%

Henry 8% 14% 46%

Muscogee -4% -6% 24%

Bibb -1% -5% 18%

Douglas 2% 9% 37%

Clarke -14% 16% 22%

Mean -2.8% 9.8% 30.6%

Median -4% 11.5% 27%

These changes alone are highly suspect. The 2016 to 2020 increase in Democratic votes is at least over double in these counties.

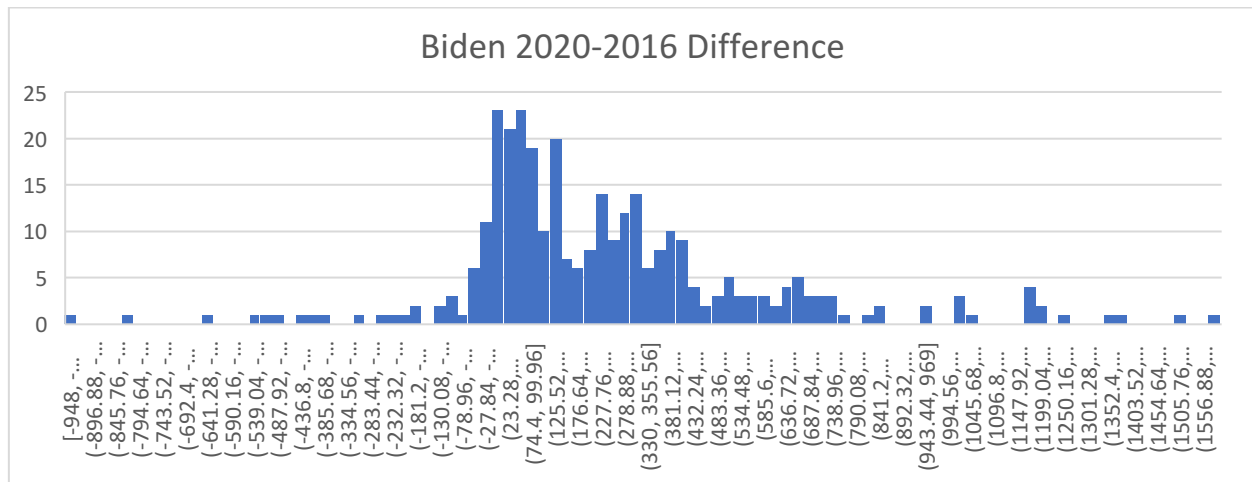
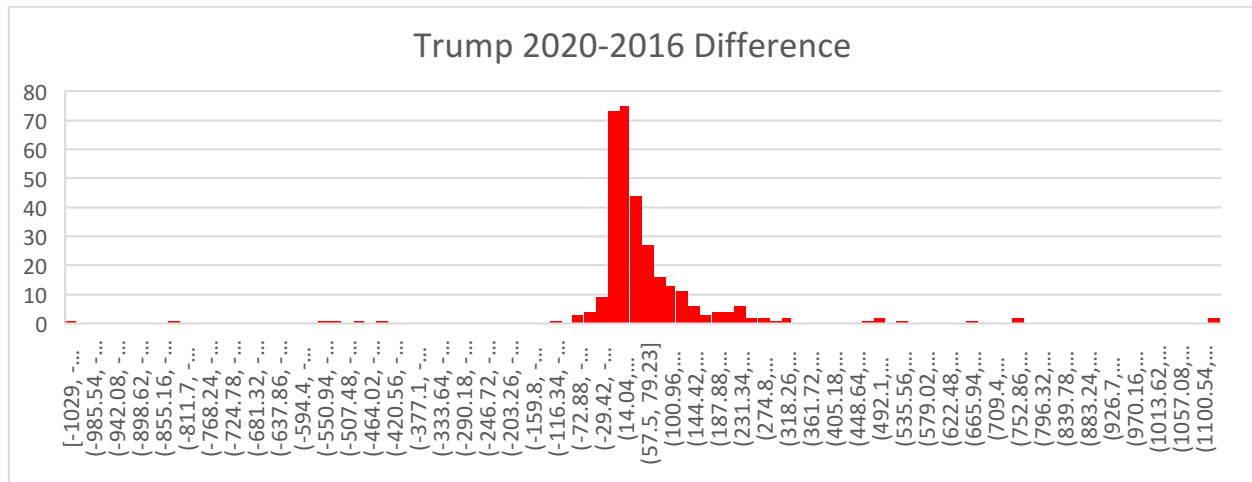
Moreover, all it takes is one or two counties, like Fulton, to become a hotspot for fraud for it to sway the overall election outcome, particularly via Atlanta.

Moreover, as a control group, consider the fact that counties that are on the Northeastern border of Alabama have a much lower increase in Democrat votes for Biden. These counties are comparable given their proximity, making the especially large surge in Georgia more suspect.

There are also many precincts within these counties that have highly suspect numbers. For example, 97% of the votes are for Biden in SC16A (Fulton County) and 97% in Snapfinger Road (DeKalb). Many more examples abound. The distribution is also highly skewed towards Biden: whereas 10% of the precincts have an over 95% Biden vote, none of the precincts have an over 90% Trump vote. Given the historical distribution of votes from 2016, this fact pattern is suspect.

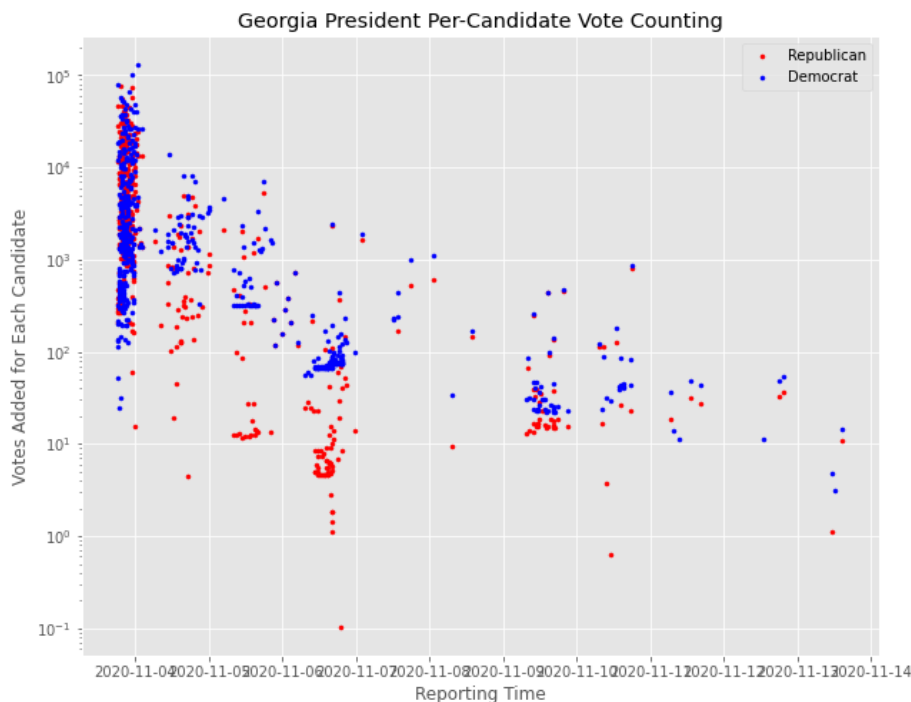
8. One diagnostic for detecting fraud involves Benford's law. In the case of election fraud, that means looking at the distribution of digits across votes within a specified geography. Using precinct level data for Georgia, my research identified 1,017 suspicious precincts out of 2,656 when we look at advance ballots. Even more precincts (1,530) were flagged as suspicious for election day votes. While Benford's law is not a silver-bullet for identifying fraud on its own, it suggests suspicious activity that warrants additional attention.
9. Yet another way of detecting statistical anomalies involves looking at the distribution of the change in 2020 to 2016 vote shares of Trump

and Biden. Whereas the distribution for Trump is perfectly “normal,” the distribution for Biden is non-normal: it is skewed heavily to the right. This is not present in other states that do not have similar concerns about fraudulent activity, but is present in the states with those concerns (e.g., Pennsylvania too).



10. There were many puzzling incidents across states, including Georgia, where surges of votes for Biden were observed at odd hours of the morning of November 4th. In particular, preliminary analysis on the live Edison Research data reveals that new ballots were coming in increasingly more slowly, but they were larger for

Democrats than for Republicans. The combination of the pattern and timing is puzzling, particularly since it is not present in other states, like Florida, that do not have similar concerns about fraud.



I declare under penalty of perjury that the foregoing is true and correct.
Executed this November 16, 2020.

Christos A. Makridis,

CHRISTOS MAKRIDIS

Ballot-Marking Devices Cannot Ensure the Will of the Voters

Andrew W. Appel, Richard A. DeMillo, and Philip B. Stark

ABSTRACT

The complexity of U.S. elections usually requires computers to count ballots—but computers can be hacked, so election integrity requires a voting system in which paper ballots can be recounted by hand. However, paper ballots provide no assurance unless they accurately record the votes as expressed by the voters.

Voters can express their intent by indelibly hand-marking ballots or using computers called ballot-marking devices (BMDs). Voters can make mistakes in expressing their intent in either technology, but only BMDs are also subject to hacking, bugs, and misconfiguration of the software that prints the marked ballots. Most voters do not review BMD-printed ballots, and those who do often fail to notice when the printed vote is not what they expressed on the touchscreen. Furthermore, there is no action a voter can take to demonstrate to election officials that a BMD altered their expressed votes, nor is there a corrective action that election officials can take if notified by voters—there is no way to deter, contain, or correct computer hacking in BMDs. These are the essential security flaws of BMDs.

Risk-limiting audits can ensure that the votes recorded on paper ballots are tabulated correctly, but no audit can ensure that the votes on paper are the ones expressed by the voter on a touchscreen: Elections conducted on current BMDs cannot be confirmed by audits. We identify two properties of voting systems, *contestability* and *defensibility*, necessary for audits to confirm election outcomes. No available BMD certified by the Election Assistance Commission is contestable or defensible.

Keywords: voting machines, paper ballot, ballot-marking device, election security

INTRODUCTION: CRITERIA FOR VOTING SYSTEMS

ELECTIONS FOR PUBLIC OFFICE and on public questions in the United States or any democracy must produce outcomes based on the votes that voters *express* when they indicate their choices

on a paper ballot or on a machine. Computers have become indispensable to conducting elections, but computers are vulnerable. They can be hacked—compromised by insiders or external adversaries who can replace their software with fraudulent software that deliberately miscounts votes—and they can contain design errors and bugs—hardware or software flaws or configuration errors that result in mis-recording or mis-tabulating votes. Hence there must be some way, *independent* of any software in any computers, to ensure that reported election outcomes are correct, i.e., consistent with the expressed votes as intended by the voters.

Voting systems should be *software independent*, meaning that “an undetected change or error in its software cannot cause an undetectable change or error in an election outcome” (Rivest and Wack

Andrew W. Appel is the Eugene Higgins Professor of Computer Science in the Department of Computer Science at Princeton University in Princeton, New Jersey, USA. Richard A. DeMillo is the Charlotte B. and Roger C. Warren Chair of Computing and a professor in the College of Computing at Georgia Tech in Atlanta, Georgia, USA. Philip B. Stark is a professor in the Department of Statistics at the University of California, Berkeley, in Berkeley, California, USA. The authors are listed alphabetically; they contributed equally to this work.

2006; Rivest 2008; Rivest and Virza 2016). Software independence is similar to tamper-evident packaging: if somebody opens the container and disturbs the contents, it will leave a trace.

The use of software-independent voting systems is supposed to ensure that if someone fraudulently hacks the voting machines to steal votes, we'll know about it. But we also want to know *the true outcome* in order to avoid a do-over election.¹ A voting system is *strongly software independent* if it is software independent and, moreover, a detected change or error in an election outcome (due to change or error in the software) can be corrected using only the ballots and ballot records of the current election (Rivest and Wack 2006; Rivest 2008). Strong software independence combines tamper evidence with a kind of resilience: there's a way to tell whether faulty software caused a problem, and a way to recover from the problem if it did.

Software independence and *strong software independence* are now standard terms in the analysis of voting systems, and it is widely accepted that voting systems should be software independent. Indeed, version 2.0 of the Voluntary Voting System Guidelines (VVSG 2.0) incorporates this principle (U.S. Election Assistance Commission 2017).

But as we will show, these standard definitions are incomplete and inadequate, because the word *undetectable* hides several important questions: *Who* detects the change or error in an election outcome? How can a person *prove* that she has detected an error? *What happens* when someone detects an error—does the election outcome remain erroneous? Or conversely: How can an election administrator *prove* that the election outcome not been altered, or prove that the correct outcome was recovered if a software malfunction was detected? The standard definition does not distinguish evidence available to an election official, to the public, or just to a single voter; nor does it consider the possibility of false alarms.

Those questions are not merely academic, as we show with an analysis of ballot-marking devices. Even if some voters “detect” that the printed output is not what they expressed to the ballot-marking device (BMD)—even if some of *those* voters report their detection to election officials—there is no mechanism by which the *election official* can “detect” whether a BMD has been hacked to alter election outcomes. The questions of *who detects*, and *then what happens*, are critical—but unanswered by the standard definitions.

We will define the terms *contestable* and *defensible* to better characterize properties of voting systems that make them acceptable for use in public elections.²

A voting system is *contestable* if an undetected change or error in its software that causes a change or error in an election outcome can always produce *public* evidence that the outcome is untrustworthy. For instance, if a voter selected candidate A on the touchscreen of a BMD, but the BMD prints candidate B on the paper ballot, then this A-vs-B evidence is available to the individual voter, but the voter cannot demonstrate this evidence to anyone else, since nobody else saw—nor should have seen—where the voter touched the screen.³ Thus, the voting system does not provide a way for the voter who observed the misbehavior to prove to anyone else that there was a problem, even if the problems altered the reported outcome. Such a system is therefore not *contestable*.

While the definition of software independence might allow evidence available only to individual voters as “detection,” such evidence does not suffice for a system to be contestable. Contestability is software independence, plus the requirement that “detect” implies “can generate public evidence.” “Trust me” does not count as public evidence. If a voting system is not contestable, then problems voters “detect” might never see the light of day, much less be addressed or corrected.⁴

¹Do-overs are expensive; they may delay the inauguration of an elected official; there is no assurance that the same voters will vote in the do-over election as voted in the original; they decrease public trust. And if the do-over election is conducted with the same voting system that can only detect but not correct errors, then there may need to be a do-over of the do-over, ad infinitum.

²There are other notions connected to contestability and defensibility, although essentially different: Benaloh et al. (2011) define a *P-resilient canvass framework*, *personally verifiable P-resilient canvass framework*, and *privacy-preserving personally verifiable P-resilient canvass frameworks*.

³See footnote 17.

⁴If voters are the only means of detecting and quantifying the effect of those problems—as they are for ballot-marking devices (BMDs)—then in practice the system is not strongly software independent. The reason is that, as we will show, such claims by (some) voters *cannot* correct software-dependent changes to other voters' ballots, and *cannot* be used as the basis to invalidate or correct an election outcome. Thus, BMD-based election systems are not even (weakly) software independent, unless one takes “detection” to mean “somebody claimed there was a problem, with no evidence to support that claim.”

Similarly, while strong software independence demands that a system be able to report the correct outcome even if there was an error or alteration of the software, it does not require *public evidence* that the (reconstructed) reported outcome is correct. We believe, therefore, that voting systems must also be *defensible*. We say that a voting system is defensible if, when the reported electoral outcome is correct, it is possible to generate convincing public evidence that the reported electoral outcome is correct—despite any malfunctions, software errors, or software alterations that might have occurred. If a voting system is not defensible, then it is vulnerable to “crying wolf”: malicious actors could claim that the system malfunctioned when in fact it did not, and election officials will have no way to prove otherwise.

By analogy with *strong software independence*, we define: a voting system is *strongly defensible* if it is defensible and, moreover, a detected change or error in an election outcome (due to change or error in the software) can be corrected (with convincing public evidence) using only the ballots and ballot records of the current election.

In short, a system is contestable if it can generate public evidence of a problem whenever a reported outcome is wrong, while a system is defensible if it can generate public evidence whenever a reported outcome is correct—despite any problems that might have occurred. Contestable systems are publicly tamper-evident; defensible systems are publicly, demonstrably resilient.

Defensibility is a key requirement for *evidence-based elections* (Stark and Wagner 2012): defensibility makes it possible in principle for election officials to generate convincing evidence that the reported winners really won—if the reported winners did really win. (We say an election system may be defensible, and an election may be evidence-based; there’s much more *process* to an election than just the choice of system.)

Examples

The only known practical technology for contestable, strongly defensible voting is a system of *hand-marked paper ballots*, kept demonstrably physically secure, counted by machine, audited manually, and recountable by hand.⁵ In a hand-marked paper ballot election, ballot-marking software cannot be the source of an error or change-of-election-outcome,

because no software is used in marking ballots. Ballot-scanning-and-counting software can be the source of errors, but such errors can be detected and corrected by audits.

That system is *contestable*: if an optical scan voting machine reports the wrong outcome because it miscounted (because it was hacked, misprogrammed, or miscalibrated), the evidence is *public*: the paper ballots, recounted before witnesses, will not match the claimed results, also witnessed. It is *strongly defensible*: a recount before witnesses can demonstrate that the reported outcome is correct or can find the correct outcome if it was wrong—and provide public evidence that the (reconstructed) outcome is correct. See Section 4, “Contestability/Defensibility of Hand-Marked Opscan,” for a detailed analysis.

Over 40 states now use some form of paper ballot for most voters (Verified Voting Foundation 2018). Most of the remaining states are taking steps to adopt paper ballots. But *not all voting systems that use paper ballots are equally secure*.

Some are not even software independent. Some are software independent but not strongly software independent, contestable, or defensible. In this report we explain:

- *Hand-marked paper ballot* systems are the only practical technology for contestable, strongly defensible voting systems.
- *Some ballot-marking devices* can be software independent, but they not strongly software independent, contestable, or defensible. Hacked or misprogrammed BMDs can alter election outcomes undetectably, so elections conducted using BMDs cannot provide public evidence that reported outcomes are correct. If BMD malfunctions are detected, there is no way to determine who really won. Therefore BMDs should not be used by voters who are able to mark an optical-scan ballot with a pen.
- *All-in-one BMD or DRE+VVPAT voting machines* are not software independent, contestable, or defensible. They should not be used in public elections.

⁵The election must also generate convincing evidence that physical security of the ballots was not compromised, and the audit must generate convincing public evidence that the audit itself was conducted correctly.

BACKGROUND

We briefly review the kinds of election equipment in use, their vulnerability to computer hacking (or programming error), and in what circumstances risk-limiting audits can mitigate that vulnerability.

Voting equipment

Although a voter may form an intention to vote for a candidate or issue days, minutes, or seconds before actually casting a ballot, that intention is a psychological state that cannot be directly observed by anyone else. Others can have access to that intention through what the voter (privately) *expresses* to the voting technology by interacting with it, e.g., by making selections on a BMD or marking a ballot by hand.⁶ Voting systems must accurately record the vote as the voter *expressed* it.

With a *hand-marked paper ballot optical-scan* system, the voter is given a paper ballot on which all choices (candidates) in each contest are listed; next to each candidate is a *target* (typically an oval or other shape) which the voter marks with a pen to indicate a vote. Ballots may be either preprinted or printed (unvoted) at the polling place using *ballot on demand* printers. In either case, the voter creates a tamper-evident record of intent by marking the printed paper ballot with a pen.

Such hand-marked paper ballots may be scanned and tabulated at the polling place using a *precinct-count optical scanner* (PCOS), or may be brought to a central place to be scanned and tabulated by a *central-count optical scanner* (CCOS). Mail-in ballots are typically counted by CCOS machines.

After scanning a ballot, a PCOS machine deposits the ballot in a secure, sealed ballot box for later use in recounts or audits; this is *ballot retention*. Ballots counted by CCOS are also retained for recounts or audits.⁷

Paper ballots can also be hand counted, but in most jurisdictions (especially where there are many contests on the ballot) this is hard to do quickly; Americans expect election-night reporting of unofficial totals. Hand counting—i.e., manually determining votes directly from the paper ballots—is appropriate for audits and recounts.

A *ballot-marking device* provides a computerized user interface (UI) that presents the ballot to voters and captures their expressed selections—for instance, a touchscreen interface or an assistive in-

terface that enables voters with disabilities to vote independently. Voter inputs (expressed votes) are recorded electronically. When a voter indicates that the ballot is complete and ready to be cast, the BMD prints a paper version of the electronically marked ballot. We use the term *BMD* for devices that mark ballots but do not tabulate or retain them, and *all-in-one* for devices that combine ballot marking, tabulation, and retention into the same paper path.

The paper ballot printed by a BMD may be in the same format as an optical-scan form (e.g., with ovals filled as if by hand) or it may list just the names of the candidate(s) selected in each contest. The BMD may also encode these selections into barcodes or QR codes for optical scanning. We discuss issues with barcodes later in this report.

An *all-in-one touchscreen voting machine* combines computerized ballot marking, tabulation, and retention in the same paper path. All-in-one machines come in several configurations:

- DRE+VVPAT machines—direct-recording electronic (DRE) voting machines with a voter-verifiable paper audit trail (VVPAT)—provide the voter a touchscreen (or other) interface, then print a paper ballot that is displayed to the voter under glass. The voter is expected to review this ballot and approve it, after which the machine deposits it into a ballot box. DRE+VVPAT machines do not contain optical scanners; that is, they do not read what is marked on the paper ballot; instead, they tabulate the vote directly from inputs to the touchscreen or other interface.
- BMD+Scanner all-in-one machines⁸ provide the voter a touchscreen (or other) interface to

⁶We recognize that voters make mistakes in expressing their intentions. For example, they may misunderstand the layout of a ballot or express an unintended choice through a perceptual error, inattention, or lapse of memory. The use of touchscreen technology does not necessarily correct for such user errors, as every smartphone user who has mistyped an important text message knows. Poorly designed ballots, poorly designed touchscreen interfaces, and poorly designed assistive interfaces increase the rate of error in voters' expressions of their votes. For the purposes of this report, we assume that properly engineered systems seek to minimize such usability errors.

⁷Regulations and procedures governing custody and physical security of ballots are uneven, and in many cases inadequate, but straightforward to correct because of decades of development of best practices.

⁸Some voting machines, such as the ES&S ExpressVote, can be configured as either a BMD or a BMD+Scanner all-in-one. Others, such as the ExpressVoteXL, work only as all-in-one machines.

input ballot choices and print a paper ballot that is ejected from a slot for the voter to inspect. The voter then reinserts the ballot into the slot, after which the all-in-one BMD+Scanner scans it and deposits it into a ballot box. Or, some BMD+Scanner all-in-one machines display the paper ballot behind plexiglass for the voter to inspect, before mechanically depositing it into a ballot box.

Opscan+BMD with separate paper paths. At least one model of voting machine (the Dominion ICP320) contains an optical scanner (opscan) and a BMD in the same cabinet,⁹ so that the optical scanner and BMD-printer are not in the same paper path; no possible configuration of the software could cause a BMD-marked ballot to be deposited in the ballot box without human handling of the ballot. We do not classify this as an *all-in-one* machine.

Hacking

There are many forms of computer hacking. In this analysis of voting machines we focus on the alteration of voting machine software so that it miscounts votes or mis-marks ballots to alter election outcomes. There are many ways to alter the software of a voting machine: a person with physical access to the computer can open it and directly access the memory; one can plug in a special USB thumbdrive that exploits bugs and vulnerabilities in the computer's USB drivers; one can connect to its Wi-Fi port or Bluetooth port or telephone modem (if any) and exploit bugs in those drivers, or in the operating system.

"Air-gapping" a system (i.e., never connecting it to the Internet nor to any other network) does not automatically protect it. Before each election, election administrators must transfer a *ballot definition* into the voting machine by inserting a *ballot definition cartridge* that was programmed on election-administration computers that may have been connected previously to various networks; it has been demonstrated that vote-changing viruses can propagate via these ballot-definition cartridges (Feldman et al. 2007).

Hackers might be corrupt insiders with access to a voting-machine warehouse; corrupt insiders with access to a county's election-administration computers; outsiders who can gain remote access to election-administration computers; outsiders who can gain re-

mote access to voting-machine manufacturers' computers (and "hack" the firmware installed in new machines, or the firmware updates supplied for existing machines), and so on. Supply-chain hacks are also possible: the hardware installed by a voting system vendor may have malware pre-installed by the vendor's component suppliers.¹⁰

Computer systems (including voting machines) have so many layers of software that it is impossible to make them perfectly secure (National Academies of Sciences, Engineering, and Medicine 2018, 89–91). When manufacturers of voting machines use the best known security practices, adversaries may find it more difficult to hack a BMD or optical scanner—but not impossible. Every computer in every critical system is vulnerable to compromise through hacking, insider attacks, or exploiting design flaws.

Election assurance through risk-limiting audits

To ensure that the reported electoral outcome of each contest corresponds to what the voters expressed, the most practical known technology is a *risk-limiting audit* (RLA) of trustworthy paper ballots (Stark 2008; Stark 2009; Lindeman and Stark 2012). The National Academies of Science, Engineering, and Medicine recommend routine RLAs after every election (National Academies of Sciences, Engineering, and Medicine 2018), as do many other organizations and entities concerned with election integrity.¹¹

The *risk limit* of a risk-limiting audit is the maximum chance that the audit will not correct the reported electoral outcome, if the reported outcome is wrong. "Electoral outcome" means the political result—who or what won—not the exact tally. "Wrong" means that the outcome does not correspond to what the voters expressed.

⁹More precisely, the ICP320 optical scanner and the BMD audio+buttons interface are in the same cabinet, but the printer is a separate box.

¹⁰Given that many chips and other components are manufactured in China and elsewhere, this is a serious concern. Carsten Schürmann has found Chinese pop songs on the internal memory of voting machines (C. Schürmann, personal communication, 2018). Presumably those files were left there accidentally—but this shows that malicious code *could* have been pre-installed deliberately, and that neither the vendor's nor the election official's security and quality control measures discovered and removed the extraneous files.

¹¹Among them are the Presidential Commission on Election Administration, the American Statistical Association, the League of Women Voters, and Verified Voting Foundation.

An RLA involves manually inspecting randomly selected paper ballots following a rigorous protocol. The audit stops if and when the sample provides convincing evidence that the reported outcome is correct; otherwise, the audit continues until every ballot has been inspected manually, which reveals the correct electoral outcome if the paper trail is trustworthy. RLAs protect against vote-tabulation errors, whether those errors are caused by failures to follow procedures, misconfiguration, miscalibration, faulty engineering, bugs, or malicious hacking.¹²

The risk limit should be determined as a matter of policy or law. For instance, a 5% risk limit means that, if a reported outcome is wrong solely because of tabulation errors, there is at least a 95% chance that the audit procedure will correct it. Smaller risk limits give higher confidence in election outcomes, but require inspecting more ballots, other things being equal. RLAs never revise a correct outcome.

RLAs can be very efficient, depending in part on how the voting system is designed and how jurisdictions organize their ballots. If the computer results are accurate, an efficient RLA with a risk limit of 5% requires examining just a few—about seven divided by the margin—ballots selected randomly from the contest.¹³ For instance, if the margin of victory is 10% and the results are correct, the RLA would need to examine about $7/10\% = 70$ ballots to confirm the outcome at 5% risk. For a 1% margin, the RLA would need to examine about $7/1\% = 700$ ballots. The sample size does not depend much on the total number of ballots cast in the contest, only on the margin of the winning candidate's victory.

RLAs assume that a full hand tally of the paper trail would reveal the correct electoral outcomes: the paper trail must be trustworthy. Other kinds of audits, such as *compliance audits* (Benaloh et al. 2011; Lindeman and Stark 2012; Stark and Wagner 2012; Stark 2018), are required to establish whether the paper trail itself is trustworthy. Applying an RLA procedure to an untrustworthy paper trail cannot limit the risk that a wrong reported outcome goes uncorrected.

Properly preserved hand-marked paper ballots ensure that expressed votes are identical to recorded votes. But BMDs might not record expressed votes accurately, for instance, if BMD software has bugs, was misconfigured, or was hacked: a BMD printout is not a trustworthy record of the expressed votes. Neither a compliance audit nor an RLA can possibly check whether errors in recording expressed votes

altered election outcomes. RLAs that rely on BMD output therefore cannot limit the risk that an incorrect reported election outcome will go uncorrected.

A paper-based voting system (such as one that uses optical scanners) is systematically more secure than a paperless system (such as DREs) *only if the paper trail is trustworthy and the results are checked against the paper trail using a rigorous method such as an RLA or full manual tally*. If it is possible that error, hacking, bugs, or miscalibration caused the recorded-on-paper votes to differ from the expressed votes, an RLA or even a full hand recount cannot not provide convincing public evidence that election outcomes are correct: such a system cannot be *defensible*. In short, paper ballots provide little assurance against hacking if they are never examined or if the paper might not accurately reflect the votes expressed by the voters.

(NON)CONTESTABILITY/ DEFENSIBILITY OF BMDS

A BMD-generated paper trail is not a reliable record of the vote expressed by the voter.

Like any computer, a BMD (or a DRE+VVPAT) is vulnerable to bugs, misconfiguration, hacking, installation of unauthorized (fraudulent) software, and alteration of installed software.

If a hacker sought to steal an election by altering BMD software, what would the hacker program the BMD to do? In cybersecurity practice, we call this the *threat model*.

The simplest threat model is this one: In some contests, not necessarily top-of-the-ticket, change a small percentage of the votes (such as 5%).

In recent national elections, analysts have considered a candidate who received 60% of the vote to have won by a landslide. Many contests are decided by less than a 10% margin. Changing 5% of the votes can change the margin by 10%, because

¹²Risk-limiting audits (RLAs) do not protect against problems that cause BMDs to print something other than what was shown to the voter on the screen, nor do they protect against problems with ballot custody.

¹³Technically, it is the *diluted margin* that enters the calculation. The diluted margin is the number of votes that separate the winner with the fewest votes from the loser with the most votes, divided by the number of ballots cast, including under-votes and invalid votes.

“flipping” a vote for one candidate into a vote for a different candidate changes the difference in their tallies—i.e., the margin—by two votes. If hacking or bugs or misconfiguration could change 5% of the votes, that would be a very significant threat.

Although public and media interests often focus on top-of-the-ticket races such as president and governor, elections for lower offices such as state representatives, who control legislative agendas and redistricting, and county officials, who manage elections and assess taxes, are just as important in our democracy. Altering the outcome of smaller contests requires altering fewer votes, so fewer voters are in a position to notice that their ballots were misprinted. And most voters are not as familiar with the names of the candidates for those offices, so they might be unlikely to notice if their ballots were misprinted, even if they checked.

Research in a real polling place in Tennessee during the 2018 election found that half the voters *didn't look at all* at the paper ballot printed by a BMD, even when they were holding it in their hand and directed to do so while carrying it from the BMD to the optical scanner (DeMillo et al. 2018). Those voters who did look at the BMD-printed ballot spent *an average of 4 seconds* examining it to verify that the eighteen or more choices they made were correctly recorded. That amounts to 222 milliseconds per contest, barely enough time for the human eye to move and refocus under perfect conditions and not nearly enough time for perception, comprehension, and recall (Rayner 2009). A study by other researchers (Bernhard et al. 2020), in a simulated polling place using real BMDs deliberately hacked to alter one vote on each paper ballot, found that only 6.6% of voters told a pollworker something was wrong.^{14,15} The same study found that among voters who examined their hand-marked ballots, half were unable to recall key features of ballots cast moments before, a prerequisite step for being able to recall their own ballot choices. This finding is broadly consistent with studies of effects like “change blindness” or “choice blindness,” in which human subjects fail to notice changes made to choices made only seconds before (Johansson et al. 2008).

Suppose, then, that 10% of voters examine their paper ballots carefully enough to even *see* the candidate's name recorded as their vote for legislator or county commissioner. Of those, perhaps only

half will remember the name of the candidate they intended to vote for.¹⁶

Of those who notice that the vote printed is not the candidate they intended to vote for, what will they think, and what will they do? Will they think, “Oh, I must have made a mistake on the touchscreen,” or will they think, “Hey, the machine is cheating or malfunctioning!” There's no way for the voter to know for sure—voters do make mistakes—and there's *absolutely* no way for the voter to prove to a pollworker or election official that a BMD printed something other than what the voter entered on the screen.^{17,18}

Either way, polling-place procedures generally advise voters to ask a pollworker for a new ballot if theirs does not show what they intended. Pollworkers should void that BMD-printed ballot, and the voter should get another chance to mark a ballot. Anecdotal evidence suggests that many voters are too timid to ask, or don't know that they have the right to ask, or are not sure whom to ask. Even if a voter asks for a new ballot, training for pollworkers is uneven, and we are aware of no formal

¹⁴You might think, “the voter really *should* carefully review their BMD-printed ballot.” But because the scientific evidence shows that voters *do not* (DeMillo et al. 2018) and cognitively *cannot* (Everett 2007) perform this task well, legislators and election administrators should provide a voting system that counts the votes *as voters express them*.

¹⁵Studies of voter confidence about their ability to verify their ballots are not relevant: in typical situations, subjective confidence and objective accuracy are at best weakly correlated. The relationship between confidence and accuracy has been studied in contexts ranging from eyewitness accuracy (Bothwell et al. 1987; Deffenbacher 1980; Wixted and Wells 2017) to confidence in psychological clinical assessments (Desmarais et al. 2010) and social predictions (Dunning et al. 1990). The disconnect is particularly severe at high confidence. Indeed, this is known as “the overconfidence effect.” For a lay discussion, see *Thinking, Fast and Slow* by Nobel economist Daniel Kahnemann (2011).

¹⁶We ask the reader, “do you know the name of the most recent losing candidate for county commissioner?” We recognize that some readers of this document *are* county commissioners, so we ask those readers to imagine the frame of mind of their constituents.

¹⁷You might think, “the voter can prove it by showing someone that the vote on the paper doesn't match the vote onscreen.” But that won't work. On a typical BMD, by the time a paper record is printed and ejected for the voter to hold and examine, the touchscreen no longer shows the voter's choice. You might think, “BMDs should be designed so that the choices still show on the screen for the voter to compare with the paper.” But a hacked BMD could easily alter the on-screen choices to match the paper, *after* the voter hits the “print” button.

¹⁸Voters should *certainly not* video-record themselves voting! That would defeat the privacy of the secret ballot and is illegal in most jurisdictions.

procedure for resolving disputes if a request for a new ballot is refused. Moreover, there is no sensible protocol for ensuring that BMDs that misbehave are investigated—nor can there be, as we argue below.

Let's summarize. If a machine alters votes on 5% of the ballots (enabling it to change the margin by 10%), and 10% of voters check their ballots carefully and 50% of the voters who check notice the error, then optimistically we might expect $5\% \times 10\% \times 50\%$ or 0.25% of the voters to request a new ballot and correct their vote.¹⁹ This means that the machine will change the margin by 9.75% and get away with it.

In this scenario, 0.25% of the voters, one in every 400 voters, has requested a new ballot. You might think, “that’s a form of *detection* of the hacking.” But it isn’t, as a practical matter: a few individual voters may have detected that there was a problem, but there’s no procedure by which this translates into any action that election administrators can take to correct the outcome of the election. Polling-place procedures *cannot correct or deter hacking, or even reliably detect it*, as we discuss next. This is essentially the distinction between a system that is merely software independent and one that is contestable: a change to the software that alters the outcome might generate evidence for an alert, conscientious, individual voter, but it does not generate public evidence that an election official can rely on to conclude there is a problem.

Even if some voters notice that BMDs are altering votes, there’s no way to correct the election outcome.

That is, BMD voting systems are *not contestable*, *not defensible* (and therefore *not strongly defensible*), and *not strongly software independent*. Suppose a state election official wanted to detect whether the BMDs are cheating, and correct election results, based on actions by those few alert voters who notice the error. What procedures could possibly work against the manipulation we are considering?

1. How about, “If at least 1 in 400 voters claims that the machine misrepresented their vote, void the entire election.”²⁰ No responsible authority would implement such a procedure. A few dishonest voters could collaborate to invalidate entire elections simply by falsely claiming that BMDs changed their votes.

2. How about, “If at least 1 in 400 voters claims that the machine misrepresented their vote, then investigate.” Investigations are fine, but then what?

The only way an investigation can ensure that the outcome accurately reflects what voters expressed to the BMDs is to void an election in which the BMDs have altered votes and conduct a new election. But how do you know whether the BMDs have altered votes, except based on the claims of the voters?²¹ Furthermore, the investigation itself would suffer from the same problem as above: how can one distinguish between voters who detected BMD hacking or bugs from voters who just want to interfere with an election?

This is the essential security flaw of BMDs: few voters will notice and promptly report discrepancies between what they saw on the screen and what is on the BMD printout, and even when they do notice, there’s nothing appropriate that can be done. Even if election officials are convinced that BMDs malfunctioned, *there is no way to determine who really won*.

Therefore, BMDs should not be used by most voters.

Why can’t we rely on pre-election and post-election logic and accuracy testing, or parallel testing?

Most, if not all, jurisdictions perform some kind of *logic and accuracy testing* (LAT) of voting equipment before elections. LAT generally involves voting on the equipment using various combinations of selections, then checking whether the equipment tabulated the votes correctly. As the Volkswagen/Audi “Dieselgate” scandal shows, devices can be programmed to behave properly when they are tested but misbehave in use (Contag et al. 2017).

¹⁹This calculation assumes that the 10% of voters who check are in effect a random sample of voters: voters’ propensity to check BMD printout is not associated with their political preferences.

²⁰Note that in many jurisdictions, far fewer than 400 voters use a given machine on Election Day: BMDs are typically expected to serve fewer than 300 voters per day. (The vendor ES&S recommended 27,000 BMDs to serve Georgia’s 7 million voters, amounting to 260 voters per BMD (Election Systems and Software 2018).) Recall also that the rate one in 400 is tied to the amount of manipulation. What if the malware flipped only one vote in 50, instead of one vote in 20? That could still change the margin by 4%, but—in this hypothetical—would be noticed by only one voter in 1,000, rather than one in 400. The smaller the margin, the less manipulation it would have taken to alter the electoral outcome.

²¹Forensic examination of the BMD might show that it *was* hacked or misconfigured, but it cannot prove that the BMD *was not* hacked or misconfigured.

Therefore, LAT can never prove that voting machines performed properly in practice.

Parallel or “live” testing involves pollworkers or election officials using some BMDs at random times on Election Day to mark (but not cast) ballots with test patterns, then check whether the marks match the patterns. The idea is that the testing is not subject to the “Dieselgate” problem, because the machines cannot “know” they are being tested on Election Day. As a practical matter, the number of tests required to provide a reasonable chance of detecting outcome-changing errors is prohibitive, and even then the system is not *defensible*. See Section 6, “Parallel Testing of BMDs.”

Suppose, counterfactually, that it was practical to perform enough parallel testing to guarantee a large chance of detecting a problem if BMD hacking or malfunction altered electoral outcomes. Suppose, counterfactually, that election officials were required to conduct that amount of parallel testing during every election, and that the required equipment, staffing, infrastructure, and other resources were provided. Even then, the system would not be *strongly defensible*; that is, if testing detected a problem, there would be no way to determine who really won. The only remedy would be a new election.

Don't voters need to check hand-marked ballots, too?

It is always a good idea to check one's work, but there is a substantial body of research (e.g., Reason 2009) suggesting that preventing error as a ballot is being marked is a fundamentally different cognitive task than detecting an error on a previously marked ballot. In cognitively similar tasks, such as proof reading for non-spelling errors, ten percent rates of error detection are common (Reason 2009, 167 et seq.), whereas by carefully attending to the task of correctly marking their ballots, voters apparently can largely avoid marking errors.

A fundamental difference between hand-marked paper ballots and ballot-marking devices is that, with hand-marked paper ballots, voters are responsible for catching and correcting *their own errors*, while if BMDs are used, voters are also responsible for catching *machine errors, bugs, and hacking*. Voters are the *only* people who can detect such problems with BMDs—but, as explained above, if voters do find problems,

there's no way they can prove to poll workers or election officials that there were problems and no way to ensure that election officials take appropriate remedial action.

CONTESTABILITY/DEFENSIBILITY OF HAND-MARKED OPSCAN

The most widely used voting system in the United States is optical-scan counting of hand-marked paper ballots.²² Computers and computer software are used in several stages of the voting process, and if that software is hacked (or erroneous), then the computers will deliberately (or accidentally) report incorrect outcomes.

- Computers are used to prepare the PDF files from which (unvoted) optical-scan ballots are printed, with ovals (or other targets to be marked) next to the names of candidates. Because the optical scanners respond to the *position on the page*, not the name of the candidate nearest the target, computer software could cheat by reordering the candidates on the page.
- The optical-scan voting machine, which scans the ballots and interprets the marks, is driven by computer software. Fraudulent (hacked) software can deliberately record (some fraction of) votes for Candidate A and votes for Candidate B.
- After the voting machine reports the in-the-precinct vote totals (or, in the case of central-count optical scan, the individual-batch vote totals), computers are used to aggregate the various precincts or batches together. Hacked software could cheat in this addition process.

Protection against any or all of these attacks relies on a system of risk-limiting audits, along with compliance audits to check that the chain of custody of ballots and paper records is trustworthy. Without such audits, optical-scan ballots (whether hand marked or machine marked) are neither contestable nor defensible.

²²Verified Voting Foundation, “The Verifier—Polling Place Equipment—November 2020,” *Verified Voting* (2020) <<https://www.verifiedvoting.org/verifier/>> (fetched February 8, 2020).

We analyze the contestability/defensibility of hand-marked optical-scan ballots with respect to each of these threats, assuming a system of RLAs and compliance audits.

- Hacked generation of PDFs leading to fraudulently placed ovals. In this case, a change or error in the computer software *can* change the election outcome: on thousands of ballots, voters place a mark next to the name of candidate A, but (because the candidate name has been fraudulently misplaced on the paper), the (unhacked) optical scanner records this as a vote for candidate B. But an RLA will correct the outcome: a human, inspecting and interpreting this paper ballot, will interpret the mark as a vote for candidate A, as the voter intended. The RLA will, with high probability, conclude that the computer-reported election outcome cannot be confirmed, and a full recount must occur. Thus the system is *contestable*: the RLA produces public evidence that the (computer-reported) outcome is untrustworthy. This full recount (in the presence of witnesses, in view of the public) can provide convincing public evidence of its own correctness; that is, the system is *defensible*.
- Hacked optical-scan vote counter, reporting fraudulent vote totals. In this case, a change or error in the computer software *can* change the election outcome: on thousands of ballots, voters place a mark next to the name of candidate A, but the (hacked) optical scanner records this as a vote for candidate B. But an RLA can detect the incorrect outcome (just as in the case above); the system is *contestable*. And a full recount will produce a correct outcome with public evidence: the system is *defensible*.
- Hacked election-management system (EMS), fraudulently aggregating batches. A risk-limiting audit can detect this problem, and a recount will correct it: the system is contestable and defensible. But actually, contestability and defensibility against this attack is even easier and simpler than RLAs and recounts. Most voting machines (including precinct-count optical scanners) print a “results tape” in the polling place, at the close of the polls (in addition to writing their results electronically to a removable memory card). This results tape is (typically) signed by poll-

workers and by credentialed challengers, and open to inspection by members of the public, before it is transported (with chain-of custody protections) along with the ballot boxes to a secure central location. The county clerk or registrar of voters can (and in many counties, does) inspect these paper records to verify that they correspond to the precinct-by-precinct machine-reported aggregation. Errors (or fraud) in aggregation can be detected and corrected without the need to inspect individual ballots: the system is contestable and defensible against this class of errors.

END-TO-END VERIFIABLE (E2E-V) SYSTEMS

In all BMD systems currently on the market, and in all BMD systems certified by the Election Assistance Commission (EAC), the printed ballot or ballot summary is the only channel by which voters can verify the correct recording of their ballots, independently of the computers. The analysis in this article applies to all of those BMD systems.

There is a class of voting systems called “end-to-end verifiable” (E2E-V), which provide an alternate mechanism for voters to verify their votes (Benaloh et al. 2014; Appel 2018b). The basic idea of an E2E-V system is that a cryptographic protocol encodes the vote; mathematical properties of the cryptographic system allow the voters to verify (probabilistically) that their vote has been accurately counted, but does not compromise the secret ballot by allowing voters to prove how they voted. E2E-V systems have not been adopted in public elections (except that Scantegrity was used for municipal elections in Takoma Park, Maryland, in 2009 and 2011).

Each E2E-V system requires its own analysis of contestability/defensibility.

Scantegrity (Chaum et al. 2008) is a system of preprinted optical-scan ballots, counted by conventional precinct-count optical scanners, but with an additional security feature: when the voter fills in an oval with a special pen, the oval is mostly darkened (so it’s counted conventionally by the optical scanner), but two-letter code is also revealed that the voter can (optionally) use in the cryptographic protocol. *Scantegrity* is contestable/defensible, but not because of its E2E-V properties: since it’s an add-on to a conventional optical-scan system

with hand-marked paper ballots, RLAs and compliance audits can render this system contestable/defensible.

Prêt-à-Voter (Ryan et al. 2009) is the system in which the voter separates the candidate list from the oval-target list after marking the ballot and before deposit into the optical scanner. This system can be made contestable, with difficulty: the auditing procedure requires participation of the voters in an unintuitive cryptographic challenge. It is not clear that the system is defensible: if this cryptographic challenge proves that the blank ballots have been tampered with, then no recount can reliably reconstruct the true result with public evidence.

STAR-Vote (Benaloh et al. 2013) is a DRE+VV-PAT system with a smart ballot box. Voters interact with a device that captures their votes electronically and prints a paper record that voters can inspect, but the electronic votes are held “in limbo” until the paper ballot is deposited in the smart ballot box. The ballot box does not read the votes from the ballot; rather, depositing the ballot tells the system that it has permission to cast the votes it had already recorded from the touchscreen. The claimed advantage of *STAR-Vote* (and other systems that use the “Benaloh challenge”) is that RLAs and ballot-box chain-of-custody are not required in order to obtain software independence. To ensure that the E2E-V cryptographic protocol has correctly recorded each vote, the voter can “challenge” the system to prove that the cryptographic encoding of the ballot records the vote actually printed on the paper ballot. To do so, the voter must discard (void) this ballot and vote a fresh ballot; this is because the challenge process reveals the vote to the public, and a voting system must preserve the secrecy of the (cast) ballots. Thus, the voter cannot ensure the correct encoding of their true ballot, but (since *STAR-Vote* must print the ballot before knowing whether the voter will challenge), the voter can ensure it with any desired *error probability*.

STAR-Vote is software independent but it is not contestable or defensible. The reason is that, while the challenge can produce public evidence that a machine did not accurately encrypt the plaintext vote on the ballot, if the machine prints the wrong plaintext vote and a correct encryption of that incorrect vote, there is no evidence the voter can use to prove that to anyone else.

No *E2E-V* system is currently certified by the EAC, nor to our knowledge is any such system

under review for certification, nor are any of the five major voting-machine vendors offering such a system for sale.²³

PARALLEL TESTING OF BMDs

Wallach (2019) has proposed (in response to earlier drafts of this article) that contestability/defensibility failure of BMDs could be mitigated by *parallel testing*, which he also calls “live auditing.” Stark (2019) has analyzed Wallach’s proposal in detail. Here we provide a summary of the proposal and the analyses.

One might like to test each BMD before the election to make sure it’s not hacked. Unfortunately, since the computer in a voting machine (including BMDs) has a real-time clock, the software (including fraudulent vote-stealing software) knows whether it’s Election Day or not. Fraudulent software can make sure not to cheat except on Election Day.

The idea of parallel testing is to have trained auditors test the BMDs, at random times during an actual election: use the BMD to prepare a ballot, inspect that ballot to ensure it’s marked correctly, then discard the ballot. The same BMDs in use during the polling will be selected, from time to time, for such test, right there in the polling places.

If the BMDs cheat with uniform random probability p , and if the BMD cannot distinguish an auditor from an ordinary voter, then after n random audits the probability of detecting the malware is $1 - (1 - p)^n$. If $p = 5\%$ and $n = 240$, then the probability of detection is 91%.

Unfortunately, the attacker is not constrained to cheat with uniform random probability; or, to put it another way, BMD malware may indeed be able to distinguish auditors from ordinary voters. Stark (2019) discusses many ways in which the “signature” of how auditors interact with the BMD may differ from ordinary voters, enough to give clues

²³Some vendors, notably Scytl, have sold systems advertised as E2E-V in other countries. Those systems were not in fact E2E-V. Moreover, serious security flaws have been found in their implementations. See, e.g., S.J. Lewis, O. Pereira, and V. Teague, “Ceci N’est Pas une Preuve: The Use of Trapdoor Commitments in Bayer-Groth Proofs and the Implications for the Verifiability of the Scytl-SwissPost Internet Voting System” (March 12, 2019), <<https://people.eng.unimelb.edu.au/vjteague/UniversalVerifiabilitySwissPost.pdf>>.

to the malware about whether to cheat.²⁴ Therefore, one cannot simply multiply $(1 - p)^n$ and calculate a probability of detection.

While auditors might try to build an accurate model of voter behavior for live audits, that approach is doomed by privacy concerns and by the “curse of dimensionality”: election officials would have to record every nuance of voter behavior (preferences across contests; language settings, font settings, and other UI settings; timing, including speed of voting and hesitation; on-screen review; etc.) for millions of voters to accurately approximate voter behavior.

There are many logistical problems with “live auditing.” It would require additional voting machines (because testing requires additional capacity), staff, infrastructure, and other resources, *on Election Day* when professional staff is most stretched. One must be prepared to perform the audits at the busiest times of day; even that will cause lines of voters to lengthen, because otherwise the malware can simply cheat only at the busy times. Live auditing must be done in view of the voters (one cannot carry the voting machine into another room to do it), but some election officials are concerned that the creation of test ballots in the polling place could be perceived as a threat of ballot-box stuffing.

No state, to our knowledge, has implemented parallel testing or live auditing of BMDs.

In any case, we can assess the contestability and defensibility of parallel testing.

With a sufficiently high rate of parallel testing, and a sufficiently sophisticated randomization of auditor behavior, it may be possible to make BMDs with parallel testing *contestable*: an audit could detect *and prove* mismarking of paper ballots.

But BMDs with parallel testing is not *defensible*. It will be extremely difficult for an election official to generate convincing public evidence that the audit *would have* detected mismarking, if mismarking were occurring. To generate that public evidence, the election official would have to reveal substantial detail about the parallel-testing protocol: how, exactly, the random selection of times to test is made; how, exactly, the random selection is made of what candidates to vote for in the tests. Revealing such details of the protocol allows the attacker to analyze the protocol for clues about how and when to cheat with less chance of detection.

Furthermore, parallel testing has a severe disadvantage in comparison with other contestable/defensible paper-ballot-based voting systems: If

the auditors detect that the BMDs have mismarked a ballot—even once—the entire election must be invalidated, and a do-over election must be held. This is because the auditor will have detected evidence that the BMDs in this election have been systematically mismarking ballots for some proportion of *all* voters. No recount of the paper ballots can correct this.

In contrast, if optical scanners are hacked to cheat on hand-marked paper ballots, the correct outcome can be calculated by a full hand recount of the paper ballots.²⁵

Wallach also suggests, instead of parallel testing, the use of spoiled-ballot rates as a measure of BMD cheating. Suppose, when BMDs are not cheating, the baseline rate of spoiled ballots (i.e., voters asking for a “do-over” of their BMD marked ballot) is 1%. Suppose the machines are cheating on 5% of the ballots, and 6% of voters notice this, and ask for a do-over. Then the spoiled ballot rate increases to 1.3%. The election administrator is supposed to act upon this discrepancy. But the only meaningful action the administrator could take is to invalidate the entire election, and call for a do-over election. This is impractical.

Moreover, the underlying “natural” rate of spoilage will not be known exactly, and will vary from election to election, even if the machines function flawlessly. The natural rate might depend on the number of contests on the ballot, the complexity of voting rules (e.g., instant-runoff voting [IRV] versus plurality), ballot layout, and many other factors. For any rule, there will be a tradeoff between false alarms and failures to detect problems.

To continue the previous hypothetical, suppose that spoiled ballots follow a Poisson distribution (there is no reason to think that they do). Imagine that the theoretical rate is known to be 1% if the

²⁴For example, BMDs do “know” their own settings and other aspects of each voting session, so malware can use that information to target sessions that use the audio interface, increase the font size, use the sip-and-puff interface, set the language to something other than English, or take much longer than average to vote. (Voters who use those settings might be less likely to be believed if they report that the equipment altered their votes.) For parallel testing to have a good chance of detecting all outcome-changing problems, the tests must have a large chance of probing *every* combination of settings and voting patterns that includes enough ballots to change any contest result. It is not practical.

²⁵Provided, of course, that secure chain of custody of the ballot boxes can be demonstrated.

BMDs function correctly, and known to be 1.3% if the BMDs malfunction. How many votes must be cast for it to be possible to limit the chance of a false alarm to 1%, while ensuring a 99% chance of detecting a real problem? The answer is 28,300 votes. If turnout is roughly 50%, jurisdictions (or contests) with fewer than 60,000 voters could not in principle limit the chance of false positives and of false negatives to 1%—even under these optimistic assumptions and simplifications. Twenty-three of California’s 58 counties have fewer than 60,000 registered voters.

OTHER TRADEOFFS, BMDS VERSUS HAND-MARKED OPSCAN

Supporters of ballot-marking devices advance several other arguments for their use.

Mark legibility. A common argument is that a properly functioning BMD will generate clean, error-free, unambiguous marks, while hand-marked paper ballots may contain mistakes and stray marks that make it impossible to discern a voter’s intent. However appealing this argument seems at first blush, the data are not nearly so compelling. Experience with statewide recounts in Minnesota and elsewhere suggest that truly ambiguous handmade marks are very rare.²⁶ For instance, 2.9 million hand-marked ballots were cast in the 2008 Minnesota race between Al Franken and Norm Coleman for the U.S. Senate. In a manual recount, between 99.95% and 99.99% of ballots were unambiguously marked.^{27,28} In addition, usability studies of hand-marked bubble ballots—the kind in most common use in U.S. elections—indicate a *voter* error rate of 0.6%, much lower than the 2.5%–3.7% error rate for machine-marked ballots (Everett 2007).²⁹ Thus, mark legibility is not a good reason to adopt BMDs for all voters.

Undervotes, overvotes. Another argument offered for BMDs is that the machines can alert voters to undervotes and prevent overvotes. That is true, but modern PCOS systems can also alert a voter to overvotes and undervotes, allowing a voter to eject the ballot and correct it.

Bad ballot design. Ill-designed paper ballots, just like ill-designed touchscreen interfaces, may lead to unintentional undervotes (Norden et al. 2008). For instance, the 2006 Sarasota, Florida, touchscreen ballot was badly designed. The 2018 Broward County, Flor-

ida, opscan ballot was badly designed: it violated three separate guidelines from the EAC’s 2007 publication, “Effective Designs for the Administration of Federal Elections, Section 3: Optical Scan Ballots” (U.S. Election Assistance Commission 2007). In both of these cases (touchscreens in 2006, hand-marked optical-scan in 2018), undervote rates were high. The solution is to follow standard, published ballot-design guidelines and other best practices, both for touchscreens and for hand-marked ballots (Appel 2018c; Norden et al. 2008).

Low-tech paper-ballot fraud. All paper ballots, however they are marked, are vulnerable to *loss*, *ballot-box stuffing*, *alteration*, and *substitution* between the time they are cast and the time they are recounted. That’s why it is so important to make sure that ballot boxes are always in multiple-person (preferably bipartisan) custody whenever they are handled, and that appropriate physical security measures are in place. Strong, verifiable chain-of-custody protections are essential.

Hand-marked paper ballots are vulnerable to alteration by anyone with a pen. Both hand-marked and BMD-marked paper ballots are vulnerable to substitution: anyone who has poorly supervised access to a legitimate BMD during election day can create fraudulent ballots, not necessarily to deposit them in the ballot box immediately (in case the

²⁶States do need clear and complete regulations for interpreting voter marks.

²⁷“During the recount, the Coleman and Franken campaigns initially challenged a total of 6,655 ballot-interpretation decisions made by the human recounters. The State Canvassing Board asked the campaigns to voluntarily withdraw all but their most serious challenges, and in the end approximately 1,325 challenges remained. That is, approximately 5 ballots in 10,000 were ambiguous enough that one side or the other felt like arguing about it. The State Canvassing Board, in the end, classified all but 248 of these ballots as votes for one candidate or another. That is, approximately 1 ballot in 10,000 was ambiguous enough that the bipartisan recount board could not determine an intent to vote.” (Appel 2009; see also Office of the Minnesota Secretary of State 2009).

²⁸We have found that some local election officials consider marks to be ambiguous if *machines* cannot read the marks. That is a different issue from *humans* being unable to interpret the marks. Errors in machine interpretation of voter intent can be dealt with by manual audits: if the reported outcome is wrong because machines misinterpreted handmade marks, an RLA has a known, large chance of correcting the outcome.

²⁹Better designed user interfaces (UI) might reduce the error rate for machine-marked ballots below the historical rate for direct-recording electronic (DRE) voting machines; however, UI improvements cannot keep BMDs from printing something other than what the voter is shown on the screen.

ballot box is well supervised on Election Day) but with the hope of substituting it later in the chain of custody.³⁰

All those attacks (on hand-marked and on BMD-marked paper ballots) are fairly low-tech. There are also higher-tech ways of producing ballots indistinguishable from BMD-marked ballots for substitution into the ballot box if there is inadequate chain-of-custody protection.

Accessible voting technology. When hand-marked paper ballots are used with PCOS, there is (as required by law) also an accessible voting technology available in the polling place for voters unable to mark a paper ballot with a pen. This is typically a BMD or a DRE. When the accessible voting technology is not the same as what most voters vote on—when it is used by very few voters—it may happen that the accessible technology is ill-maintained or even (in some polling places) not even properly set up by pollworkers. This is a real problem. One proposed solution is to require all voters to use the same BMD or all-in-one technology. But the failure of some election officials to properly maintain their accessible equipment is not a good reason to adopt BMDs for *all* voters. Among other things, it would expose all voters to the security flaws described above.³¹ Other advocates object to the idea that disabled voters must use a different method of marking ballots, arguing that their rights are thereby violated. Both the Help America Vote Act (HAVA) and the Americans with Disabilities Act (ADA) require reasonable accommodations for voters with physical and cognitive impairments, but neither law requires that those accommodations must be used by all voters. To best enable and facilitate participation by all voters, each voter should be provided with a means of casting a vote best suited to their abilities.

Ballot printing costs. Preprinted optical-scan ballots cost 20–50 cents each.³² Blank cards for BMDs cost up to 15 cents each, depending on the make and model of BMD.³³ But optical-scan ballots must be preprinted for as many voters as *might* show up, whereas blank BMD cards are consumed in proportion to how many voters *do* show up. The Open Source Election Technology Institute (OSET) conducted an independent study of total life cycle costs³⁴ for hand-marked paper ballots and BMDs in conjunction with the 2019 Georgia legislative debate regarding BMDs (Perez 2019). OSET concluded that, even in the most optimistic (i.e., lowest cost) scenario for BMDs and the most pessimistic (i.e., highest cost)

scenario for hand-marked paper ballots and ballot-on-demand (BOD) printers—which can print unmarked ballots as needed—the total lifecycle costs for BMDs would be higher than the corresponding costs for hand-marked paper ballots.³⁵

Vote centers. To run a vote center that serves many election districts with different ballot styles, one must be able to provide each voter a ballot containing the contests that voter is eligible to vote in, possibly in a number of different languages. This is easy with BMDs, which can be programmed with all the appropriate ballot definitions. With preprinted optical-scan ballots, the PCOS can be programmed to *accept* many different ballot styles, but the vote center must still maintain *inventory* of many different ballots. BOD printers are another economical alternative for vote centers.³⁶

Paper/storage. BMDs that print summary cards rather than full-face ballots can save paper and storage space. However, many BMDs print full-face ballots—so they do not save storage—while many

³⁰Some BMDs print a barcode indicating when and where the ballot was produced, but that does not prevent such a substitution attack against currently Election Assistance Commission (EAC)-certified, commercially available BMDs. We understand that systems under development might make ballot-substitution attacks against BMDs more difficult.

³¹Also, some accessibility advocates argue that requiring disabled voters to use BMDs compromises their privacy since hand-marked ballots are easily distinguishable from machine marked ballots. That issue can be addressed without BMDs-for-all: Accessible BMDs are already available and in use that mark ballots with marks that cannot easily be distinguished from hand-marked ballots.

³²Single-sheet (one- or two-side) ballots cost 20–28 cents; double-sheet ballots needed for elections with many contests cost up to 50 cents.

³³Ballot cards for ES&S ExpressVote cost about 15 cents. New Hampshire's (One4All/Prime III) BMDs used by sight-impaired voters use plain paper that is less expensive.

³⁴They include not only the cost of acquiring and implementing systems but also the ongoing licensing, logistics, and operating (purchasing paper stock, printing, and inventory management) costs.

³⁵Ballot-on-demand (BOD) printers currently on the market arguably are best suited for vote centers, but less expensive options suited for polling places could be developed. Indeed, BMDs that print full-face ballots could be re-purposed as BOD printers for polling place use, with modest changes to the programming.

³⁶Ballot-on-demand printers *may* require maintenance such as replacement of toner cartridges. This is readily accomplished at a vote center with a professional staff. Ballot-on-demand printers may be a less attractive option for many small precincts on Election Day, where there is no professional staff—but on the other hand, they are less necessary, since far fewer ballot styles will be needed in any one precinct.

BMDs that print summary cards (which could save storage) use thermal printers and paper that is fragile and can fade in a few months.³⁷

Advocates of hand-marked paper ballot systems advance these additional arguments.

Cost. Using BMDs for all voters substantially increases the cost of acquiring, configuring, and maintaining the voting system. One PCOS can serve 1,200 voters in a day, while one BMD can serve only about 260 (Election Systems and Software 2018)—though both these numbers vary greatly depending on the length of the ballot and the length of the day. OSET analyzed the relative costs of acquiring BMDs for Georgia’s nearly seven million registered voters versus a system of hand-marked paper ballots, scanners, and BOD printers (Perez 2019). A BMD solution for Georgia would cost taxpayers between three and five times more than a system based on hand-marked paper ballots. Open-source systems might eventually shift the economics, but current commercial universal-use BMD systems are more expensive than systems that use hand-marked paper ballots for most voters.

Mechanical reliability and capacity. Pens are likely to have less downtime than BMDs. It is easy and inexpensive to get more pens and privacy screens when additional capacity is needed. If a precinct-count scanner goes down, people can still mark ballots with a pen; if the BMD goes down, voting stops. Thermal printers used in DREs with VVPAT are prone to jams; those in BMDs might have similar flaws.

These secondary pros and cons of BMDs do not outweigh the primary security and accuracy concern: BMDs, if hacked or erroneously programmed, can change votes in a way that is not correctable. BMD voting systems are not contestable or defensible. Audits that rely on BMD printout cannot make up for this defect in the paper trail: they cannot reliably detect or correct problems that altered election outcomes.

Barcodes

A controversial feature of some BMDs allows them to print one-dimensional or two-dimensional barcodes on the paper ballots. A one-dimensional barcode resembles the pattern of vertical lines used to identify products by their universal product codes. A two-dimensional barcode or QR code is a rectangular area covered in coded image *modules*

that encode more complex patterns and information. BMDs print barcodes on the same paper ballot that contains human-readable ballot choices. Voters using BMDs are expected to verify the human-readable printing on the paper ballot card, but the presence of barcodes with human-readable text poses some significant problems.

Barcodes are not human readable. The whole purpose of a paper ballot is to be able to recount (or audit) the *voters’* votes in a way independent of any (possibly hacked or buggy) computers. If the official vote on the ballot card is the barcode, then it is impossible for the voters to verify that the official vote they cast is the vote they expressed. Therefore, before a state even *considers* using BMDs that print barcodes (and we do not recommend doing so), the state must ensure by statute that recounts and audits are based *only* on the human-readable portion of the paper ballot. Even so, audits based on untrustworthy paper trails suffer from the verifiability the problems outlined above.

Ballot cards with barcodes contain two different votes. Suppose a state does ensure by statute that recounts and audits are based on the human-readable portion of the paper ballot. Now a BMD-marked ballot card with both barcodes and human-readable text contains two different votes in each contest: the barcode (used for electronic tabulation), and the human-readable selection printout (official for audits and recounts). In few (if any) states has there even been a discussion of the legal issues raised when the official markings to be counted differ between the original count and a recount.

Barcodes pose technical risks. Any coded input into a computer system—including wired network packets, Wi-Fi, USB thumbdrives, *and barcodes*—pose the risk that the input-processing software can be vulnerable to attack via deliberately ill-formed input. Over the past two decades, many such vulnerabilities have been documented on *each* of these channels (including barcode readers) that, in the worst case,

³⁷The California Top-To-Bottom Review (TTBR) of voting systems found that thermal paper can also be covertly spoiled wholesale using common household chemicals. <<https://votingsystems.cdn.sos.ca.gov/oversight/ttbr/red-diebold.pdf>> (last visited April 8, 2019; Matt Bishop, Principal Investigator). The fact that thermal paper printing can fade or deteriorate rapidly might mean it does not satisfy the federal requirement to preserve voting materials for 22 months (U.S. Code Title 52, Chapter 207, Sec. 20701, as of April 2020).

give the attacker complete control of a system.³⁸ If an attacker were able to compromise a BMD, the barcodes are an attack vector for the attacker to take over an optical scanner (PCOS or CCOS), too. Since it is good practice to close down all such unneeded attack vectors into PCOS or CCOS voting machines (e.g., don't connect your PCOS to the Internet!), it is also good practice to avoid unnecessary attack channels such as barcodes.

INSECURITY OF ALL-IN-ONE BMDS

Some voting machines incorporate a BMD interface, printer, and optical scanner into the same cabinet. Other DRE+VVPAT voting machines incorporate ballot-marking, tabulation, and paper-printout retention, but without scanning. These are often called “all-in-one” voting machines. To use an all-in-one machine, the voter makes choices on a touchscreen or through a different accessible interface. When the selections are complete, the BMD prints the completed ballot for the voter to review and verify, before depositing the ballot in a ballot box attached to the machine.

Such machines are especially unsafe: like any BMD described in Section 3, “(Non)Contestability/Defensibility of BMDs,” they are not contestable or defensible, but in addition, if hacked they can print votes onto the ballot *after* the voter last inspects the ballot.

- The ES&S ExpressVote (in all-in-one mode) allows the voter to mark a ballot by touchscreen or audio interface, then prints a paper ballot card and ejects it from a slot. The voter has the opportunity to review the ballot, then the voter redeposits the ballot into the same slot, where it is scanned and deposited into a ballot box.
- The ES&S ExpressVoteXL allows the voter to mark a ballot by touchscreen or audio interface, then prints a paper ballot and displays it under glass. The voter has the opportunity to review the ballot, then the voter touches the screen to indicate “OK,” and the machine pulls paper ballot up (still under glass) and into the integrated ballot box.
- The Dominion ImageCast Evolution (ICE) allows the voter to deposit a hand-marked paper ballot, which it scans and drops into the attached ballot box. *Or*, a voter can use a touchscreen or audio interface to direct the marking of a paper

ballot, which the voting machine ejects through a slot for review; then the voter redeposits the ballot into the slot, where it is scanned and dropped into the ballot box.

In all three of these machines, the ballot-marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can mark the paper ballot (to add votes or spoil already-cast votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection.

Vote-stealing software could easily be constructed that looks for *undervotes* on the ballot, and marks those unvoted spaces for the candidate of the hacker's choice. This is very straightforward to do on optical-scan bubble ballots (as on the Dominion ICE) where undervotes are indicated by no mark at all. On machines such as the ExpressVote and ExpressVoteXL, the normal software indicates an undervote with the words “no selection made” on the ballot summary card. Hacked software could simply leave a blank space there (most voters wouldn't notice the difference), and then fill in that space and add a matching bar code after the voter has clicked “cast this ballot.”

An even worse feature of the ES&S ExpressVote and the Dominion ICE is the *auto-cast* configuration setting (in the manufacturer's standard software) that allows the voter to indicate, “don't eject the ballot for my review, just print it and cast it without me looking at it.” If fraudulent software were installed in the ExpressVote, it could change *all* the votes of any voter who selected this option, because the voting machine software would know *in advance of printing* that the voter had waived the opportunity to inspect the printed ballot. We call this auto-cast feature “permission to cheat” (Appel 2018a).

Regarding these all-in-one machines, we conclude:

³⁸ An example of a barcode attack is based on the fact that many commercial barcode-scanner components (which system integrators use to build cash registers or voting machines) treat the barcode scanner using the same operating-system interface as if it were a keyboard device; and then some operating systems allow “keyboard escapes” or “keyboard function keys” to perform unexpected operations.

- Any machine with ballot printing in the same paper path with ballot deposit is not *software independent*; it is *not* the case that “an error or fault in the voting system software or hardware cannot cause an undetectable change in election results.” Therefore such all-in-one machines do not comply with the VVSG 2.0 (the Election Assistance Commission’s Voluntary Voting Systems Guidelines). Such machines are not contestable or defensible, either.
- All-in-one machines on which all voters use the BMD interface to mark their ballots (such as the ExpressVote and ExpressVoteXL) *also* suffer from the same serious problem as ordinary BMDs: most voters do not review their ballots effectively, and elections on these machines are not contestable or defensible.
- The auto-cast option for a voter to allow the paper ballot to be cast without human inspection is particularly dangerous, and states must insist that vendors disable or eliminate this mode from the software. However, even disabling the auto-cast feature does not eliminate the risk of undetected vote manipulation.

Remark

The Dominion ImageCast Precinct ICP320 is a precinct-count optical scanner (PCOS) that also contains an audio+buttons ballot-marking interface for disabled voters. This machine can be configured to cast electronic-only ballots from the BMD interface, or an external printer can be attached to print paper optical-scan ballots from the BMD interface. When the external printer is used, that printer’s paper path is *not* connected to the scanner+ballot-box paper path (a person must take the ballot from the printer and deposit it into the scanner slot). Therefore this machine is as safe to use as any PCOS with a separate external BMD.

CONCLUSION

Ballot-marking devices produce ballots that do not necessarily record the vote expressed by the voter when they enter their selections on the touchscreen: hacking, bugs, and configuration errors can cause the BMDs to print votes that differ from what the voter entered and verified electroni-

cally. Because outcome-changing errors in BMD printout do not produce public evidence, BMD systems are not *contestable*. Because there is no way to generate convincing public evidence that reported outcomes are correct despite any BMD malfunctions that might have occurred, BMD systems are not *defensible*. Therefore, BMDs should not be used by voters who can hand mark paper ballots.

All-in-one voting machines, which combine ballot-marking and ballot-box-deposit into the same paper path, are even worse. They have all the disadvantages of BMDs (they are not contestable or defensible), and they can mark the ballot after the voter has inspected it. Therefore they are not even *software independent*, and should not be used by those voters who are capable of marking, handling, and visually inspecting a paper ballot.

When computers are used to record votes, the original transaction (the voter’s expression of the votes) is not documented in a verifiable way.³⁹ When pen and paper are used to record the vote, the original expression of the vote *is* documented in a verifiable way (if demonstrably secure chain of custody of the paper ballots is maintained). Audits of elections conducted with hand-marked paper ballots, counted by optical scanners, can ensure that reported election outcomes are correct. Audits of elections conducted with BMDs *cannot* ensure that reported outcomes are correct.

REFERENCES

- Appel, A.W. 2009. “Optical-Scan Voting Extremely Accurate in Minnesota.” *Freedom to Tinker*. January. <<https://freedom-to-tinker.com/2009/01/21/optical-scan-voting-extremely-accurate-minnesota/>>.
- Appel, A.W. 2018a. “Serious Design Flaw in ESS ExpressVote Touch-Screen: “Permission to Cheat.”” *Freedom to Tinker*. September. <<https://freedom-to-tinker.com/2018/09/14/serious-design-flaw-in-ess-expressvote-touchscreen-permission-to-cheat/>>.

³⁹It is conceivable that cryptographic protocols like those used in E2E-V systems could be used to create BMD-based systems that are contestable and defensible, but no such system exists, nor, to our knowledge, has such a design been worked out in principle. Existing E2E-V systems that use a computer to print (encrypted) selections are neither contestable nor defensible, as explained in Section 1, “Introduction: Criteria for Voting Systems.”

- Appel, A.W. 2018b. "End-to-End Verifiable Elections." *Freedom to Tinker*. November. <<https://freedom-to-tinker.com/2018/11/05/end-to-end-verifiable-elections/>>.
- Appel, A.W. 2018c. "Florida Is the Florida of Ballot-Design Mistakes." *Freedom to Tinker*. November 2018. <<https://freedom-to-tinker.com/2018/11/14/florida-is-the-florida-of-ballot-design-mistakes/>>.
- Bell, S., J. Benaloh, M.D. Byrne, D. DeBeauvoir, B. Eakin, G. Fisher, P. Kortum, N. McBurnett, J. Montoya, M. Parker, O. Pereira, P.B. Stark, D.S. Wallach, and M. Winn. 2013. "STAR-Vote: A Secure, Transparent, Auditable, and Reliable Voting System." *USENIX Journal of Election Technology and Systems (JETS)* 1(1): 18–37.
- Benaloh, J., D. Jones, E. Lazarus, M. Lindeman, and P.B. Stark. 2011. "SOBA: Secrecy-Preserving Observable Ballot-Level Audits." In *Proceedings of the 2011 Electronic Voting Technology Workshop / Workshop on Trustworthy Elections (EVT/WOTE '11)*. USENIX.
- Benaloh, Josh, Ronald L. Rivest, Peter Y.A. Ryan, Philip B. Stark, Vanessa Teague, and Poorvi L. Vora. 2014. "End-to-End Verifiability." *ArXiv.org*. February 2. <<https://arxiv.org/ftp/arxiv/papers/1504/1504.03778.pdf>>.
- Bernhard, Matthew, Allison McDonald, Henry Meng, Jensen Hwa, Nakul Bajaj, Kevin Chang, and J. Alex Halderman. 2020. "Can Voters Detect Malicious Manipulation of Ballot Marking Devices?" In *41st IEEE Symposium on Security and Privacy*. IEEE.
- Bothwell, R.K., K.A. Deffenbacher, and J.C. Brigham. 1987. "Correlation of Eyewitness Accuracy and Confidence: Optimality Hypothesis Revisited." *Journal of Applied Psychology* 72(4): 691–695.
- Chaum, D., A. Essex, R.T. Carback III, J. Clark, S. Popoveniuc, A.T. Sherman, and P. Vora. 2008. "Scantegrity: End-to-End Voter Verifiable Optical-Scan Voting." *IEEE Security & Privacy* 6(3): 40–46.
- Contag, Moritz, Guo Li, Andre Pawlowski, Felix Domke, Kirill Levchenko, Thorsten Holz, and Stefan Savage. 2017. "How They Did It: An Analysis of Emission Defeat Devices in Modern Automobiles." In *2017 IEEE Symposium on Security and Privacy*, 231–250. San Jose, CA: IEEE.
- Deffenbacher, K. 1980. "Eyewitness Accuracy and Confidence: Can We Infer Anything About Their Relation?" *Law and Human Behavior* 4: 243–260.
- DeMillo, R., R. Kadel, and M. Marks. 2018. "What Voters Are Asked to Verify Affects Ballot Verification: A Quantitative Analysis of Voters' Memories of Their Ballots." *SSRN*. November. <<https://ssrn.com/abstract=3292208>>.
- Desmarais, S.L., T.L. Nicholls, J. D. Read, and J. Brink. 2010. "Confidence and Accuracy in Assessments of Short-Term Risks Presented by Forensic Psychiatric Patients." *Journal of Forensic Psychiatry & Psychology* 21(1): 1–22.
- Dunning, D., D.W. Griffin, J.D. Milojkovic, and L. Ross. 1990. "The Overconfidence Effect in Social Prediction." *Journal of Personality and Social Psychology* 58: 568–581.
- Election Systems and Software. 2018. *State of Georgia Electronic Request for Information New Voting System*. Event Number: 47800-SOS0000035. August 24. <<http://sos.ga.gov/admin/files/ESS%20RFI%20-%20Final%20-%20Redacted.pdf>>.
- Everett, S.P. 2007. "The Usability of Electronic Voting Machines and How Votes Can Be Changed Without Detection." PhD thesis. Rice University.
- Feldman, A.J., J.A. Halderman, and E.W. Felten. 2007. "Security Analysis of the Diebold AccuVote-TS Voting Machine." In *2007 USENIX/ACCURATE Electronic Voting Technology Workshop (EVT 2007)*. August.
- Johansson, P., L. Hall, and S. Sikstrom. 2008. "From Change Blindness to Choice Blindness." *Psychologia* 51(2): 142–155.
- Kahnemann, D. 2011. *Thinking, Fast and Slow*. New York, NY: Farrar, Straus and Giroux.
- Lindeman, M. and P.B. Stark. 2012. "A Gentle Introduction to Risk-Limiting Audits." *IEEE Security and Privacy* 10(5): 42–49.
- National Academies of Sciences, Engineering, and Medicine. 2018. *Securing the Vote: Protecting American Democracy*. Washington, DC: National Academies Press. September.
- Norden, L., M. Chen, D. Kimball, and W. Quesenbery. 2008. "Better Ballots." *Brennan Center for Justice*. July 21. <<http://www.brennancenter.org/publication/better-ballots>>.
- Office of the Minnesota Secretary of State. 2009. "Minnesota's Historic 2008 Election." In *Minnesota Legislative Manual (Blue Book)*, 2009–2010 ed. Saint Paul, MN: Office of the Minnesota Secretary of State. <<https://www.sos.state.mn.us/media/3078/minnesotas-historic-2008-election.pdf>>.
- Perez, E. 2019. "Georgia State Election Technology Acquisition: A Reality Check." *OSET Institute Briefing*. March. <https://trustthevote.org/wp-content/uploads/2019/03/06Mar19-OSETBriefing_GeorgiaSystemsCostAnalysis.pdf>.
- Rayner, K. 2009. "Eye Movements and Attention in Reading, Scene Perception, and Visual Search." *Quarterly Journal of Experimental Psychology* 62(8): 1457–1506.
- Reason, J. 2009. *Human Error* (20th Printing). New York, NY: Cambridge University Press.
- Rivest, R.L., and J.P. Wack. 2006. "On the Notion of 'Software Independence' in Voting Systems." White paper. July. <<https://www.nist.gov/system/files/si-in-voting.pdf>>.
- Rivest, Ronald L. 2008. "On the Notion of 'Software Independence' in Voting Systems." *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* 366(1881): 3759–3767.
- Rivest, Ronald L., and Madars Virza. 2016. "Software Independence Revisited." In *Real-World Electronic Voting*, eds. Feng Hao and Peter Y.A. Ryan, 19–34. Boca Raton, FL: Auerbach Publications.
- Ryan, P.Y.A., D. Bismark, J. Heather, S. Schneider, and Z. Xia. 2009. "Prêt à Voter: A Voter- Verifiable Voting System." *IEEE Transactions on Information Forensics and Security* 4(4): 662–673.
- Stark, P.B. 2008. "Conservative Statistical Post-Election Audits." *Annals of Applied Statistics* 2(2): 550–581.
- Stark, P.B. 2009. "Risk-Limiting Postelection Audits: Conservative P-values from Common Probability Inequalities." *IEEE Transactions on Information Forensics and Security* 4(4): 1005–1014.

- Stark, P.B. 2018. “An Introduction to Risk-Limiting Audits and Evidence-Based Elections.” Testimony prepared for the California Little Hoover Commission. July 2. <<https://www.stat.berkeley.edu/~stark/Preprints/lhc18.pdf>>.
- Stark, P.B. 2019. “There Is No Reliable Way to Detect Hacked Ballot-Marking Devices.” *ArXiv.org*. August. <<https://arxiv.org/abs/1908.08144>>.
- Stark, P.B., and D.A. Wagner. 2012. “Evidence-Based Elections.” *IEEE Security and Privacy* 10(5): 33–41.
- U. S. Election Assistance Commission. 2007. *Effective Designs for the Administration of Federal Elections*. June. <https://www.eac.gov/sites/default/files/event_document/files/EAC_Effective_Election_Design.pdf>.
- U.S. Election Assistance Commission. 2017. *Voluntary Voting Systems Guidelines 2.0*. September. <https://www.eac.gov/sites/default/files/TestingCertification/2020_02_29_vvsg_2_draft_requirements.pdf>.
- Verified Voting Foundation. 2018. “The Verifier—Polling Place Equipment—November 2018.” *Verified Voting*. November. <<https://www.verifiedvoting.org/verifier/>>.
- Verified Voting Foundation. 2020. “The Verifier—Polling Place Equipment—November 2020.” *Verified Voting*. February 8 (retrieved). <<https://www.verifiedvoting.org/verifier/>>.
- Wallach, Dan S. 2019. “On the Security of Ballot Marking Devices.” *ArXiv.org*. December. <<https://arxiv.org/abs/1908.01897>>.
- Wixted, J.T., and G.L. Wells. 2017. “The Relationship Between Eyewitness Confidence and Identification Accuracy: A New Synthesis.” *Psychological Science in the Public Interest* 18(1): 10–65.

Address correspondence to:

Andrew W. Appel
 Department of Computer Science
 Princeton University
 35 Olden Street
 Princeton, NJ 08540
 USA

E-mail: appel@princeton.edu

Received for publication December 27, 2019; received in revised form February 14, 2019; accepted April 4, 2020; published online June 17, 2020.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

AFFIDAVIT OF KELLY MOORE IN SUPPORT OF
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

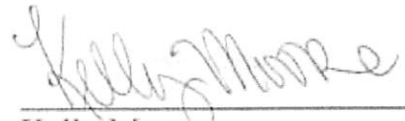
I, Kelly Moore, declare under penalty of perjury that the following is true
and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal
knowledge of the matters stated herein.

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the “Trump Campaign”) in connection with what was identified to me as the “hand count” of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 16, 2020 at the Lithonia Voting Facility in Lithonia, Georgia.
3. At the Lithonia location, I was originally scheduled to watch from 1:00 p.m. until 5:00 p.m. I saw irregularities at every table. Every paid auditor was not following procedure. Stacks were being created without regard for the number in the stacks. Stacks of 15 or 16 were being created instead of the required method of creating a stack of ten, and then another stack of ten at right angles on top.
4. There was no system in place that would create an accurate count. When one group left with an “unfinished box,” it was left behind for the next group – at least in once case open and unattended. I watched it to see what would happen, and a poll worker attempted to recover it as a completed box until I called the supervisor.
5. Everyone seemed confident that there would be no change in the counts and did not want to follow any rules set in place. I was confronted with Democrat poll workers and the supervisor, “Twyla” verbally harassed other poll watchers, particularly if she felt they were Republican.

5. From the handful of paper absentee ballots I was able to see up close, it looked like many of the absentee ballots were perfectly filled out, as if the bubbles had been filled in by a machine. But we were kept at such a distance we could not see if they varied in a significant way from the other absentee ballots I observed.

I declare under penalty of perjury that the foregoing statements are true and correct


Kelly Moore

STATE OF GEORGIA

COUNTY OF DEKALB

Kelly Moore, appeared before me, a Notary Public in and for the above jurisdiction, this 18th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]




Notary Public

My Commission Expires AUGUST 17, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

AFFIDAVIT OF SCOTT GRAHAM HALL IN SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER

I, SCOTT GRAHAM HALL, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. I was an Election recount monitor at the Georgia World Congress Center on Saturday, November 14, 2020 and Sunday, November 15, 2020. Saturday morning during the manual recount of the mail-in ballots, I observed large quantities of ballots being cast for Joseph Biden on ballots that did not appear to have been mailed.
3. There were no creases in the mail in ballots giving the impression that they were never folded into an envelope and mailed. Most importantly, these ballots appeared to be pre-printed with the selections already made. The bubbles that one would select to choose their candidate appeared to have the exact same markings, with no different color inks, and no markings outside of the bubble as if they were all done perfectly. Hundreds of ballots at a time were counted for Biden only.
4. Additionally, on Sunday, November 15, 2020 around Noon, after most of the people had left, a table was set up in the far right-hand corner of the room outside of the area that was roped off for counting in where it was not visible

to security cameras. I noticed on the bag it was labeled "Welcome". I have attached a photograph of the table and area.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct.

STATE OF Georgia
COUNTY OF Fulton


SCOTT GRAHAM HALL

SCOTT GRAHAM HALL appeared before me, a Notary Public in and for the above jurisdiction, this 17 day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]




Notary Public

My Commission Expires AUGUST 17, 2024

[Faint handwritten signature]

[Faint handwritten text]

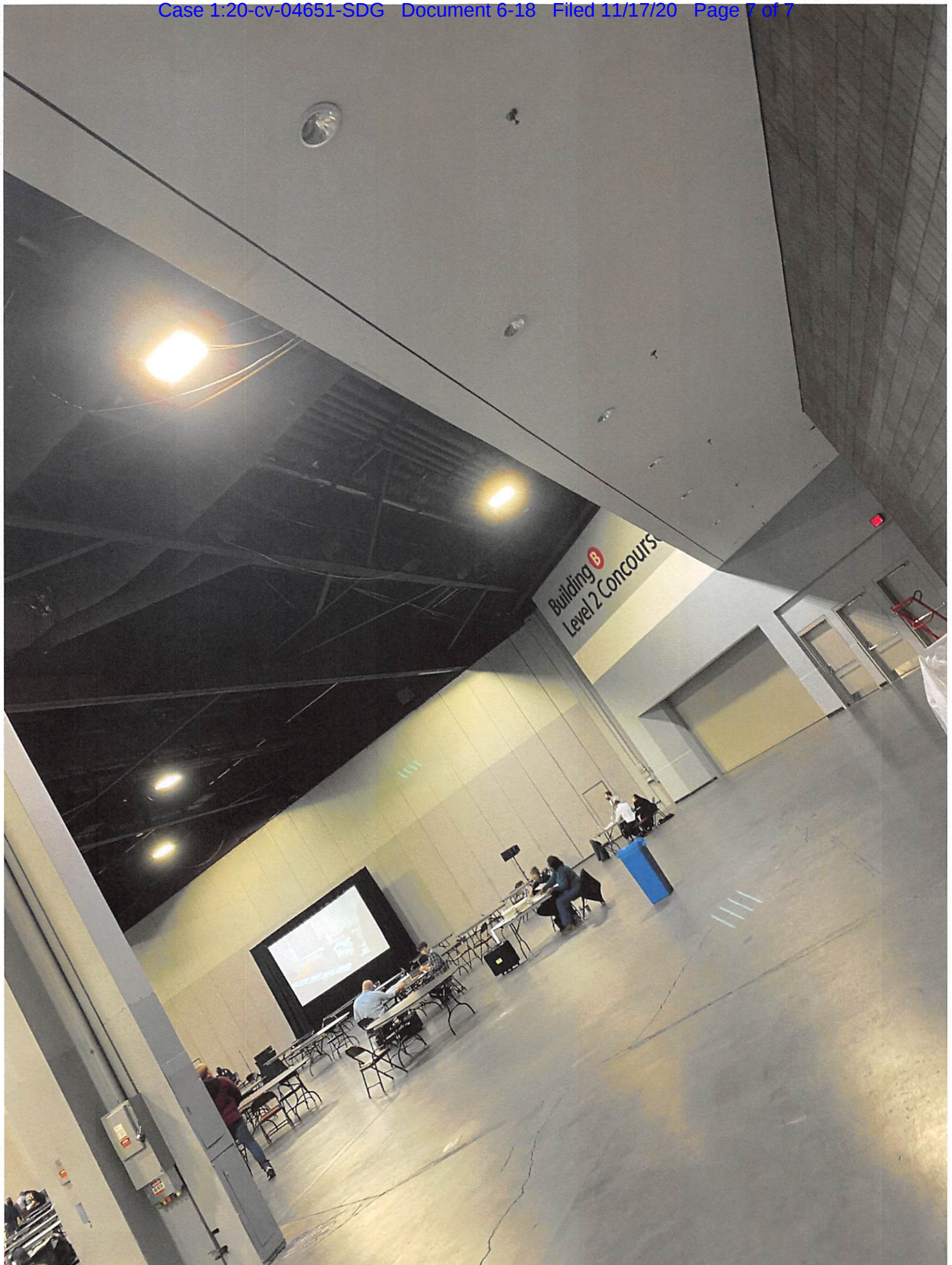
[Faint handwritten signature]



[Faint handwritten text]







**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, REBECCA N. SULLIVAN,
in her official capacity as Vice Chair of
the Georgia State Election Board,
DAVID J. WORLEY, in his official
capacity as a Member of the Georgia
State Election Board, MATTHEW
MASHBURN, in his official capacity as
a Member of the Georgia State Election
Board, and ANH LE, in her official
capacity as a Member of the Georgia
State Election Board,**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF ROBIN HALL IN SUPPORT OF PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**


I, ROBIN HALL, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.

2. I was at the World Congress Center on Saturday, November 14, 2020. I was certified as a Fulton County recount observer. I observed many boxes of absentee or mail in ballots being counted. Many of the boxes of ballots had voted for 100% for Biden and 0% for Trump. The ballots appeared to be perfectly filled out as if they were pre-printed with the presidential candidate selected. They did not look like a person had filled this out at home. All of them looked alike. Me and the other observers wrote down which batch headers and box number ranges were suspicious. I have created a spreadsheet with the list of batch headers.

[SIGNATURE AND OATH ON NEXT PAGE]

I declare under penalty of perjury that the foregoing statements are true and correct.


Robin Hall

STATE OF Georgia

COUNTY OF Fulton

Robin Hall appeared before me, a Notary Public in and for the above jurisdiction, this 17th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]




Notary Public

My Commission Expires AUGUST 17, 2024

[Illegible text]

[Illegible text]

[Illegible signature]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]

[Illegible text]



Table 1

All Questionable Ballots
Looked machine stamped

	BATCH HEADER	BOX RANGE	BOX RANGE	BOX RANGE	BOX RANGE	BOX RANGE
		1-8				292-298
	11	9-15				421-426
	18	12-25				465-471
	26	26-34				237-243
92 Biden 7 Trump	27	26-34				455-465
	28	26-34				271-280
	32	26-34				465-471
100% Biden	33					437-445
100% Biden	34					231-236
100% Biden	35					215-221
100% Biden	36					216-224
100% Biden	37					397-403
	38	35-46	35-42			446-453
	40	35-46	35-42			
	41	35-46	35-42			
	44	35-46				
	56	56-62	54-62	73-80		
	62	59-64	58-64			
	85	85-93	79-88	79-90		
	87	85-93	79-90			
	90	85-93	79-90			
	93	85-93	88-97	94-108	91-97	
	98		94-108		98-107	
	101	99-108	94-108	102-109	98-107	
	104	99-108	94-108	102-109	98-107	
	109	108-118	109-118	102-109		
	110	110-116	108-118			
	124	114-126	124-130			
	127	124-130				
	133	129-136	137-146			
	148	147-155				
	151	147-155				
	155	147-155				
	157					
	158	158-165				
	163	158-165				
	169	166-172				
	178	171-182	173-179			
	180	171-182				
	181					
	186		203-209			
	202	202-208				
hid yellow sheet	225	225-232				
	251	244-253	264-270	250-256		

95-100%
Biden
for
most
of
them

	277	271-280	277-284			
	285	285-291				
96 Biden-4 Trump	286	285-291				
96 Biden-4 Trump	289	285-291				
	309					
	318	311-323	316-323			
	319	311-323	316-323			
	336	333-341				
	341	333-341				
	350					
	354					
	358	358-364				
	389	389-396				
	390	389-396				
	392	389-396				
	428					

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his official)
capacity as Secretary of State of the State)
of Georgia, REBECCA N. SULLIVAN,)
in her official capacity as Vice Chair of)
the Georgia State Election Board,)
DAVID J. WORLEY, in his official)
capacity as a Member of the Georgia)
State Election Board, MATTHEW)
MASHBURN, in his official capacity as)
a Member of the Georgia State Election)
Board, and ANH LE, in her official)
capacity as a Member of the Georgia)
State Election Board,)**

Defendants.

**CIVIL ACTION FILE NO.
1:20-cv-04651-SDG**

**AFFIDAVIT OF BARBARA HARTMAN IN SUPPORT OF PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

I, BARBARA HARTMAN, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18 years and competent to testify herein. I have personal knowledge of the matters stated herein.
2. I was an election official auditor at the Georgia World Congress Center on Saturday, November 14, 2020 and Sunday, November 15, 2020 for the hand count of ballots from the November 3, 2020 presidential election in Fulton County, Georgia.
3. I was given several stacks of absentee ballots to count. The absentee ballots looked as though they had just come from a fresh stack. I could not observe any creases in the ballots and did not seem like they were ever folded and put into envelopes or mailed out. The marked bubbles for each candidate was filled in black ink perfectly within the circle. They looked as if they were stamped.
4. The majority of the mail in ballots that I reviewed contained suspicious black perfectly bubbled markings for Biden.

[SIGNATURE AND OATH ON NEXT PAGE]

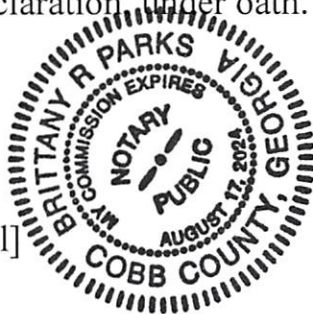
I declare under penalty of perjury that the foregoing statements are true and correct.

Barbara Hartman
BARBARA HARTMAN

STATE OF Georgia
COUNTY OF Fulton

BARBARA HARTMAN appeared before me, a Notary Public in and for the above jurisdiction, this ____ day of November 2020, and after being duly sworn, made this Declaration under oath.

[Affix Seal]



Brittany R. Parks
Notary Public

My Commission Expires AUGUST 17, 2024



$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

[signature on following page]

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1 (B).

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing and all exhibits and attachments thereto in the above-captioned matter to be filed with the United States District Court for the Northern District of Georgia, Atlanta Division, via the Court's CM-ECF system. I also hereby certify that I caused the foregoing and all exhibits and attachments thereto in the above captioned matter to be served, via email, upon:

Secretary of State Brad Raffensperger
214 State Capitol
Atlanta, Georgia 30334
brad@sos.ga.gov
soscontact@sos.ga.gov

Rebecca N. Sullivan
Georgia Department of Administrative Services
200 Piedmont Avenue SE
Suite 1804, West Tower
Atlanta, Georgia 30334-9010
rebecca.sullivan@doas.ga.gov

David J. Worley
Evangelista Worley LLC
500 Sugar Mill Road
Suite 245A
Atlanta, Georgia 30350
david@ewlawllc.com

Matthew Mashburn
Aldridge Pite, LLP
3575 Piedmont Road, N.E.
Suite 500
Atlanta, Georgia 30305
mmashburn@aldridgepite.com

Anh Le
Harley, Rowe & Fowler, P.C.
2700 Cumberland Parkway
Suite 525
Atlanta, Georgia 30339
ale@hrflegal.com

This 18th day of November, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

Affidavit of Russell James Ramsland, Jr.

1. My name is Russell James Ramsland, Jr., and I am a resident of Dallas County, Texas.
2. I am part of the management team of Allied Security Operations Group, LLC, (ASOG). ASOG provides a range of security services, but has a particular emphasis on cyber security, OSINT and PEN testing of networks. We employ a wide variety of cyber and cyber forensic analysts. We have patents pending in a variety of applications from novel network security applications to SCADA protection and safe browsing solutions for the dark and deep web.
3. In November 2018, ASOG analyzed audit logs for the central tabulation server of the ES&S Election Management System (EMS) for the Dallas, Texas, General Election of 2018. Our team was surprised at the enormous number of error messages that should not have been there. They numbered in the thousands, and the operator ignored and overrode all of them. This led to various legal challenges in that election, and we provided evidence and analysis in some of them.
4. As a result, ASOG initiated an 18-month study into the major EMS providers in the United States, among which is Dominion/Premier that provides EMS services in Michigan. We did thorough background research of the literature and discovered there is quite a history from both Democrat and Republican stakeholders in the vulnerability of Dominion. The State of Texas rejected Dominion/Premier's certification for use there due to vulnerabilities. Next, we began doing PEN testing into the vulnerabilities described in the literature and confirmed for ourselves that in many cases, vulnerabilities already identified were still left open to exploit. We also noticed a striking similarity between the approach to software and EMS systems of ES&S and Dominion/Premier. This was logical since they share a common ancestry in the Diebold voting system.
5. Over the past three decades, almost all of the states have shifted from a relatively low-technology format to a high-technology format that relies heavily on a handful of private services companies. These private companies supply the hardware and software, often handle voter registrations, hold the voter records, partially manage the elections, program counting the votes and report the outcomes. Michigan is one of those states.
6. These systems contain a large number of vulnerabilities to hacking and tampering, both at the front end where Americans cast their votes, and at the back end where the votes are stored, tabulated, and reported. These vulnerabilities are well known, and experts in the field have written extensively about them.
7. Dominion/Premier ("Dominion") is a privately held United States company that provides election technologies and services to government jurisdictions. Numerous counties across the state of Michigan use the Dominion/Premier Election

Management System. The Dominion/Premier system has both options to be an electronic, paperless voting system with no permanent record of the voter's choices, paper ballot based system or hybrid of those two.

8. The Dominion/Premier Election Management System's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an attacker the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events. When a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log.

9. My colleagues and I at ASOG have studied the information that is publicly available concerning the November 3, 2020, election results. Based on the significant anomalies and red flags that we have observed, we believe there is a significant probability that election results have been manipulated within the Dominion/Premier system in Michigan. Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has observed, with reference to Dominion Voting machines, "I figured out how to make a slightly different computer program that just before the polls were closed it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." Some of those red flags are listed below. Until a thorough analysis is conducted, it will be impossible to know for certain.

10. One red flag has been seen in Antium County, Michigan. In Michigan we have seen reports of 6,000 votes in Antium County that were switched from Donald Trump to Joe Biden and were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a glitch after an update, it was recanted and later attributed to "clerical error." This change is important because if it was not due to clerical error, but due to a "glitch" emanating from an update, the system would be required to be "re-certified" according to Dominion officials. This was not done. We are skeptical of these assurances as we know firsthand this has many other plausible explanations and a full investigation of this event needs to be conducted as there are a reported 47 other counties using essentially the same system in Michigan. It is our belief (based on the information we have at this point) that the problem most likely did occur due to a glitch where an update file didn't properly synchronize the ballot barcode generation and reading portions of the system. If that is indeed the case, there is no reason to assume this would be an isolated error. This glitch would cause entire ballot uploads to read as zero in the tabulation batch, which we also observed happening in the data (provisional ballots were accepted properly but in-person ballots were being rejected (zeroed out and/or changed (flipped))). Because of the highly vulnerable nature of these systems to error and exploits, it is quite possible that some, or all of these other counties may have the same problem.

11. Another statistical red flag is evident in the number of votes cast compared to the number of voters in some precincts. A preliminary analysis using data obtained

from the Michigan Secretary of State pinpoints a statistical anomaly so far outside of every statistical norm as to be virtually impossible. There are a stunning 3,276 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics ranges from 84% to 350%. **Normalizing the Turnout Percentage of this grouping to 80%, (still way above the national average for turnout percentage), reveals 431,954 excess ballots allegedly processed.** There were at least 19 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics exceeded 100%.

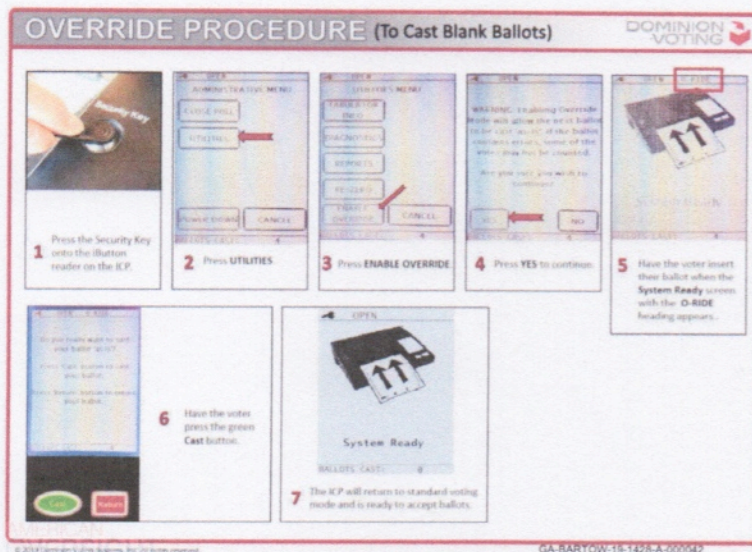
Precinct Township	Votes/SOS Est. Voters
BENVILLE TWP	350%
MONTICELLO P-1	144%
MONTICELLO P-2	138%
ALBERTVILLE P-2	138%
ALBERTVILLE P-1	136%
BRADFORD TWP.	104%
VELDT TWP.	104%
CHAMPION TWP	104%
KENT CITY	103%
WANGER TWP.	102%
KANDIYOHI TWP.	102%
LAKE LILLIAN TWP.	102%
HOKAH TWP.	102%
HOUSTON TWP.	101%
HILL RIVER TWP.	101%
SUNNYSIDE TWP.	101%
BROWNSVILLE TWP.	101%
OSLO	101%
EYOTA TWP.	101%

This pattern strongly suggests that the additive algorithm (a feature enhancement referred to as “ranked choice voting algorithm” or “RCV”) was activated in the code as shown in the Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2. It reads in part, **“RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.”** For instance, blank ballots can be entered into the system and treated as “write-ins.” Then the operator can enter an allocation of the write-ins among candidates as he wishes. The final result then awards the winner based on “points” the algorithm in the compute, not actual votes. The fact that we observed raw vote data that includes decimal places suggests strongly that this was, in fact, done. Otherwise, votes would be solely represented as whole numbers. Below is an excerpt from Dominion’s direct feed to news outlets showing actual calculated votes with decimals.

state	timestamp	eevp	trump	biden	TV	BV
michigan	2020-11-04T06:54:48Z	64	0.534	0.448	1925865.66	1615707.52
michigan	2020-11-04T06:56:47Z	64	0.534	0.448	1930247.664	1619383.808
michigan	2020-11-04T06:58:47Z	64	0.534	0.448	1931413.386	1620361.792
michigan	2020-11-04T07:00:37Z	64	0.533	0.45	1941758.975	1639383.75
michigan	2020-11-04T07:01:46Z	64	0.533	0.45	1945297.562	1642371.3
michigan	2020-11-04T07:03:17Z	65	0.533	0.45	1948885.185	1645400.25

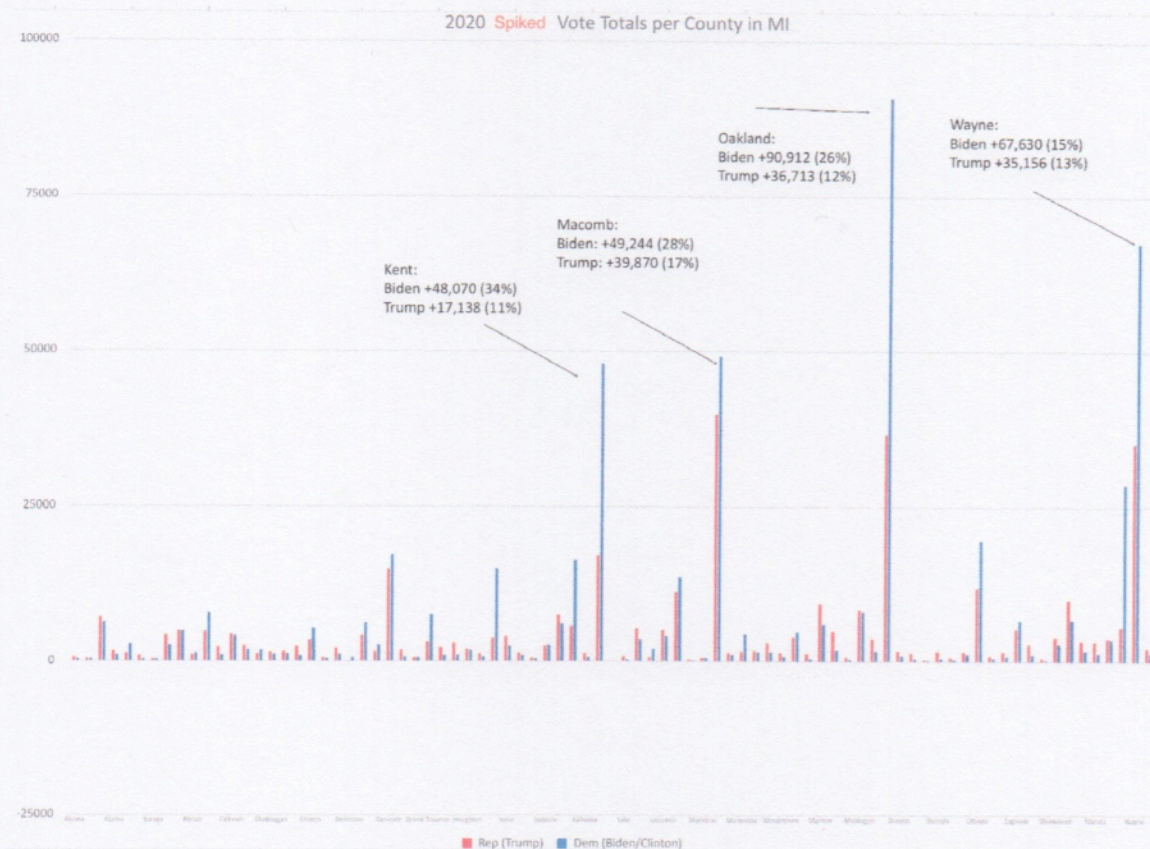
12. Yet another statistical red flag in Michigan concerns the dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased. A significant irregularity surfaces. Until the tabulated voter turnout reached approximately 83%, Trump was generally winning between 55% and 60% of every turnout point. Then, after the counting was closed at 2:00 am, the situation dramatically reversed itself, starting with a series of impossible spikes shortly after counting was supposed to have stopped. The several spikes cast solely for Biden could easily be produced in the Dominion system by pre-loading batches of blank ballots in files such as Write-Ins, then casting them all for Biden using the Override Procedure (to cast Write-In ballots) that is available to the operator of the system. A few batches of blank ballots could easily produce a reversal this extreme, a reversal that is almost as statistically difficult to explain as is the impossibility of the votes cast to number of voters described in Paragraph 11 above.

Dominion also has a "Blank Ballot Override" function. Essentially a save for later bucket that can be manually populated later.



13. The final red flag is perhaps the greatest. Something occurred in Michigan that is physically impossible, indicating the results were manipulated on election night within the EMS. The event as reflected in the data are the 4 spikes totaling 384,733

ballots allegedly processed in a combined interval of only 2 hour and 38 minutes. This is physically impossible given the equipment available at the 4 reference locations (precincts/townships) we looked at for processing ballots, and cross referencing that with both the time it took at each location and the performance specifications we obtained using the serial numbers of the scanning devices used. (Model DRM16011 - 60/min. without accounting for paper jams, replacement cover sheets or loading time, so we assume 2,000 ballots/hr. in field conditions which is probably generous). This calculation yields a sum of 94,867 ballots as the maximum number of ballots that could be processed. And while it should be noted that in the event of a jam and the counter is not reset, the ballots can be run through again and effectively duplicated, this would not alleviate the impossibility of this event because duplicated ballots still require processing time. The existence of the spike is strongly indicative of a manual adjustment either by the operator of the system (see paragraph 12 above) or an attack by outside actors. **In any event, there were 289,866 more ballots processed in the time available for processing in four precincts/townships, than there was capacity.** A look at the graph below makes clear the This is not surprising because the system is highly vulnerable to a manual change in the ballot totals as observed here.



14. At ASOG, we believe that these statistical anomalies and impossibilities together create a wholly unacceptable level of doubt as to the validity of the vote count in Michigan, and in Wayne County, in particular.

15. If ASOG, or any other team of experts with the equivalent qualifications and experience, could be permitted to analyze the raw data produced during the course of the election, as well as the audit logs that the Dominion system generates, we would likely be able to determine whether or not any fraudulent manipulation of the election results occurred within the Dominion Election Management System. These audit logs are in the possession of Dominion.

16. However, there are several deficiencies with the Dominion audit logs: (1) because the logs are "voluntary" logs, they do not enforce the logging of all actions; (2) the logs can be altered by the people who are operating the system; and (3) the logs are not synchronized. Because of these deficiencies, it is of critical importance that all of the daily full records of raw data produced during every step of the election process also be made available for analysis (in addition to the audit logs), so that gaps in the audit logs may be bridged to the best extent possible. This raw data, which is in Dominion's possession, should be individual and cumulative.

17. Wayne County uses Dominion Equipment, where 46 out of 47 precincts/townships display a highly unlikely 96%+ as the number of votes cast, using the Secretary of State's number of voters in the precinct/township; and 25 of those 47 precincts/townships show 100% turnout.

Precinct Township	Votes/SOS Est. Voters
SPRUCE GROVE TWP	100%
ATLANTA TWP	100%
RUNEBERG TWP	100%
WOLF LAKE TWP	100%
HEIGHT OF LAND TWP	100%
EAGLE VIEW TWP	100%
WOLF LAKE	100%
SHELL LAKE TWP	100%
SAVANNAH TWP	100%
CUBA TWP	100%
FOREST TWP	100%
RICEVILLE TWP	100%
WALWORTH TWP	100%
OGEMA	100%
BURLINGTON TWP	100%
RICHWOOD TWP	100%
AUDUBON	100%
LAKE EUNICE TWP	100%
OSAGE TWP	100%
DETROIT LAKES W2 P1	100%
CORMORANT TWP	100%
LAKE VIEW TWP	100%

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

18. In order to analyze the data and determine the cause of these anomalies, ASOG would need Administrator logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications. The following would be required from Premier:

XML and XSLT logs for the:

- Tabulators
- Result Pair Resolution
- Result Files
- Provisional Votes
- RTM Logs
- Ranked Profiles and entire change history Audit Trail logs
- Rejected Ballots Report by Reason Code

**Identity of everyone accessing the domain name
Admin.enr.dominionvoting.com and**

- Windows software log,
- Windows event log and
- Windows security log of the server itself that is hosted at Admin.enr.dominionvoting.com.
- Access logs to their full extent and DNS logs.
- Internal admin.enr.dominionvoting.com logs
- Ranked Contests and entire change history Audit Trail logs

FTP Transfer Points Log

19. In order to evaluate the raw data of the election, the following records would be required from Dominion.

- Daily and Cumulative Voter Records for those who voted with sufficient definition to determine:
 - Voters name and Registered Voting address
 - Address to for correspondence
 - D.O.B.
 - Voter ID number
 - How Voted (mail, in-person early, in person Election Day)
 - Where Voted (if applicable)

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

18. In order to analyze the data and determine the cause of these anomalies, ASOG would need Administrator logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications. The following would be required from Premier:

XML and XSLT logs for the:

- Tabulators
- Result Pair Resolution
- Result Files
- Provisional Votes
- RTM Logs
- Ranked Profiles and entire change history Audit Trail logs
- Rejected Ballots Report by Reason Code

Identity of everyone accessing the domain name

Admin.enr.dominionvoting.com and

- Windows software log,
- Windows event log and
- Windows security log of the server itself that is hosted at Admin.enr.dominionvoting.com.
- Access logs to their full extent and DNS logs.
- Internal admin.enr.dominionvoting.com logs
- Ranked Contests and entire change history Audit Trail logs

FTP Transfer Points Log

19. In order to evaluate the raw data of the election, the following records would be required from Dominion.

- Daily and Cumulative Voter Records for those who voted with sufficient definition to determine:
 - Voters name and Registered Voting address
 - Address to for correspondence
 - D.O.B.
 - Voter ID number
 - How Voted (mail, in-person early, in person Election Day)
 - Where Voted (if applicable)

Date voted (if applicable)
Party affiliation (if recorded)
Ballot by mail Request Date
Ballot by mail sent date
Ballot by mail voted date (if applicable)
Ballot cancelled date (if applicable)

- .RAW, HTML, XHTML and SVG files (Ballot Images)

20. Any removable media (such as thumbdrives, USB, memory cards, PCMCIA cards, etc.) used to transfer ballots to central counting from voting locations.

21. Access or control of ALL routers, tabulators or combinations thereof (some routers are inside the tabulator case) in order to garner the system logs. At the same time, the public IP of the router should be obtained.

22. Any key, authorization key & yubikey

Further affiant sayeth naught.


Russell James Ramsland, Jr.

11/17/2020
Date

Sworn before me on _____

Notary public:

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,)	
)	
Plaintiff,)	CIVIL ACTION FILE NO.
)	1:20-cv-04651-SDG
v.)	
)	
BRAD RAFFENSPERGER, in his official)	
capacity as Secretary of State of the State)	
of Georgia, <i>et al.</i>,)	
)	
Defendants.)	
)	

**PLAINTIFF’S AMENDED SUPPLEMENT TO EMERGENCY
MOTION FOR INJUNCTIVE RELIEF AND
MEMORANDUM OF LAW IN SUPPORT THEREOF**

COMES NOW Plaintiff **L. Lin Wood, Jr.** (“Plaintiff”), by and through his undersigned counsel of record, and files this Supplement to Emergency Motion for Injunctive Relief and Memorandum of Law in Support Thereof (the “Motion”) filed on November 18, 2020. Exhibit Q to the Motion was mistakenly submitted with the incorrect signature page. A true and correct copy of the Affidavit of Russell James Ramsland, Jr. executed and notarized is attached hereto as Exhibit Q.

[signature on following page]

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1 (B).

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III

Ray S. Smith, III

Georgia Bar No. 662555

Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing and all exhibits and attachments thereto in the above-captioned matter to be filed with the United States District Court for the Northern District of Georgia, Atlanta Division, via the Court's CM-ECF system. I also hereby certify that I caused the foregoing and all exhibits and attachments thereto in the above captioned matter to be served, via email, upon:

Secretary of State Brad Raffensperger
214 State Capitol
Atlanta, Georgia 30334
brad@sos.ga.gov
soscontact@sos.ga.gov

Rebecca N. Sullivan
Georgia Department of Administrative Services
200 Piedmont Avenue SE
Suite 1804, West Tower
Atlanta, Georgia 30334-9010
rebecca.sullivan@doas.ga.gov

David J. Worley
Evangelista Worley LLC
500 Sugar Mill Road
Suite 245A
Atlanta, Georgia 30350
david@ewlawllc.com

Matthew Mashburn
Aldridge Pite, LLP
3575 Piedmont Road, N.E.
Suite 500
Atlanta, Georgia 30305
mmashburn@aldridgepite.com

Anh Le
Harley, Rowe & Fowler, P.C.
2700 Cumberland Parkway
Suite 525
Atlanta, Georgia 30339
ale@hrflegal.com

This 18th day of November, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

Affidavit of Russell James Ramsland, Jr.

1. My name is Russell James Ramsland, Jr., and I am a resident of Dallas County, Texas.
2. I am part of the management team of Allied Security Operations Group, LLC, (ASOG). ASOG provides a range of security services, but has a particular emphasis on cyber security, OSINT and PEN testing of networks. We employ a wide variety of cyber and cyber forensic analysts. We have patents pending in a variety of applications from novel network security applications to SCADA protection and safe browsing solutions for the dark and deep web.
3. In November 2018, ASOG analyzed audit logs for the central tabulation server of the ES&S Election Management System (EMS) for the Dallas, Texas, General Election of 2018. Our team was surprised at the enormous number of error messages that should not have been there. They numbered in the thousands, and the operator ignored and overrode all of them. This led to various legal challenges in that election, and we provided evidence and analysis in some of them.
4. As a result, ASOG initiated an 18-month study into the major EMS providers in the United States, among which is Dominion/Premier that provides EMS services in Michigan. We did thorough background research of the literature and discovered there is quite a history from both Democrat and Republican stakeholders in the vulnerability of Dominion. The State of Texas rejected Dominion/Premier's certification for use there due to vulnerabilities. Next, we began doing PEN testing into the vulnerabilities described in the literature and confirmed for ourselves that in many cases, vulnerabilities already identified were still left open to exploit. We also noticed a striking similarity between the approach to software and EMS systems of ES&S and Dominion/Premier. This was logical since they share a common ancestry in the Diebold voting system.
5. Over the past three decades, almost all of the states have shifted from a relatively low-technology format to a high-technology format that relies heavily on a handful of private services companies. These private companies supply the hardware and software, often handle voter registrations, hold the voter records, partially manage the elections, program counting the votes and report the outcomes. Michigan is one of those states.
6. These systems contain a large number of vulnerabilities to hacking and tampering, both at the front end where Americans cast their votes, and at the back end where the votes are stored, tabulated, and reported. These vulnerabilities are well known, and experts in the field have written extensively about them.
7. Dominion/Premier ("Dominion") is a privately held United States company that provides election technologies and services to government jurisdictions. Numerous counties across the state of Michigan use the Dominion/Premier Election

Management System. The Dominion/Premier system has both options to be an electronic, paperless voting system with no permanent record of the voter's choices, paper ballot based system or hybrid of those two.

8. The Dominion/Premier Election Management System's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an attacker the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events. When a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log.

9. My colleagues and I at ASOG have studied the information that is publicly available concerning the November 3, 2020, election results. Based on the significant anomalies and red flags that we have observed, we believe there is a significant probability that election results have been manipulated within the Dominion/Premier system in Michigan. Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has observed, with reference to Dominion Voting machines, "I figured out how to make a slightly different computer program that just before the polls were closed it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." Some of those red flags are listed below. Until a thorough analysis is conducted, it will be impossible to know for certain.

10. One red flag has been seen in Antium County, Michigan. In Michigan we have seen reports of 6,000 votes in Antium County that were switched from Donald Trump to Joe Biden and were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a glitch after an update, it was recanted and later attributed to "clerical error." This change is important because if it was not due to clerical error, but due to a "glitch" emanating from an update, the system would be required to be "re-certified" according to Dominion officials. This was not done. We are skeptical of these assurances as we know firsthand this has many other plausible explanations and a full investigation of this event needs to be conducted as there are a reported 47 other counties using essentially the same system in Michigan. It is our belief (based on the information we have at this point) that the problem most likely did occur due to a glitch where an update file didn't properly synchronize the ballot barcode generation and reading portions of the system. If that is indeed the case, there is no reason to assume this would be an isolated error. This glitch would cause entire ballot uploads to read as zero in the tabulation batch, which we also observed happening in the data (provisional ballots were accepted properly but in-person ballots were being rejected (zeroed out and/or changed (flipped))). Because of the highly vulnerable nature of these systems to error and exploits, it is quite possible that some, or all of these other counties may have the same problem.

11. Another statistical red flag is evident in the number of votes cast compared to the number of voters in some precincts. A preliminary analysis using data obtained

from the Michigan Secretary of State pinpoints a statistical anomaly so far outside of every statistical norm as to be virtually impossible. There are a stunning 3,276 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics ranges from 84% to 350%. **Normalizing the Turnout Percentage of this grouping to 80%, (still way above the national average for turnout percentage), reveals 431,954 excess ballots allegedly processed.** There were at least 19 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics exceeded 100%.

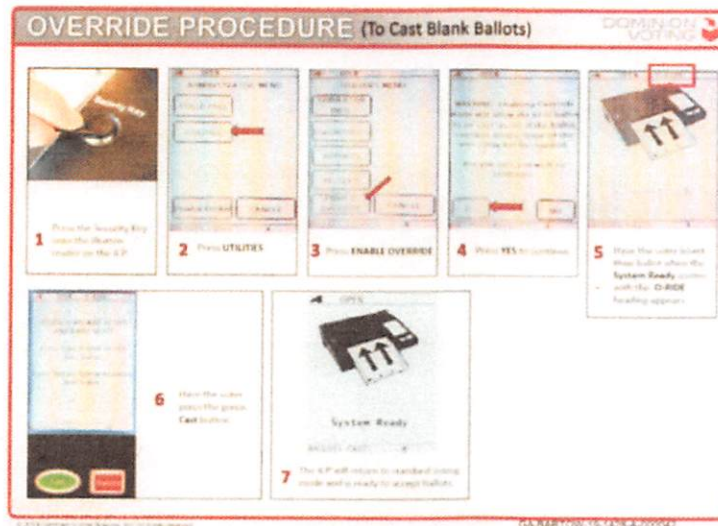
Precinct Township	Votes/SOS Est. Voters
BENVILLE TWP	350%
MONTICELLO P-1	144%
MONTICELLO P-2	138%
ALBERTVILLE P-2	138%
ALBERTVILLE P-1	136%
BRADFORD TWP.	104%
VELDT TWP.	104%
CHAMPION TWP	104%
KENT CITY	103%
WANGER TWP.	102%
KANDIYOHI TWP.	102%
LAKE LILLIAN TWP.	102%
HOKAH TWP.	102%
HOUSTON TWP.	101%
HILL RIVER TWP.	101%
SUNNYSIDE TWP.	101%
BROWNSVILLE TWP.	101%
OSLO	101%
EYOTA TWP.	101%

This pattern strongly suggests that the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as shown in the Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2. It reads in part, "**RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.**" For instance, blank ballots can be entered into the system and treated as "write-ins." Then the operator can enter an allocation of the write-ins among candidates as he wishes. The final result then awards the winner based on "points" the algorithm in the compute, not actual votes. The fact that we observed raw vote data that includes decimal places suggests strongly that this was, in fact, done. Otherwise, votes would be solely represented as whole numbers. Below is an excerpt from Dominion's direct feed to news outlets showing actual calculated votes with decimals.

state	timestamp	eevp	trump	biden	TV	BV
michigan	2020-11-04T06:54:48Z	64	0.534	0.448	1925865.66	1615707.52
michigan	2020-11-04T06:56:47Z	64	0.534	0.448	1930247.664	1619383.808
michigan	2020-11-04T06:58:47Z	64	0.534	0.448	1931413.386	1620361.792
michigan	2020-11-04T07:00:37Z	64	0.533	0.45	1941758.975	1639383.75
michigan	2020-11-04T07:01:46Z	64	0.533	0.45	1945297.562	1642371.3
michigan	2020-11-04T07:03:17Z	65	0.533	0.45	1948885.185	1645400.25

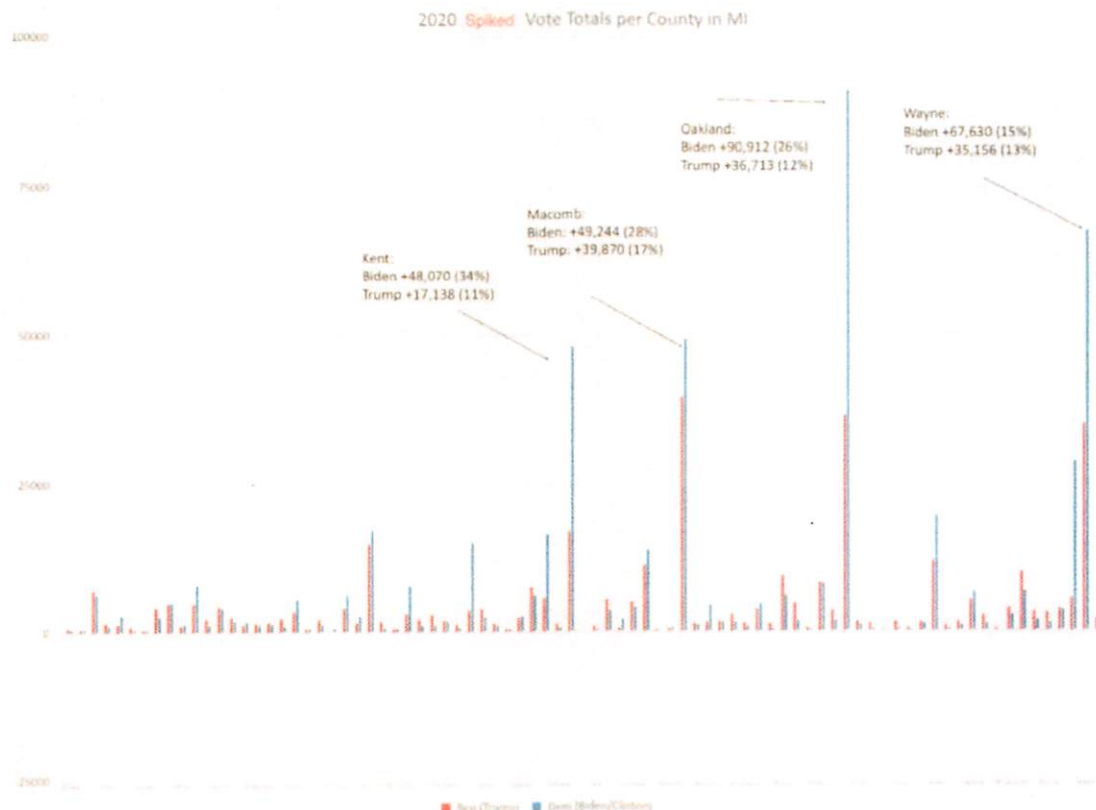
12. Yet another statistical red flag in Michigan concerns the dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased. A significant irregularity surfaces. Until the tabulated voter turnout reached approximately 83%, Trump was generally winning between 55% and 60% of every turnout point. Then, after the counting was closed at 2:00 am, the situation dramatically reversed itself, starting with a series of impossible spikes shortly after counting was supposed to have stopped. The several spikes cast solely for Biden could easily be produced in the Dominion system by pre-loading batches of blank ballots in files such as Write-Ins, then casting them all for Biden using the Override Procedure (to cast Write-In ballots) that is available to the operator of the system. A few batches of blank ballots could easily produce a reversal this extreme, a reversal that is almost as statistically difficult to explain as is the impossibility of the votes cast to number of voters described in Paragraph 11 above.

Dominion also has a "Blank Ballot Override" function. Essentially a save for later bucket that can be manually populated later.



13. The final red flag is perhaps the greatest. Something occurred in Michigan that is physically impossible, indicating the results were manipulated on election night within the EMS. The event as reflected in the data are the 4 spikes totaling 384,733

ballots allegedly processed in a combined interval of only 2 hour and 38 minutes. This is physically impossible given the equipment available at the 4 reference locations (precincts/townships) we looked at for processing ballots, and cross referencing that with both the time it took at each location and the performance specifications we obtained using the serial numbers of the scanning devices used. (Model DRM16011 - 60/min. without accounting for paper jams, replacement cover sheets or loading time, so we assume 2,000 ballots/hr. in field conditions which is probably generous). This calculation yields a sum of 94,867 ballots as the maximum number of ballots that could be processed. And while it should be noted that in the event of a jam and the counter is not reset, the ballots can be run through again and effectively duplicated, this would not alleviate the impossibility of this event because duplicated ballots still require processing time. The existence of the spike is strongly indicative of a manual adjustment either by the operator of the system (see paragraph 12 above) or an attack by outside actors. **In any event, there were 289,866 more ballots processed in the time available for processing in four precincts/townships, than there was capacity.** A look at the graph below makes clear the This is not surprising because the system is highly vulnerable to a manual change in the ballot totals as observed here.



14. At ASOG, we believe that these statistical anomalies and impossibilities together create a wholly unacceptable level of doubt as to the validity of the vote count in Michigan, and in Wayne County, in particular.

15. If ASOG, or any other team of experts with the equivalent qualifications and experience, could be permitted to analyze the raw data produced during the course of the election, as well as the audit logs that the Dominion system generates, we would likely be able to determine whether or not any fraudulent manipulation of the election results occurred within the Dominion Election Management System. These audit logs are in the possession of Dominion.

16. However, there are several deficiencies with the Dominion audit logs: (1) because the logs are "voluntary" logs, they do not enforce the logging of all actions; (2) the logs can be altered by the people who are operating the system; and (3) the logs are not synchronized. Because of these deficiencies, it is of critical importance that all of the daily full records of raw data produced during every step of the election process also be made available for analysis (in addition to the audit logs), so that gaps in the audit logs may be bridged to the best extent possible. This raw data, which is in Dominion's possession, should be individual and cumulative.

17. Wayne County uses Dominion Equipment, where 46 out of 47 precincts/townships display a highly unlikely 96%+ as the number of votes cast, using the Secretary of State's number of voters in the precinct/township; and 25 of those 47 precincts/townships show 100% turnout.

<u>Precinct Township</u>	<u>Votes/SOS Est. Voters</u>
SPRUCE GROVE TWP	100%
ATLANTA TWP	100%
RUNEBERG TWP	100%
WOLF LAKE TWP	100%
HEIGHT OF LAND TWP	100%
EAGLE VIEW TWP	100%
WOLF LAKE	100%
SHELL LAKE TWP	100%
SAVANNAH TWP	100%
CUBA TWP	100%
FOREST TWP	100%
RICEVILLE TWP	100%
WALWORTH TWP	100%
OGEMA	100%
BURLINGTON TWP	100%
RICHWOOD TWP	100%
AUDUBON	100%
LAKE EUNICE TWP	100%
OSAGE TWP	100%
DETROIT LAKES W2 P1	100%
CORMORANT TWP	100%
LAKE VIEW TWP	100%

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

18. In order to analyze the data and determine the cause of these anomalies, ASOG would need Administrator logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications. The following would be required from Premier:

XML and XSLT logs for the:

- Tabulators
- Result Pair Resolution
- Result Files
- Provisional Votes
- RTM Logs
- Ranked Profiles and entire change history Audit Trail logs
- Rejected Ballots Report by Reason Code

Identity of everyone accessing the domain name

Admin.enr.dominionvoting.com and

- Windows software log,
- Windows event log and
- Windows security log of the server itself that is hosted at Admin.enr.dominionvoting.com.
- Access logs to their full extent and DNS logs.
- Internal admin.enr.dominionvoting.com logs
- Ranked Contests and entire change history Audit Trail logs

FTP Transfer Points Log

19. In order to evaluate the raw data of the election, the following records would be required from Dominion.

- Daily and Cumulative Voter Records for those who voted with sufficient definition to determine:
 - Voters name and Registered Voting address
 - Address to for correspondence
 - D.O.B.
 - Voter ID number
 - How Voted (mail, in-person early, in person Election Day)
 - Where Voted (if applicable)

Date voted (if applicable)
Party affiliation (if recorded)
Ballot by mail Request Date
Ballot by mail sent date
Ballot by mail voted date (if applicable)
Ballot cancelled date (if applicable)

- .RAW, HTML, XHTML and SVG files (Ballot Images)

20. Any removable media (such as thumbdrives, USB, memory cards, PCMCIA cards, etc.) used to transfer ballots to central counting from voting locations.

21. Access or control of ALL routers, tabulators or combinations thereof (some routers are inside the tabulator case) in order to garner the system logs. At the same time, the public IP of the router should be obtained.

22. Any key, authorization key & yubikey

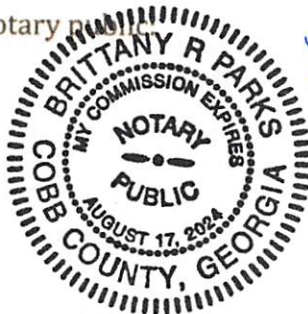
Further affiant sayeth naught.


Russell James Ramsland, Jr.

11/17/2020
Date

Sworn before me on NOVEMBER 17, 2020

Notary




MY COMMISSION EXPIRES
ON AUGUST 17, 2024

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his
official capacity as Secretary of State
of the State of Georgia, et al.,**

Defendants.

**CIVIL ACTION FILE NO,
1:20-cv-04651-SDG**

NOTICE OF FILING ATTORNEY DECLARATION

COMES NOW Ray S. Smith, III, Counsel of Record, and gives notice of the filing of the Attorney Declarations.

Respectfully submitted this 19th day of November, 2020.

SMITH & LISS, LLC

A large, stylized handwritten signature in black ink, appearing to read 'R. Smith III', is written over a horizontal line.

RAY S. SMITH III
Georgia Bar No. 662555
rsmith@smithliss.com
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone 404-760-6006
Facsimile 404-760-0225

CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing **Notice of Filing Attorney Declarations** via electronic mail as follows:

Charlene S McGowan
Georgia Attorney General's Office
Assistant Attorney General
40 Capitol Square SW
Atlanta, GA 30334
404-656-3389
Email: cmcgowan@law.ga.gov

Russell D. Willard
Attorney General's Office-Atl
Department of Law
40 Capitol Square, SW
Atlanta, GA 30334
404-656-3300
Email: rwillard@law.ga.gov

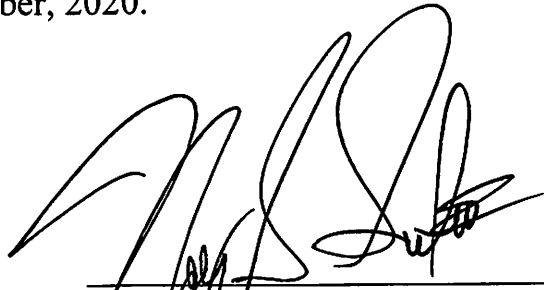
Marc E. Elias
Perkins Coie LLP
700 13th St NW
Ste 800
Washington, DC 20005
202-654-6200
Email: melias@perkinscoie.com

Adam Martin Sparks
Krevolin & Horst, LLC

One Atlantic Center, Ste 3250
1201 West Peachtree St., NW
Atlanta, GA 30309
404-888-9700
Email: sparks@khlawfirm.com

Bryan Ludington Sells
The Law Office of Bryan L. Sells, LLC
P.O. Box 5493
1226 Springdale Road, NE
Atlanta, GA 31107-0493
404-480-4212
Email: bryan@bryansellslaw.com

This 19th day of November, 2020.

A large, stylized handwritten signature in black ink, likely belonging to Ray S. Smith III, is written over a horizontal line.

RAY S. SMITH III
Georgia Bar No. 662555
rsmith@smithliss.com
Counsel for Plaintiff

SMITH & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone 404-760-6006
Facsimile 404-760-0225

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his
official capacity as Secretary of State
of the State of Georgia, et al.,**

Defendants.

**CIVIL ACTION FILE NO,
1:20-cv-04651-SDG**

ATTORNEY DECLARATIONS

I, **Ray S. Smith, III**, declare as follows

1. I am counsel for the plaintiff in the above captioned matter.
2. I have personal knowledge of the following matters identified in this declaration and if requested by the Court, can testify to the substance contained in this declaration.
3. The purpose of this declaration is to provide a summary of election data compiled by the State of Georgia concerning mail in ballots and rejection rates of mail in ballots.

4. The data itself was derived online from the Elections Division webpage contained in Georgia's Secretary of State's website. The data constitute official records which are public and publicly available online.

5. While I did not create or compile the source of the data—the State of Georgia's Elections Division did—I am familiar with accessing files on the internet generally, including those provided by state and federal governments. I am also proficient with zip files and Microsoft Excel spreadsheets.

6. On or about November 18, 2020, I downloaded zipped files containing state compiled mail-in ballot data for years 2016 through 2020. These zipped files contain excel spreadsheet reports which are easily accessible at <https://elections.sos.ga.gov/Elections/voterabsenteefile.do>.

7. After downloading the zipped files, I extracted the excel spreadsheets and compiled a summary of the data contained in the files for years 2016, 2018, and 2020. I also examined those files which are fairly simple to comprehend. The Court or opposing counsel can easily repeat this process.

8. This declaration is a summary of Georgia's public data. This summary is extremely helpful because the data files are voluminous and cannot be conveniently examined in Court.

9. A summary of the data files for various years which I downloaded is represented in Table 1 and summarizes various election data contained in the State of Georgia's Elections Division.

Table 1: Mail-In Ballot Rejection rates by Election.

	Cast	Rejected	Rejection Rate	% diff vs. 2020	Exp Vote diff
2016 General	208,620	6,382	3.06%	2.738%	35827.05096
2018 General	227,718	8,157	3.58%	3.261%	42668.33238
2020 Primary	1,164,044	11,864	1.02%	0.698%	9138.32618
2020 General	1,308,306	4,196	0.32%	na	na

10. As Table 1 shows, Georgia's rate of rejection for mail-in ballots averaged 3.06% and 3.58% respectively for the 2016 and 2018 general elections.

11. Concerning the 2020 primary election, however, the mail-in ballot rejection rate decreased to 1.02%.

12. In stark contrast to the 2020 primary, the 2020 general election rejection rate decreased even further to just 0.32%.

13. The .32% rejection rate represents an approximate 90% *decrease* in the rate of mail-in ballot rejections compared to the 2016 and 2018 general elections.

14. The .32% rejection rate appears to be the lowest mail-in ballot rejection rate in the history of the state of Georgia while the number of mail-in ballots is at an historic high.

15. Excluding canceled ballots, the data tables show that the number of mail-in ballots cast in Georgia exploded from just over 200,000 in the 2016 and 2018 elections to more than 1.3 million in the 2020 general election—an increase of nearly 500%.

16. If Georgia's historical mail-in ballot rejection rate of 3.06-3.58% is applied to the current mail in ballot numbers, there would have been between 40,034 and 46,837 ballots rejected in the 2020 general election.

17. Instead, just 4,196 ballots (0.32%) were rejected—35,838 to 42,641 fewer than historical rates.

18. As of November 17, the number of votes separating the top two candidates for President of the United States is 13,977.

19. Thus, the additional ballots one would have expected to be rejected is significant as it easily exceeds the current margin of separation.

20. Applied to the 2020 General Election, the historical rejection rate for improper or illegal ballots would have changed the outcome.

21. Even using the 2020 Primary Election's lower rejection rate of 1.02%, one would have expected to see 13,345 ballots rejected, or 9,149 more than were actually rejected. Depending on the final results of the State's current hand recount, this margin could also have proved decisive in the election contest.

22. Upon extracting excel files from their zip folders, I note that they do not contain consistent or complete information showing the reasons why ballots may have been rejected. The paucity of reasons for ballot rejection contained in these files is either due to a failure in Georgia's management to reliably collect that information, or the Secretary of State has never disaggregated this data clearly and made such additional data available to the public.

23. For example, it does not appear possible—based on the State's publicly records which it has published and made available to the public online—to explain the number of ballots rejected for reasons such as a lack of signature match.

SMITH & LISS, LLC



Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

**[PROPOSED] INTERVENOR-DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION FOR
INJUNCTIVE RELIEF**

I. INTRODUCTION

Two days before the certification deadline for the 2020 general election, and on the last day of the statewide hand recount of the 2020 presidential results, Plaintiff seeks—among other unprecedented requests—to enjoin certification of *five million* Georgians' votes or, alternatively, to enjoin certification of the votes of the more than *one million* Georgians who lawfully voted absentee by mail, and to install Georgia Republican Party overseers for virtually every aspect of Georgia's signature-matching and ballot-counting election processes. But Plaintiff's emergency motion for injunctive relief ("Motion")—premised on an eight-month-

old settlement agreement and specious affidavits about the recount process that do nothing to advance his claims—is as baseless as it is unprecedented.

Indeed, as already set forth in the motion to dismiss filed by Proposed Intervenor-Defendants Democratic Party of Georgia (“DPG”), DSCC, and DCCC (together, “Political Party Committees”), ECF No. 8-1, Plaintiff’s claims fail for want of jurisdiction, laches, and failure to state a claim. Plaintiff’s Motion further fails for lack of proof. Plaintiff lacks standing to bring these claims, and his decision to wait eight months and challenge the settlement agreement after the election legally bars this lawsuit. Notwithstanding this inexplicable delay, Plaintiff provides no factual support that would support the lofty constitutional claims he raises.

All told, there is no emergency here. This is just the latest chapter in Plaintiff’s effort to subvert the State of Georgia’s democratic processes by disenfranchising millions of Georgia voters and to impose partisan control over the absentee voting process by judicial fiat. Plaintiff’s claims are baseless, and his requested relief untenable. The Motion should be denied.

II. BACKGROUND

On November 6, 2019, the Political Party Committees sued the Secretary of State (the “Secretary”) and members of the State Board of Elections (the “Board”), challenging Georgia’s signature matching laws under the First and Fourteenth

Amendments to the U.S. Constitution. The Political Party Committees asserted that Georgia's arbitrary and unreliable procedures for comparing absentee ballot signatures and rejecting absentee ballots unconstitutionally deprived Georgians of their right to vote. *DPG v. Raffensperger*, No. 1:19-cv-5028 (N.D. Ga.), ECF Nos. 1, 30. After weeks of arms-length negotiations, the parties entered into a settlement agreement on March 6, 2020 ("Settlement Agreement"), which was publicly filed that day. *See id.*, ECF Nos. 56, 56-1.

In the Settlement Agreement, the Secretary and Board agreed to initiate rulemaking and issue guidance to the 159 counties to help ensure uniform and fair treatment of voters *within* the existing statutory framework. *See* ECF No. 6-1. Thus, the Secretary agreed to issue official guidance to increase uniformity in processing absentee ballot signatures, and the Board agreed to promulgate and enforce a more robust voter notification and cure process. *See id.* Neither step was unusual: The Secretary routinely offers such guidance, and one function of the Board is to promulgate and enforce rules regulating the conduct of Georgia elections. The Office of the Georgia Attorney General and private counsel (who regularly represents both the Georgia Republican Party and prominent Republican leaders) represented Defendants and personally signed the Settlement Agreement. *See id.* at 6.

The details of both procedures—the Secretary’s issuance of an Official Election Bulletin (“OEB”) (signature verification) and Board’s issuance of a Rule that proceeded through a full notice and comment period (notice and cure)—are laid out in detail in the Political Party Committees’ Motion to Intervene, ECF No. 8, and Motion to Dismiss, ECF Nos. 8-1, 8-2. Both procedures were widely publicized and in place for several subsequent elections, including the June 9 primary, the August 11 primary runoff, and the November 3 general election. *See* Ex. 13 to Attorney Declaration of Amanda R. Callais, filed contemporaneously herewith.

On September 15, Georgia voters began casting absentee ballots for the general election. Election officials began reviewing signatures on absentee ballot envelopes as soon as the first absentee ballots were returned and concluded on November 6, when the deadline to cure absentee ballots passed. For envelopes where elections officials successfully matched signatures, they separated envelopes and ballots for counting to protect the secrecy of those ballots. *See* O.C.G.A. § 21-2-386(a)(2)–(3); *see also* S.E.B. Rule 183-1-14-0.9-15(4) (requiring absentee ballot envelopes to be processed “in a manner that ensures that the contents of the envelope cannot be matched back to the outer envelope”). This separation began on October 19 and continued throughout the initial counting period. *See* Ex. 13. Once a ballot is separated from its envelope, it is impossible to trace an absentee ballot to a specific

voter, and any attempt to do so would violate state law. *See* S.E.B. Rule 183-1-14-0.9-15(4).

On November 11, following unsubstantiated complaints from Republican leaders about the integrity of the elections, the Secretary announced that a statewide hand recount of the presidential election would take place. *See* Ex. 3; *see also* Exs. 1–2. On November 12, the Secretary distributed the rules governing the recount and held a statewide, public training on recount procedures for all election officials. *See* Ex. 4; *see also* Ex. 3. Notably, the rules provided that “Political Parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in the county.” Ex. 3. The recount began that same day. After Republican Party complaints about access, the Secretary announced that counties could allow as many designated monitors from each party as their space could accommodate. Ex. 15. Both the Democratic and Republican Parties of Georgia had numerous, and often equivalent numbers, of observers on-site at recount locations throughout the duration of the recount. *See, e.g.*, Vailes Aff. ¶¶ 5–6, 10–11; Thomas Aff. ¶¶ 7–8; Brandon Aff. ¶ 17; Sumner Aff. ¶ 5–6; Lourie Aff. ¶ 7; Alston Aff. ¶ 7; Cason Aff. ¶¶ 5–6, 11; Young Aff. ¶ 6; Graham Aff. ¶¶ 5, 13; Short Aff. ¶¶ 7–9, 11, 13, 15; *see infra* Section C(3). Multiple recount locations also live-streamed the process, and several major state and national news outlets observed and

reported on the proceedings. *See e.g.*, Ex. 14. No major irregularities in the original counts or the recount have been reported. As of November 18, all counties had finished the recount.

Plaintiff filed his initial Complaint on November 13 and his Amended Complaint on November 16, more than *eight months* after the Settlement Agreement was finalized, 59 days after voters begin voting absentee, 32 days after elections officials started separating absentee envelopes from ballots, and 13 days after the general election. Just two days before the certification deadline, Plaintiff filed his “emergency” motion for temporary injunction, seeking to stop certification of the election results and to install Georgia Republican Party overseers for virtually every aspect of Georgia’s signature-matching and ballot-counting election processes. In addition to his Motion, Plaintiff also filed several specious affidavits, including one redacted and unsigned affidavit from an unidentified individual in Venezuela, as well as a vague affidavit filed with speculation and opinions from an individual apparently intended as an expert report.¹

¹ For his due process claim, Plaintiff relies on 16 affidavits from recount observers (primarily individuals from outside the State of Georgia) which describe run-of-the-mill election complaints, *see infra* Section C(3), and then purport to express speculative and conclusory opinions about voter fraud based on clear misunderstandings of Georgia election procedures and ballot styles. The Political Party Committees request that the Court strike the portions of these affidavits

The Political Party Committees filed their motion to intervene on November 18, ECF No. 8, and their motion to dismiss the same day, ECF No. 8-1, which is incorporated fully herein.

III. ARGUMENT

A. Legal Standard

A party seeking a preliminary injunction must establish “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005) (per curiam). “[A] preliminary injunction is an extraordinary and drastic

reflecting such opinions. *See United States v. Spellissy*, 374 F. App’x 898, 900 (11th Cir. 2010) (finding no abuse of discretion by district court that struck affidavits it found were “scandalous [in] nature” and lacked “probative value”); *Rogers v. Evans*, 792 F.2d 1052, 1062 n. 9 (11th Cir. 1986) (concluding that affidavits “phrased in conclusory terms without citing facts” were properly stricken). Further, though seemingly unconnected to any of his claims and not relied on in his brief, Plaintiff also includes a redacted anonymous declaration from someone in Venezuela discussing election machines, an article on election machines and security, and an unsupported “expert” affidavit that fails to meet even the basic reliability standards set out in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993). The Political Party Committees also request that the Court strike these as hearsay, and further request the so-called expert report be excluded under the *Daubert* standard. In support of this latter request, the Political Party Committees submit the Expert Report of Dr. Jonathan Rodden, which details the methodological and conceptual errors in the Plaintiff’s purported expert’s report. *See Ex. 16.*

remedy that should not be granted unless the movant clearly carries its burden of persuasion on each of these prerequisites.” *Suntrust Bank v. Houghton Mifflin Co.*, 252 F.3d 1165, 1166 (11th Cir. 2001) (per curiam).

B. Plaintiff lacks standing.

At the outset, Plaintiff’s request for injunctive relief should be dismissed because Plaintiff does not have standing for the reasons extensively set forth in the Political Party Committees’ motion to dismiss, *see* ECF No. 8-2 at 7–13, incorporated by reference here. In short, Plaintiff lacks standing because he has neither pleaded nor suffered a cognizable injury-in-fact, asserting only generalized grievances about Defendants’ supposed defiance of state law. Plaintiff also lacks prudential standing to assert the claims of others; he cannot step into the Georgia General Assembly’s shoes to prosecute the Elections and Electors Clause claims, nor can he maintain a recount-related “due process” claim on behalf of the Georgia Republican Party or the “non-party” monitors. *See* Prelim. Inj. Mot. at 11.²

² Plaintiff also relies on *Meek v. Metro. Dade Cty. Fla.*, 985 F.2d 1471, 1480 (11th Cir. 1993), which the Eleventh Circuit explicitly abrogated *thirteen years ago*. *See Dillard v. Chilton Cty. Comm’n*, 495 F.3d 1324, 1331-1332 (11th Cir. 2007). This fact is plain; for example, *Meek* is red-flagged on Westlaw.

C. Plaintiff is not likely to succeed on the merits of his claims.

Even if Plaintiff had standing to invoke the jurisdiction of this Court, he in any event does not have the faintest likelihood of success on the merits of his claims, much less a “substantial” likelihood. This first factor is dispositive by itself.

1. Plaintiff is not likely to succeed on his Equal Protection claim.³

Plaintiff is unlikely to succeed on the merits of his Equal Protection claim because he fails to demonstrate any burden on his or anyone else’s right to vote or any disparate treatment of voters.⁴

Plaintiff asserts that there has been “disparate treatment” of voters. Prelim. Inj. Mot. at 18. To sustain a such an Equal Protection claim, a plaintiff must necessarily allege that similarly situated voters are treated differently. *See, e.g., Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012) (Equal Protection Clause applies when state classifies voters in disparate ways). But Plaintiff does not allege that he or any other voter in Georgia is being treated differently from similarly

³ For additional discussion, *see* ECF No. 8-2 at 15–17.

⁴ Though it is not entirely clear why, Plaintiff’s Equal Protection claim includes extensive discussion of burdens on the right to vote. *See* Prelim. Inj. Mot. at 15–17. This is irrelevant, as he does not allege any such burden. Nor does Plaintiff offer any evidence that the Settlement Agreement disenfranchised any voter, created obstacles to voting, or resulted in any lawfully cast ballot not being counted. Rather, the Settlement Agreement helped *protect* the right to vote by occasioning the implementation of uniform signature match protocols. It logically could not impede Plaintiff’s right to vote or anyone else’s.

situated voters because of the Settlement Agreement; rather, he alleges that the disparate treatment is in purportedly processing absentee ballots according to the process set forth in the Settlement Agreement which, he complains, is different than the Election Code allegedly requires. *See* Prelim. Inj. Mot. at 18 (“The result [of the Settlement Agreement] is that absentee ballots have been processed differently by County Officials than the process created by the Georgia Legislature and set forth in the Georgia Election Code.”). Different or not, the process about which Plaintiff complains was provided in uniform, statewide guidance—which Plaintiff concedes. *See* Am. Compl. ¶ 25 (complaining that Settlement Agreement “set[s] forth different standards” than statutes require for all authorities “in the State of Georgia”); Prelim. Inj. Mot. at 18. This is not an Equal Protection violation. *See Husted*, 697 F.3d at 428.

Further, even if it were, the Secretary has a strong interest in uniform application of state election laws that easily justifies the modest procedures in the Settlement Agreement. *See, e.g., Brooks v. State Bd. of Elections*, 775 F. Supp. 1470, 1489 (S.D. Ga. 1989), *aff’d*, 498 U.S. 916 (1990) (“The state’s overriding independent, legitimate interest in maintaining a uniform election procedure is clearly shown.”); *Texas League of United Latin Am. Citizens v. Hughs*, 978 F.3d 136, 149 (5th Cir. 2020) (“[T]he Secretary has articulated important state interests

in ensuring election uniformity’). The Settlement Agreement and resulting regulations merely require double-checking ballot rejection determinations made through the statutory process; this reduces the risk of accepting noncompliant ballots, while ensuring uniform and fair treatment of *all* voters *within* the existing statutory framework. As such, the Settlement Agreement lessens the likelihood that voters are disparately treated in violation of the Equal Protection Clause or that their right to vote is unduly burdened. Thus, Plaintiff is unlikely to succeed on this claim.

2. Plaintiff is not likely to succeed on his Elections and Electors Clause claims.⁵

As an individual voter, Plaintiff lacks standing to bring his Elections and Electors Clause claims, *see* ECF No. 8-2 at 10, but they lack merit in any event. The Elections and Electors Clause vest authority in “the Legislature” of each state to regulate “[t]he Times, Places, and Manner of holding Elections for Senators and Representatives,” U.S. CONST. art. I, § 4, cl. 1., and to direct the selection of presidential electors, U.S. CONST. art. II, § 1, cl. 2, respectively. But innumerable courts to examine this issue have held that the use of the term “Legislature” does not preclude the delegation of such legislative authority. *See, e.g., Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 807 (2015) (noting that

⁵ For additional discussion, *see* ECF No. 8-2 at 18–21.

Elections Clause does not preclude “the State’s choice to include” state officials in lawmaking functions so long as such involvement is “in accordance with the method which the State has prescribed for legislative enactments”) (internal quotations omitted).⁶

Accordingly, the actions of the Secretary could only constitute plausible violations of the Elections and Electors Clauses if such actions exceeded the authority granted to him by the Georgia General Assembly.⁷ They plainly did not. Pursuant to Georgia law, the Secretary is the chief election official for the State, O.C.G.A. § 21-2-50(b), and the General Assembly has granted him the power and authority to manage Georgia’s election system, including the absentee voting system. *See Fair Fight Action, Inc. v. Raffensperger*, 413 F. Supp. 3d 1251 (N.D. Ga. 2019); Ga. Op. Att’y Gen. No. 2005-3 (Apr. 15, 2005) (recognizing the

⁶ Given the functionally identical roles that the Elections and Electors Clauses serve, with the former setting the terms for congressional elections and the latter implicating presidential elections, *see id.* at 839 (2015) (Roberts, C.J., dissenting) (noting that Electors Clause is “a constitutional provision with considerable similarity to the Elections Clause”), this same logic applies equally to the Electors Clause.

⁷ As explained in the Political Party Committees’ motion to dismiss, it does not appear that Plaintiff is challenging the notice and cure procedures under the Electors and Elections Clauses, but even if he were, as discussed therein, *see* ECF No. 8-2 at 20, those rules were promulgated pursuant to state law and went through a full public notice and comment period, which is within the authority delegated to the Board by the Georgia General Assembly.

Secretary's authority to manage Georgia's election system). Additionally, the Secretary is the Chair of the Board, which is the governmental body responsible for uniform election practice in Georgia. O.C.G.A. § 21-2-31; *see also Curling v. Raffensperger*, 403 F. Supp. 3d 1311, 1345 (N.D. Ga. 2019) (“[T]he [] Board is charged with enforcing Georgia's election code under state law.”). The Secretary was well within that authority in entering into the Settlement Agreement and ensuring the signature verification protocols were uniform across Georgia.

Plaintiff's Elections and Electors Clause claims are entirely premised on the notion that, by promulgating procedures to implement the Settlement Agreement, “Defendants altered the otherwise statutorily mandated procedure contrary to the Georgia Election Code.” Prelim. Inj. Mot. at 19. Put simply, this is false. The Settlement Agreement and resulting procedures are in no way inconsistent with the Georgia Election Code. The Secretary's signature review guidance explicitly seeks to promote uniform application of the signature verification processes “required by Georgia law.” Ex. 5 at 1. In order to “[e]nsur[e] that signatures match . . . in this time of increased absentee voting due to the COVID-19 crisis,” the Secretary required election administrators to double check that the statutory procedures had been properly followed. *Id.* at 1-2. The OEB merely “strengthened signature match” procedures. Ex. 9. It defies logic to suggest that ensuring more rigorous compliance

with a law somehow violates that law. For all these reasons, Plaintiff's Elections and Electors Clause claims necessarily fail.

3. Plaintiff is not likely to succeed on his Due Process claim.

Plaintiff's due process claim—which is premised on the purported denial of Republican observers' right to observe the hand recount—also fails. As a threshold matter, to succeed on a procedural due process claim, a plaintiff must demonstrate that he has a “private interest that will be affected by the official action.” *Mathews v. Eldridge*, 424 U.S. 319, 334–47 (1976). But neither Georgia law nor the U.S. Constitution provides a private individual with an enforceable “private interest” in observing a recount. Rather, as Plaintiff recognizes, Georgia law provides that *candidates* and *political parties* may send “two representatives to be present” at a recount. *See* Prelim. Inj. Mot. at 20 (quoting O.C.G.A. § 21-2-495(a)). Thus, neither Plaintiff—who does not even allege much less present evidence that he even attempted to observe the recount—nor the individual monitors who submitted supporting affidavits are due any process as they have no right to monitor recounts in Georgia. *See supra* Section B; *see also* ECF No. 8-2 at 21–23 (explaining that Plaintiff has no vested interest in the recount observation process).

More fundamentally, even if an individual could hold such an interest (which they cannot), the process announced by the Secretary and memorialized in the very

affidavits upon which Plaintiff relies, demonstrates that far more than two observers per political party were allowed to observe the recount. *See* Prelim. Inj. Mot. at 11 (explaining that the Secretary permitted two monitors per political party and one per party for every ten tables); *see also* Ex. 4; Ex. 15. Indeed, virtually every affiant supporting Plaintiff's Motion testifies that they and others were able to freely observe or participate in the recount process. *See* ECF Nos. 6-5 at ¶ 5 and 6-13 at ¶ 5 ("I was permitted to roam throughout the facility to conduct observations."); ECF No. 6-7 at ¶ 21 (noting he was "a Voting Review Panel member"); ECF No. 6-9 at ¶ 6 (noting he could walk to counting table and observe); ECF Nos. 6-11 at ¶¶ 3–7, 6-18 at ¶ 3, and 6-19 at ¶ 2 (noting they were close enough to see how ballots were filled in); ECF Nos. 6-6, 6-8, 6-10, 6-12, and 6-17 (permitted to observe). And the Political Party Committees' affidavits confirm this. *See* Vailes Aff. ¶¶ 5–6 (noting equal number of Republican and Democratic monitors in Fulton County), 10-11; Thomas Aff. ¶¶ 7–8 (observing 20 monitors per party in Fulton County); Brandon Aff. ¶ 17 (observing at least ten monitors from each political party in Cobb County); Lourie Aff. ¶ 7 (observing numerous monitors from both parties in Fulton County); Sumner Aff. ¶¶ 3, 5 (observing more Republican monitors than Democratic monitors at Gwinnett County); Young Aff. ¶ 10 (observing equal numbers of monitors for each party in Fulton County); Graham Aff. ¶¶ 5–6, 10, 13 (equal numbers in Fulton

County); Short Aff. ¶¶ 7–10 (same); Alston Aff. ¶ 7 (same); Cason Aff. ¶ 8 (same); Ghazal Aff. ¶¶ 6–40 (observing Republican monitors in Cobb County); Zydney Aff. ¶ 9 (more Republican monitors inside the rope than allowed). Thus, while Plaintiff and the Republican affiants might complain about the level of access they were given, nothing in their affidavits indicates that they were deprived of access to the recount process or of the process they were due. *Cf.* Ga. Comp. R. & Regs. 183-1-12-.11(12) (“Accredited poll watchers shall be allowed to observe the process described in this rule; however, they must do so in a manner that does not interfere with poll officials or voters.”).

To the extent Plaintiff attempts to show that he is likely to succeed on a substantive due process claim, his claim is equally unavailing. It is well-settled that “[f]ederal courts should not ‘involve themselves in garden variety election disputes.’” *Serpentfoot v. Rome City Comm’n*, No. 4:09-CV-0187-HLM, 2010 WL 11507239, at *16 (N.D. Ga. Mar. 3, 2010) (quoting *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986) (noting “[o]nly in extraordinary circumstances will a challenge to a state election rise to the level of a constitutional deprivation”). For the substantive due process clause to be implicated, the situation “*must go well beyond the ordinary dispute over the counting and marking of ballots.*” *Curry*, 802 F.2d at 1315 (emphasis added). But that is not the case here.

The incidents Plaintiff complains of—not being close enough to hear poll worker conversations, ECF Nos. 6-5 at ¶ 11 and 6-13 at ¶ 11; not being able to speak to poll workers, ECF No. 6-9 at ¶ 15; differences in counting methods, ECF No. 6-6 at ¶ 5; and isolated discrepancies in ballot placements or ballot recounts, ECF No. 6-5 at ¶ 26—are nothing more than “garden variety” ordinary disputes that would plague any hand recount. To the extent that the affidavits go beyond that, insinuating that sightings of “pristine ballots” led affiants to believe that fraud occurred, *see* ECF No. 6-4 at ¶ 14, this is nothing more than mere speculation and uninformed opinions of individuals who are unfamiliar with Georgia elections and, as such, are not only improper, but also easily explained and refuted, *see* Ghazal Aff. ¶ 41; Brandon Aff. ¶ 15; *see also* Ex. 10 (the Secretary explaining that his office has found no evidence of widespread fraud or irregularities); Ex. 11 (the Secretary “expressed exasperation over a string of baseless allegations coming from Trump and his allies”); Ex. 12 (“Federal election infrastructure officials said in a joint statement . . . that the 2020 election was the ‘most secure in American history’”). What is not a garden variety change and is fundamentally unfair, however, is the disenfranchisement of millions of Georgians and the subsequent imposition of a party-controlled signature verification and absentee review process, which is precisely what Plaintiff seeks. *See Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978) (refusing to disenfranchise the

“[a]lmost ten percent of the qualified and voting electorate” who voted “in reliance on absentee . . . ballot procedures announced by state officials[,]” because doing so was a due process violation); *see also* ECF No. 8-2 at 23–24. Accordingly, Plaintiff’s due process claim is unlikely to succeed.⁸

D. Plaintiff does not establish irreparable harm.

Plaintiff has failed to establish that he will suffer *any* harm, much less irreparable harm if his requested relief is not granted. As discussed *supra* Section B, Plaintiff brings, at most, generalized grievances or third-party claims. As such, he cannot demonstrate that he will suffer any harm at all. In contrast, Plaintiff’s requested relief would in fact cause irreparable injury by depriving between one and five million Georgians of their votes. *See Gonzalez v. Governor of Georgia*, 978 F.3d 1266 (11th Cir. 2020) (noting that depriving even a single individual of his right to vote would cause irreparable harm). As a court in this district recently explained “[i]t is well-settled that an infringement on the fundamental right to vote amounts [to] an irreparable injury.” *New Georgia Project v. Raffensperger*, No. 1:20-CV-

⁸ The only case Plaintiff cites to support his due process claim is *Marks v. Stinson*, 19 F.3d 873 (3rd Cir. 1994), but that case does not support his claim. Indeed, in *Marks*, even where there was clear evidence of fraud (not speculation and insinuations, as here), the court refused to permit all absentee ballots to be discarded. *Id.* at 887.

01986-ELR, 2020 WL 5200930, at *26 (N.D. Ga. Aug. 31, 2020). Thus, Plaintiff has failed to establish this element of his request for preliminary relief.

E. The balance of the equities and public interest weigh against a preliminary injunction.

There is no question that the balance of the equities and the public interest weigh against Plaintiff's requested relief. Plaintiff asks this Court to disenfranchise between one and five million voters who dutifully cast their votes after the election is over. Such relief is unprecedented. *See Short v. Brown*, No. 2:18-CV-00421 TLN-KJN, 2018 WL 1941762, at *8 (E.D. Cal. Apr. 25, 2018), *aff'd*, 893 F.3d 671 (9th Cir. 2018) (quoting *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (en banc) ("[I]nterference with an election after voting has begun is unprecedented."). And it is certainly not in the public interest. *See Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) ("[T]he public interest is served when constitutional rights are protected."); *Jones v. Governor of Fla.*, 950 F.3d 795, 831 (11th Cir. 2020) ("The public, of course, has every interest in ensuring that their peers who are eligible to vote are able to do so in every election."); *Scott v. Roberts*, 612 F.3d 1279, 1296 (11th Cir. 2010) (indicating these factors weigh against preliminary relief when it "would require the state to . . . discard ballots already cast").

Indeed, instead of *remedying* a constitutional violation, granting Plaintiff's requested relief would *violate* millions of Georgians' constitutional rights. *See Bognet v. Sec'y Commonwealth of Pennsylvania*, No. 20-3214, 2020 WL 6686120, at *1, *8 (3d Cir. Nov. 13, 2020) (“[It is] indisputable in our democratic process: that the lawfully cast vote of every citizen must count”); *Stein v. Cortés*, 223 F. Supp. 3d 423, 442 (E.D. Pa 2016) (granting relief that “could well ensure that no Pennsylvania vote counts . . . would be both outrageous and completely unnecessary”). Moreover, the harm would not stop there. In addition to disenfranchising voters, “knowledge that otherwise-eligible voters were not counted would be harmful to the public’s perception of the election’s legitimacy,” and therefore weighs even further against the public interest. *Jones*, 950 F.3d at 830 (internal quotation marks omitted).

In contrast, Plaintiff, who unjustifiably waited over eight months and three election cycles to bring his claim challenging the Settlement Agreement, has articulated no injuries whatsoever and as such would suffer no harm if this Court were to withhold relief.⁹

⁹ It is equally appropriate to consider Plaintiff's delay in bringing his claims as part of a laches argument, like the one the Political Party Committees set forth in their Motion to Dismiss. *See* ECF No. 8-2, at *13–15. Thus, Plaintiff's delay should either bar consideration of his claims entirely (laches) or alternatively warrant denial of his TRO on the merits (balancing of the equities / public interest).

The same is true of Plaintiff's requested relief with respect to the recount, which seeks statewide recourse for purported infringements in only a handful of counties and, most egregiously, asks for Republican-only surveillance of every step of Georgia's processing of individual votes in a manner likely violating multiple provisions of state law both backward looking and in future elections. *See* Prelim. Inj. Mot. at 23–25. Such relief is unprecedented in scope and plainly not justified by Plaintiff's paltry alleged harms.

Ultimately, “[t]he chief function of a preliminary injunction is to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated.” *Robinson v. Attorney Gen.*, 957 F.3d 1171, 1178–79 (11th Cir. 2020) (quoting *Ne. Fla. Ch. of Ass’n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1284 (11th Cir. 1990)). Here, the status quo is that the widely publicized, well-accepted procedures of the Settlement Agreement were used to conduct an election in which President-Elect Joseph Biden won more Georgians’ votes. The results of that election have been announced and now confirmed by a rigorous hand recount of all ballots cast which both parties were able to observe. The Court should not grant an injunction that would upend the status quo and wreak havoc on the state’s election apparatus, especially in light of the weakness of Plaintiff’s claims.

IV. CONCLUSION

For these reasons, the Political Party Committees respectfully request that the Court deny Plaintiff's Emergency Motion for Injunctive Relief.

Dated: November 19, 2020.

Respectfully submitted,

Adam M. Sparks

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Joyce Gist Lewis

Georgia Bar No. 296261

Susan P. Coppedge

Georgia Bar No. 187251

Adam M. Sparks

Georgia Bar No. 341578

KREVOLIN AND HORST, LLC

One Atlantic Center

1201 W. Peachtree Street, NW, Ste. 3250

Atlanta, GA 30309

Telephone: (404) 888-9700

Facsimile: (404) 888-9577

hknapp@khlawfirm.com

jlewis@khlawfirm.com

coppedge@khlawfirm.com

sparks@khlawfirm.com

Marc E. Elias*

Amanda R. Callais*

Alexi M. Velez*

Emily R. Brailey*

PERKINS COIE LLP

700 Thirteenth Street NW, Suite 800

Washington, DC 20005

Telephone: (202) 654-6200
melias@perkinscoie.com
acallais@perkinscoie.com
avelez@perkinscoie.com
ebrailey@perkinscoie.com

Kevin J. Hamilton*
Amanda J. Beane*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
Telephone: (206) 359-8000
khamilton@perkinscoie.com
abeane@perkinscoie.com

Gillian C. Kuhlmann*
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, California 90067
Telephone: (310) 788-3900
gkuhlmann@perkinscoie.com

Matthew J. Mertens*
Georgia Bar No: 870320
PERKINS COIE LLP
1120 NW Couch Street, 10th Floor
Portland, Oregon 97209
Telephone: (503) 727-2000

*Counsel for Proposed Intervenor-
Defendants*

**Pro Hac Vice Application Pending*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: November 19, 2020.

Adam M. Sparks
*Counsel for Proposed Intervenor-
Defendants*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: November 19, 2020.

Adam M. Sparks
*Counsel for Proposed Intervenor-
Defendants*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

ATTORNEY DECLARATION OF AMANDA R. CALLAIS

I, Amanda R. Callais, state as follows:

1. My name is Amanda R. Callais. I am over 18 years of age and have personal knowledge of the below facts, which are true and accurate to the best of my knowledge and belief.

2. I am an attorney with the firm of Perkins Coie LLP, and counsel for Proposed Defendant-Intervenors the Democratic Party of Georgia, DSCC, and DCCC. I make this declaration in support of Proposed Defendant-Intervenors' Opposition to Plaintiff's Motion for Preliminary Injunction.

3. Attached hereto as Exhibit 1 is a true and correct copy of Georgia Secretary of State Brad Raffensperger's NOTICE OF PUBLIC CONTEST

SELECTION OF RISK LIMITING AUDIT, which is publicly available at https://sos.ga.gov/admin/uploads/RLA_Public_Notice_11092020.pdf.

4. Attached hereto as Exhibit 2 is a true and correct copy of the article: Tal Axelrod, *Georgia secretary of state announces hand recount of presidential race*, THE HILL (Nov. 11, 2020), <https://thehill.com/homenews/campaign/525476-georgia-secretary-of-state-announces-hand-recount>.

5. Attached hereto as Exhibit 3 is a true and correct copy of Georgia Secretary of State Brad Raffensperger's Press Release: *Monitors Closely Observing Audit-Trigger Full Hand Recount: Transparency is Built into Process* (Nov. 13, 2020), https://sos.ga.gov/index.php/elections/monitors_closely_observing_audit-triggered_full_hand_recount_transparency_is_built_into_process.

6. Attached hereto as Exhibit 4 is November 12, 2020 Official Election Bulletin sent by Chris Harvey, State Elections Director, to all County Election Officials and County Registrars regarding the official "Audit Instructions."

7. Attached hereto as Exhibit 5 is a true and correct copy of the May 1, 2020 Official Election Bulletin sent by Chris Harvey, State Elections Director, to all County Election Officials and County Registrars regarding "Absentee Ballot Signature Review Guidance."

8. Attached hereto as Exhibit 6 is a true and correct copy of Georgia Secretary of State Brad Raffensperger's Press Release: *Number of Absentee Ballots Rejected for Signature Issues in the 2020 Election Increased 350% From 2018* (Nov. 18, 2020), which is publicly available at https://sos.ga.gov/index.php/elections/number_of_absentee_ballots_rejected_for_signature_issues_in_the_2020_election_increased_350_from_2018.

9. Attached hereto as Exhibit 7 is a true and correct copy of Georgia State Elections Board, Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing (Mar. 5, 2020), <https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf> (scheduling public hearing for April 15, 2020).

10. Attached hereto as Exhibit 8 is a true and correct copy of the official election results as of November 18, as published by the Georgia Secretary of State at *Election Results: President of the United States*, <https://results.enr.clarityelections.com/GA/105369/> (last visited Nov. 18, 2020). County level results are available for download on the left-hand side of the page under the heading "Reports."

11. Attached hereto as Exhibit 9 is a true and correct copy of a Facebook post by Georgia Secretary of State Georgia Secretary of State Brad Raffensperger, available at *GA Secretary of State Brad Raffensperger* (@GASecretaryofState), FACEBOOK (Nov. 15, 2020), <https://www.facebook.com/GASecretaryofState/photos/a.2134798756635689/3559519377496946>.

12. Attached hereto as Exhibit 10 is a true and correct copy of the article: Tim Reid, *Republican Georgia secretary of state says no sign of widespread fraud in vote count*, REUTERS (Nov. 11, 2020, 2:54PM), <https://www.reuters.com/article/us-usa-election-georgia-recount-raffenpe/republican-georgia-secretary-of-state-says-no-sign-of-widespread-fraud-in-vote-count-idUSKBN27R33P>.

13. Attached hereto as Exhibit 11 is a true and correct copy of the article: Amy Gardner, *Ga. secretary of state says fellow Republicans are pressuring him to find ways to exclude ballots*, THE WASHINGTON POST (Nov. 16, 2020), https://www.washingtonpost.com/politics/brad-raffensperger-georgia-vote/2020/11/16/6b6cb2f4-283e-11eb-8fa2-06e7cbb145c0_story.html.

14. Attached hereto as Exhibit 12 is a true and correct copy of the article: Stefan Becket, *2020 election “most secure in history,” security officials say*, CBS News (Nov. 13, 2020), <https://www.cbsnews.com/live-updates/2020-election-most-secure-history-dhs/>.

15. Attached hereto as Exhibit 13 is a true and correct copy of the article: Mark Niese, Absentee ballots can begin to be opened, but not counted, in Georgia, THE ATLANTA JOURNAL-CONSTITUTION (October 19, 2020), <https://www.ajc.com/politics/absentee-ballots-can-begin-to-be-opened-but-not-counted-in-georgia/BRBLHVUJOFHB5OEHAMZV34HPDA/>.

16. Attached hereto as Exhibit 14 is a true and correct copy of the article: Brian O'Shea, *Georgia recount: Metro Atlanta counties offer live feeds for voters to watch*, THE ATLANTA JOURNAL-CONSTITUTION (Nov. 15, 2020), <https://www.ajc.com/politics/election/georgia-recount-metro-atlanta-counties-offer-live-feeds-for-voters-to-watch/6MCEZ5N4JJGKTEC4IU7ELDOIRQ/>.

17. Attached hereto as Exhibit 15 is November 13, 2020 Official Election Bulletin sent by Chris Harvey, State Elections Director, to all County Election Officials and County Registrars regarding the "Allowing More Credentialed Monitors at Risk Limiting Audit Allowing Libertarian Party Monitors."

18. Attached hereto as Exhibit 16 is a true and correct copy of the expert report of Dr. Jonathan Rodden of Stanford University, dated November 18, 2020.

Dated: November 19, 2020.

Amanda R. Callais

Amanda R. Callais*

PERKINS COIE LLP

700 Thirteenth Street NW, Suite 800

Washington, DC 20005

Telephone: (202) 654-6200

Facsimile: (202) 654-6211

acallais@perkinscoie.com

*Counsel for Proposed Intervenor-
Defendants*

**Pro Hac Vice Application Pending*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: November 19, 2020.

Adam M. Sparks

*Counsel for Proposed Intervenor-
Defendants*

Exhibit 1



Office of the Secretary of State

Brad Raffensperger
SECRETARY OF STATE

Chris Harvey
DIRECTOR OF ELECTIONS

SECRETARY OF STATE LEGAL NOTICE ELECTIONS DIVISION

**** NOTICE OF PUBLIC CONTEST SELECTION **** OF RISK LIMITING AUDIT

Notice is hereby given that The Secretary of State's Office will announce on Wednesday, November 11, 2020 at 1:00 p.m. EST the November General Election statewide contest to be audited by all 159 counties. The meeting will be held at 214 State Capitol, Atlanta, Georgia 30334, and it will be accessible via the following link:
https://zoom.us/webinar/register/WN_VbWHeGFXSViTL0M-4zIMOW

Immediately following the announcement, the Secretary of State will oversee the random selection of the ballots to be audited. Counties will be notified of the ballots they must audit following their selection.

Using this website, please fill-in your first name, last name, and the e-mail address you would like your webinar invitation be sent. After registering you will receive an e-mail detailing the instructions on how to enter the webinar.

Exhibit 2



Georgia secretary of state announces hand recount of presidential race

BY TAL AXELROD - 11/11/20 10:57 AM EST

Just In...

Manufacturers association calls on GSA to begin transition process

ADMINISTRATION — 1H 14M AGO

Trump administration sought to sue Omarosa after she announced tell-all book: report

ADMINISTRATION — 1H 41M AGO

Biden vote tally getting close to 80 million

CAMPAIGN — 1H 51M AGO

AOC, progressive Dems attack corporate greed during health care discussion

HOUSE — 2H 2M AGO

Brent Budowsky wins The Hill's 2020 election prediction contest

CAMPAIGN — 2H 16M AGO

Dashcam video released in police shooting of 2 Black Florida teenagers

STATE WATCH — 2H 31M AGO

Former Minnesota Democratic leader quits party

CAMPAIGN — 2H 58M AGO

US military reports record 1,300 coronavirus cases in one day

DEFENSE — 3H 13M AGO

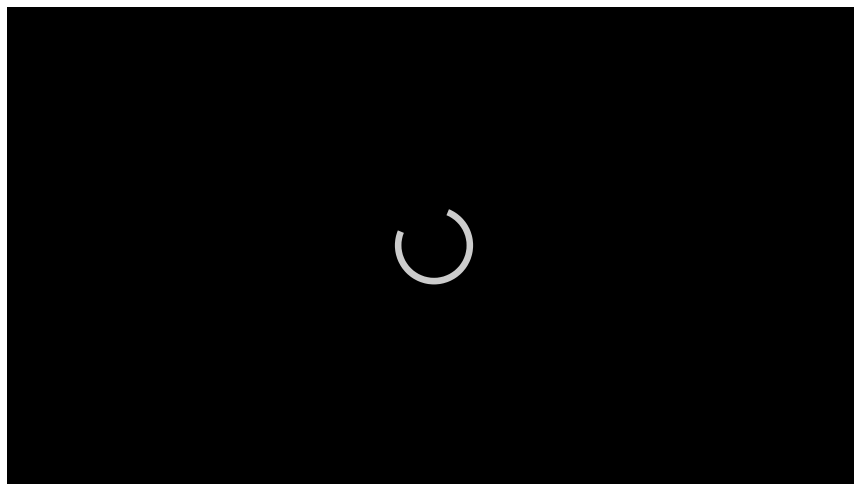
16,065 SHARES



SHARE



TW



Georgia Secretary of State Brad Raffensperger (R) announced Wednesday he will oversee a hand recount of ballots cast in the Peach State as President-elect [Joe Biden](#) maintains a slim lead over [President Trump](#) there.

Raffensperger, who has come under an avalanche of pressure from Republicans to take some kind of action given the tight statewide margin, said he will implement a risk-limiting audit to cover the presidential race. The audit is expected to be done by Nov. 20, when the state must certify its election results.

"With the margin being so close, it will require a full, by-hand recount in each county. This will help build confidence. It will be an audit, a recount and a recanvass all at once. It will be a heavy lift, but we will work with the counties to get this done in time for our state certification," Raffensperger said at a press conference.

The announcement comes as Trump and Republicans in Georgia have promoted baseless allegations of voter fraud in Georgia to explain the more than 14,000-vote margin that separates Trump from Biden in the historically red state.

Raffensperger in particular has faced broadsides from fellow Republicans over his oversight of the election, with Georgia Sens. [Kelly Loeffler](#) and [David Perdue](#), who are each facing a runoff election in January, [calling for](#)

VIEW ALL

Related News by | ▶



Kayleigh McEnany's Salary Disclosed And...

Sponsored | Definition



Trump has told advisers he's thinking about...



Bush's 2000 recount team: Trump has no...

Pennsylvania secretary of state will not order a...

his [resignation](#) and accusing him of failing "to deliver honest and transparent elections."

"Earlier today Senators Loeffler and Perdue called for my resignation. Let me start by saying that is not going to happen," Raffensperger [fired back in a statement on Monday](#). "The voters of Georgia hired me, and the voters will be the one to fire me."

That rebuke did little to ease the pressure, with GOP House members in Georgia continuing on Tuesday [to call on him to review](#) the unsubstantiated voter fraud allegations and the Trump campaign specifically calling for a by-hand recount.

The secretary of state walked a fine line during his Wednesday remarks, saying he would look into claims of voter fraud but maintaining that local officials performed their jobs well on Election Day.

"They and their staff are the ones that do the hard work on the ground of making sure that all legal votes will be counted," Raffensperger said. "Their job is hard, they executed their responsibilities, and they did their job. These men and women, and my office, will continue to follow the law and count every legal vote."

"My office will continue to investigate each and every instance of illegal voting, double voting, felon voting, people voting out of state," he added. "We have all worked hard to bring fair and accurate counts to ensure that the will of the voters is reflected in the final count and that every voter will have confidence in the outcome whether their candidate won or lost."

Georgia secretary of state says wife has received threatening texts...

Georgia elections chief: 'Emotional abuse' to mislead voters about...

The recount will be of all the votes cast in the state rather than just a subset given the tight statewide margin.

"When you have 5 million votes and the margin is so close, 14,000, if we pulled out 10,000 votes, all of the sudden you could say, 'Well this is the person that won.' You pull out 100,000, it says this person won. You pull out a million, this person won. And that's why mathematically you actually have to do a full hand-by-hand recount of all because the margin is so close," Raffensperger said.

Regardless of the results from the recount, Biden will still have enough Electoral College votes to win the White House. With calls from Georgia and North Carolina still pending, and hesitance from some outlets to call Arizona for Biden amid his lead there, the former vice president still has 279 electoral votes after winning the Rust Belt states of Michigan, Pennsylvania and Wisconsin.

TAGS DONALD TRUMP JOE BIDEN KELLY LOEFFLER DAVID PERDUE BRAD RAFFENSPERGER
GEORGIA VOTE COUNTING ELECTION RECOUNT ELECTORAL FRAUD 2020 2020 ELECTION



SHARE



TWEET



THE HILL

Exhibit 3



HOME



CORPORATIONS



ELECTIONS



LICENSING



SECURITIES



CHARITIES

VOTER INFO.

RESULTS & STATS

CANDIDATE INFO.

COUNTY & AGENCY



MONITORS CLOSELY OBSERVING AUDIT-TRIGGERED FULL HAND RECOUNT: TRANSPARENCY IS BUILT INTO PROCESS

(ATLANTA) – Monitors from state and county party organizations will be closely observing the statewide full hand recount, which was triggered by Georgia's first statewide Risk Limiting Audit. From the beginning of planning, the Secretary of State's office has made sure to instruct counties to allow political party organizations to observe the audit/recount throughout the process.

"Transparency is indispensable for ensuring confidence in the outcome of Georgia's elections, which is why I have instructed county elections officials to ensure political party monitors can watch every step of the way," said Secretary of State Brad Raffensperger. "Providing access and oversight of the full hand recount process has been part of the planning since the beginning. We have encouraged counties to livestream their recounts when possible and have made sure political parties can ensure a clean and fair recount in Georgia. Transparency should be a guiding principle in how counties are conducting the audit. While there are rules in place that allow counties to keep order, the more transparency they can provide the better while still ensuring an orderly process."

Georgia counties were required to begin their statewide Risk Limiting Audit triggered full hand recounts by 9 am on Friday, November 13. The counties must finish their recounts by 11:59 pm on Wednesday, November 18. As prescribed by Georgia law, the Secretary of State's office will then certify statewide election results after completion of the audit, by November 20.

Per the instructions given to counties as they conduct their audit triggered full hand recounts, designated monitors will be given complete access to observe the process from the beginning. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely. The general public and the press will be restricted to a public viewing area. Designated monitors will be able to watch the recount while standing close to the elections workers conducting the recount.

Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county. If DeKalb County, for example, has 75 audit teams, each political party would be allowed to designate 8 monitors to monitor the process. Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted, providing monitors and the public an additional way to keep tabs on the process.

The instructions for the audit triggered hand recount build in transparency and provide ample opportunity for party organizations and the voters of Georgia to be confident of a fair and secure process.

Georgia is recognized as a national leader in elections. It was the first state in the country to implement the trifecta of automatic voter registration, at least 16 days of early voting (which has been called the "gold standard"), and no-excuse absentee voting. Georgia continues to set records for voter turnout and election participation, seeing the largest increase in average turnout of any other state in the 2018 midterm election and record overall, early, in-person, and absentee-by-mail turnout during the November 2020 elections.

###

Key Election Dates and Information

Military and Overseas Voting

Register to Vote

Where do I vote? (MVP)

QUICK LINKS

Risk Limiting Audit Public Notice	2020 Presidential Electors
State Election Board	GA Voter ID Info.
Secure The Vote	Elections Advisory Council
2019 Official Directory	Vote Safe
SAFE Commission	Voter Registration Drive
Stop Voter Fraud	Reexamination Costs
Online Complaints	Information for Voter Registrations Pending Due to Citizenship
Proposed Constitutional Amendments	Intent to Tabulate Early
Great Seal	SD 4 Qualified Candidates
iVote - Students / Educators	Advance Voting Info.
Check Your Provisional Ballot Status for November 6, 2018 Election	2019 List Maintenance
FAQs	

LATEST ELECTIONS NEWS

Number of Absentee Ballots Rejected for Signature Issues in the 2020 Election Increased 350% from 2018

Wednesday, November 18th 2020

Secretary Raffensperger Announces Completion of Voting Machine Audit Using Forensic Techniques: No Sign of Foul Play

Tuesday, November 17th 2020

Secretary Raffensperger Issues Warning Against Activist Groups Helping Out of State Illegal Voters: 'We will catch you. We Prosecute'

Monday, November 16th 2020

SECRETARY RAFFENSPERGER WARNING: 'MOVING' TO GEORGIA TEMPORARILY IN ORDER TO VOTE IN JAN. 5 RUNOFF IS ILLEGAL AND WILL BE PROSECUTED

Friday, November 13th 2020

Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process

Friday, November 13th 2020

OFFICE OF BRAD RAFFENSPERGER

NEWS & ANNOUNCEMENTS

PRESS & MEDIA KIT

PRIVACY POLICY



CONTACT

214 State Capitol

Atlanta, Georgia 30334

404.656.2881

[E-Mail](#)

© 2018 Georgia Secretary of State

Exhibit 4



OFFICIAL ELECTION BULLETIN

November 12, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, Elections Division Director

RE: Audit Instructions

Pursuant to O.C.G.A. § 21-2-498 and SEB Rule 183-1-15-.04, the Secretary has selected the contest for President of the United States to audit. While many risk-limiting audits rely on samples of ballots, the design of risk-limiting audits combined with the margin of this race mean that this risk-limiting audit is required to be a full manual tally of the votes cast. SEB Rule 183-1-15-.04 requires that the Superintendent follow instructions issued by the Secretary of State on how to specifically conduct the audit. While there will be additional instructions issued regarding more specific processes, initial instructions are below:

1. Start and Completion Times

Each county must start their audit no later than 9:00 a.m. on Friday, November 13, 2020 and must complete their audit no later than 11:59 p.m. on Wednesday, November 18, 2020.

Public notice of the date, time, and location of the audit must be posted on the county election office's website, or, if the county election's office does not have a website, in another prominent location.

2. Public Access and Political Party Monitors

The audit shall be open to the public and the press, but no person except the persons designated by the Superintendent shall touch any ballot or ballot container. The Superintendent shall designate a viewing area from which members of the public and press may observe the audit for the purpose of good order and maintaining the integrity of the audit. The Superintendent may also choose to make the audit proceeding available via livestream or webcast. If any member of the public or press interferes with

the process or persists in not following reasonable regulations and instructions set by the Superintendent, that person shall be removed.

The State Executive Committee of each political party (Republicans and Democrats) shall have the right to have one properly designated person act as monitor of the audit for each ten audit teams that are conducting the audit, with a minimum of two designated monitors in each county per party per room where the audit is being conducted. Properly designated monitors shall have complete access to monitor the audit. They do not have to remain in the public viewing areas. The designated monitors shall be given a letter by the designating entity containing the name of the monitor, his or her address, and the county in which he or she may monitor the audit. A copy of the letter shall be delivered to the county elections superintendent prior to the monitor being allowed to monitor the process. The designating entity shall provide their monitors with name tags that clearly indicate their names and the entity the designated them. Such name tags shall be worn at all times while monitoring the audit.

The Superintendent may make reasonable regulations, including regulations regarding social distancing measures and required personal protective equipment, that designated monitors and public observers shall follow so that they do not interfere with the auditing process. If a designated monitor or public observer interferes with the audit after being warned by an election official, or if he or she violated any of the prohibited activities listed herein, the superintendent may revoke the person's designation to monitor the process, remove them from any further monitoring or observing, and refer the incident to the Secretary of State's office for investigation. Any infraction or irregularity observed by a monitor or observer shall be reported to the superintendent or to the Secretary of State. If a monitor's designation is revoked by the Superintendent, the designating entity shall have the right to designate a new monitor in the manner set forth herein.

While monitoring the process, designated monitors are prohibited from:

- (a) In any way interfering with the audit process;
- (b) Speaking to any member of the audit team or vote review panel;
- (c) When outside of the public viewing area, using any photographic, electronic monitoring or recording devices, cellular telephones, or other electronic equipment;
- (d) Touching any ballot or ballot container; or
- (e) Engaging in any form of campaigning or campaign activity.

Before being allowed to monitor the process, each designated monitor shall execute an oath swearing or affirming, under penalty of perjury, that they understand the prohibitions set forth above, that they will not engage in any prohibited activity, and that

they understand any violations of this rule will be punishable by the State Election Board.

3. Audit Teams

Audit teams shall consist of at least two sworn designees. The Superintendent may designate non-employees to be a member of an audit team, but any non-employees designated to audit teams shall be residents of the State of Georgia. Every member of the audit team shall be a person of good moral character and shall take and sign an oath that they will conduct the audit fairly and accurately prior to conducting the audit. In determining the candidate for which the vote was cast, the audit teams shall refer to and rely on SEB Rule 183-1-15-02 (Definition of a Vote) for Optical Scan Voting Systems.

4. Vote Review Panels

Any ballot where the audit team does not agree on the selection for President shall be sent to a Vote Review Panel. Each Vote Review Panel shall consist of a designee of the Election Superintendent and a nominee of the county or state executive committee of each political party (Republican and Democrat) designated via letter provided to the Superintendent. Notice of the members and location of any Vote Review Panels shall be posted prominently at the office of the Superintendent. Prior to beginning its work, each member of the Vote Review Panel shall take and sign an oath. The panel shall manually review all ballots sent to it by any audit team and shall determine by a majority vote "if the elector has marked his or her ballot in such a manner that he or she has indicated **clearly and without question** the candidate for whom he or she desires to cast his or her vote." O.C.G.A. 21-2-438(c). The determination of the Vote Review Panel shall be final. The Superintendent may create multiple Vote Review Panels.

In making its determination, the Vote Review Panel shall refer to and rely on SEB Rule 183-1-15-.02 (Definition of a Vote) for Optical Scan Voting Systems.

5. Re-Certifying if Vote Counts Change

In cases like this, where the risk-limiting audit of the selected contest has led to a full manual tally of the ballots cast, the vote counts according to the manual tally shall replace the vote previously reported vote counts and each county shall re-certify the new counts for the audited race, if necessary, prior to November 20, 2020.

Exhibit 5



OFFICIAL ELECTION BULLETIN

May 1, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, State Elections Director

RE: Absentee Ballot Signature Review Guidance

Verifying that a voter's signature on his or her absentee ballot matches his or her signature on the absentee ballot application or in the voter registration record is required by Georgia law and is crucial to secure elections. Ensuring that signatures match is even more crucial in this time of increased absentee voting due to the COVID-19 crisis. The purpose of this OEB is to remind you of some recent updates to Georgia law and regulations regarding verifying signatures on absentee ballots and to make you aware of the procedures that should be followed when a signature on an absentee ballot does not match. HB 316, which passed in 2019, modified the absentee ballot laws and the design of the oath envelope. The State Election Board also adopted Rule 183-1-14.13 this year, which addresses how quickly and by what methods electors need to be notified concerning absentee ballot issues. What follows are the procedures that should be followed when the signature on the absentee ballot does not match the voter's signature on his or her application or voter registration record:

County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C).

When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.¹ If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks.

A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

¹ Once the registrar or clerk verifies a matching signature, they do not need to continue to review additional signatures for the same voter.

RULE 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than the close of business on the third business day after rejecting the absentee ballot. However, for any timely submitted absentee ballot that is rejected within eleven days of Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than close of business on the next business day.

Exhibit 6



HOME



CORPORATIONS



ELECTIONS



LICENSING



SECURITIES



CHARITIES

VOTER INFO.

RESULTS & STATS

CANDIDATE INFO.

COUNTY & AGENCY



NUMBER OF ABSENTEE BALLOTS REJECTED FOR SIGNATURE ISSUES IN THE 2020 ELECTION INCREASED 350% FROM 2018

(ATLANTA)- The number of absentee ballot rejections for signature issues increased approximately 350% in the November 2020 election in Georgia from the 2018 election, about the same rate of increase as the total number of absentee ballots accepted. The rejection rate for absentee ballots with missing or non-matching signatures in the 2020 General Election was 0.15%, the same rejection rate for signature issues as the 2018 General Election.

2,011 absentee ballots were rejected in the November 2020 election for missing or non-matching signatures out of 1,322,529 absentee ballots cast. In November 2018, 454 absentee ballots were rejected for missing or non-matching signatures out of 284,393 absentee ballots cast. The 0.15% rejection rate for signature issues was the same in both the 2018 and 2020 General Elections.

In the 2020 Primary, 3,266 absentee ballot were rejected for missing or non-matching signatures out of 1,151,371 absentee ballots cast, a rejection rate of 0.28%. The lower rejection rate in the general election compared to the primary is likely the result of both parties attempting to help voters cure their absentee ballots pursuant to the process set forth in Georgia statute.

Numbers for total number of rejected absentee ballots for the 2020 election, including ballots received after the 7:00 p.m. Election Day deadline, are still being input by county election officials and are not yet available.

Georgia is recognized as a national leader in elections. It was the first state in the country to implement the trifecta of automatic voter registration, at least 16 days of early voting (which has been called the "gold standard"), and no-excuse absentee voting. Georgia continues to set records for voter turnout and election participation, seeing the largest increase in average turnout of any other state in the 2018 midterm election and record overall, early, in-person, and absentee-by-mail turnout during the November 2020 elections.

###

Key Election Dates and Information

Military and Overseas Voting

Register to Vote

Where do I vote? (MVP)

QUICK LINKS

Risk Limiting Audit Public Notice

2020 Presidential Electors

State Election Board

GA Voter ID Info.

Secure The Vote

Elections Advisory Council

2019 Official Directory

Vote Safe

SAFE Commission

Voter Registration Drive

Stop Voter Fraud

Reexamination Costs

Online Complaints

Information for Voter Registrations Pending Due to Citizenship

Proposed Constitutional Amendments

Intent to Tabulate Early

Great Seal

SD 4 Qualified Candidates

iVote - Students / Educators

Advance Voting Info.

Check Your Provisional Ballot Status for November 6, 2018 Election

2019 List Maintenance

FAQs

LATEST ELECTIONS NEWS

Number of Absentee Ballots Rejected for Signature Issues in the 2020 Election Increased 350% from 2018

Wednesday, November 18th 2020

Secretary Raffensperger Announces Completion of Voting Machine Audit Using Forensic Techniques: No Sign of Foul Play

Tuesday, November 17th 2020

Secretary Raffensperger Issues Warning Against Activist Groups Helping Out of State Illegal Voters: 'We will catch you. We Prosecute'

Monday, November 16th 2020

SECRETARY RAFFENSPERGER WARNING: 'MOVING' TO GEORGIA TEMPORARILY IN ORDER TO VOTE IN JAN. 5 RUNOFF IS ILLEGAL AND WILL BE PROSECUTED

Friday, November 13th 2020

Monitors Closely Observing Audit-Triggered Full Hand Recount: Transparency is Built Into Process

Friday, November 13th 2020

OFFICE OF BRAD RAFFENSPERGER

NEWS & ANNOUNCEMENTS

PRESS & MEDIA KIT

PRIVACY POLICY



CONTACT

214 State Capitol
Atlanta, Georgia 30334
404.656.2881
[E-Mail](#)
© 2018 Georgia Secretary of State

Exhibit 7

**NOTICE OF INTENT TO POST A RULE OF THE STATE ELECTIONS BOARD,
CHAPTER 183-1-14, *RULES OF STATE ELECTION BOARD*, RULE 183-1-14-.13
PROMPT NOTIFICATION OF ABSENTEE BALLOT REJECTION.
AND NOTICE OF PUBLIC HEARING.**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia State Election Board, (hereinafter “SEB”) proposes to post an SEB rule, Rule 183-1-14-.13 *Prompt Notification of Absentee Ballot Rejection* (hereinafter “proposed rule”).

This notice, together with an exact copy of the proposed new rule and a synopsis of the proposed rule, is being distributed to all persons who have requested, in writing, that they be placed on a distribution list. A copy of this notice, an exact copy of the proposed rule amendment, and a synopsis of the proposed rule amendment may be reviewed during normal business hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, except official state holidays, at the Office of the Secretary of State, Elections Division, 2 Martin Luther King Jr. Drive, S.E., 8th Floor West Tower, Atlanta, Georgia 30334. These documents will also be available for review on the State Election Board’s web page at https://sos.ga.gov/index.php/elections/state_election_board. Copies may also be requested by contacting the Elections Division at (404) 656-2871.

To provide the public an opportunity to comment upon and provide input into the proposed rule amendment, a public hearing will be held on:

April 15, 2020
8:30 a.m.
State Capitol Building
206 Washington Street, SW
Room 341
Atlanta, Georgia 30334

At the public hearing anyone may present data, make a statement, comment or offer a viewpoint or argument whether orally or in writing. Oral statements should be concise and will be limited to 2 minutes per person. Additional comments should be presented in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record on or before Monday, April 6, 2020 to the address below for written comments. Written comments must be received on or before Monday, April 6, 2020 and be addressed to Jasmine Shannon by mail to Office of the Secretary of State, Elections Division, 2 Martin Luther King Jr. Drive, S.E., 8th Floor West Tower, Atlanta, Georgia 30334 or by email to jshannon@sos.ga.gov.

The State Election Board will consider the proposed rule at a meeting scheduled to begin at 8:30 a.m. on Wednesday, April 15, 2020 at the State Capitol Building, 206 Washington Street SW, Room 341, Atlanta, Georgia 30334.

This notice is given in compliance with O.C.G.A. § 50-13-4.

This 5th day of March, 2020.

A handwritten signature in black ink, reading "Brad Raffensperger", written over a horizontal line.

Brad Raffensperger
Chairman, State Elections Board

Posted: March 5, 2020

**SYNOPSIS OF THE PROPOSED RULE OF THE
STATE ELECTIONS BOARD, CHAPTER 183-1-14, *RULES OF STATE
ELECTION BOARD*, RULE 183-1-14-.13 *PROMPT NOTIFICATION OF
ABSENTEE BALLOT REJECTION***

Purpose: The purpose of the revisions to this rule is to revise the procedures for providing prompt notification to electors when their absentee ballots are rejected.

Main Features: The main feature of the revisions to this rule is to update the procedures for absentee voting to ensure that election officials promptly notify electors when their absentee ballots have been rejected and the opportunity to cure the issue so their ballot may be counted.

**DIFFERENCES BETWEEN THE EXISTING RULE AND THE PROPOSED
AMENDMENTS OF THE STATE ELECTION BOARD, CHAPTER 183-1-14,
RULES OF STATE ELECTION BOARD, RULE 183-1-14-.13 *PROMPT
NOTIFICATION OF ABSENTEE BALLOT REJECTION***

NOTE: Struck through text is proposed to be deleted. Underlined text is proposed to be added.

**THE PROPOSED RULE OF THE STATE ELECTION BOARD, CHAPTER 183-1-14,
RULES OF STATE ELECTION BOARD, RULE 183-1-14-.13 *PROMPT
NOTIFICATION OF ABSENTEE BALLOT REJECTION***

RULE 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than the close of business on the third business day after rejecting the absentee ballot. However, for any timely submitted absentee ballot that is rejected within eleven days of Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than close of business on the next business day.

Authority: O.C.G.A. §§ 21-2-31, O.C.G.A § 21-2-386

COPY OF THE PROPOSED NEW RULE
PROMPT NOTIFICATION OF ABSENTEE BALLOT REJECTION

RULE 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than the close of business on the third business day after rejecting the absentee ballot. However, for any timely submitted absentee ballot that is rejected within eleven days of Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than close of business on the next business day.

Authority: O.C.G.A. §§ 21-2-31, O.C.G.A § 21-2-386

Exhibit 8

President of the United States																
County	Donald J. Trump (I) (Rep)				Joseph R. Biden (Dem)				Jo Jorgensen (Lib)							
	Election	Da Absentee	b Advanced	\ Provisional	Total Votes	Election	Da Absentee	b Advanced	\ Provisional	Total Votes	Election	Da Absentee	b Advanced	\ Provisional	Total Votes	Total
Appling	1,753	890	3,874	9	6,526	334	587	855	3	1,779	5	5	26	0	36	8,341
Atkinson	716	164	1,419	1	2,300	250	130	445	0	825	14	3	13	0	30	3,155
Bacon	431	487	3,099	1	4,018	140	196	288	1	625	8	4	13	0	25	4,668
Baker	291	138	466	2	897	149	234	269	0	652	2	2	2	0	6	1,555
Baldwin	1,873	1,290	5,736	4	8,903	1,527	3,000	4,612	1	9,140	63	38	107	0	208	18,251
Banks	1,644	1,025	5,116	10	7,795	150	344	435	3	932	20	9	45	0	74	8,801
Barrow	5,885	4,134	16,782	3	26,804	1,717	3,583	5,150	3	10,453	226	131	307	0	664	37,921
Bartow	10,179	5,976	21,499	20	37,674	2,175	4,486	5,423	8	12,092	276	148	275	2	701	50,467
Ben Hill	441	528	3,140	1	4,110	336	714	1,342	0	2,392	18	8	32	0	58	6,560
Berrien	1,835	749	3,825	10	6,419	333	367	568	1	1,269	21	9	25	0	55	7,743
Bibb	7,922	5,375	13,234	54	26,585	8,704	14,264	20,384	116	43,468	299	174	273	3	749	70,802
Bleckley	942	614	2,770	2	4,328	295	428	588	0	1,311	20	10	37	0	67	5,706
Brantley	1,992	685	4,307	7	6,991	145	204	349	1	699	24	11	21	0	56	7,746
Brooks	1,423	519	2,312	6	4,260	522	1,115	1,149	4	2,790	16	9	25	0	50	7,100
Bryan	2,579	1,588	10,072	5	14,244	838	2,105	3,794	2	6,739	108	72	177	0	357	21,340
Bulloch	6,653	2,800	8,910	23	18,386	2,415	3,530	5,263	35	11,243	192	87	175	1	455	30,084
Burke	1,949	649	2,802	0	5,400	1,490	1,867	1,852	0	5,209	25	14	36	0	75	10,684
Butts	824	1,137	6,443	2	8,406	376	973	1,924	1	3,274	22	20	49	0	91	11,771
Calhoun	279	150	494	0	923	361	436	463	0	1,260	6	3	2	0	11	2,194
Camden	3,621	2,161	9,465	4	15,251	1,166	2,777	4,021	3	7,967	170	95	205	0	470	23,688
Candler	1,587	375	1,172	0	3,134	529	376	363	1	1,269	23	4	2	0	29	4,432
Carroll	11,071	4,699	21,676	30	37,476	3,007	4,634	8,582	15	16,238	278	125	357	0	760	54,474
Catoosa	5,170	2,952	17,025	20	25,167	976	2,130	3,823	3	6,932	178	78	236	2	494	32,593
Charlton	1,124	397	1,896	2	3,419	233	294	576	0	1,103	17	7	20	0	44	4,566
Chatham	18,346	11,781	23,014	96	53,237	17,952	29,037	31,085	180	78,254	889	506	519	15	1,929	133,420
Chattahoochee	291	132	455	2	880	150	166	350	1	667	17	9	8	1	35	1,582
Chattooga	2,464	1,102	4,492	6	8,064	366	649	837	2	1,854	50	25	57	0	132	10,050
Cherokee	23,758	19,639	56,171	19	99,587	6,598	17,261	18,929	6	42,794	921	628	899	1	2,449	144,830
Clarke	3,409	4,048	6,974	15	14,446	5,323	14,329	16,357	39	36,048	268	243	325	3	839	51,333
Clay	131	105	401	0	637	165	296	329	0	790	5	2	0	0	7	1,434
Clayton	3,403	4,366	7,988	56	15,813	16,580	27,109	51,347	440	95,476	343	312	397	3	1,055	112,344
Clinch	618	209	1,277	1	2,105	235	156	356	0	747	2	2	8	0	12	2,864
Cobb	37,609	50,764	76,907	179	165,459	30,599	95,513	95,387	347	221,846	2,157	2,320	1,952	12	6,441	393,746
Coffee	2,587	917	7,066	8	10,578	1,100	995	2,411	5	4,511	41	17	67	0	125	15,214
Colquitt	4,270	1,365	6,132	10	11,777	1,108	1,199	1,877	3	4,187	50	20	49	0	119	16,083
Columbia	13,300	7,023	29,643	47	50,013	5,009	9,546	14,648	33	29,236	514	241	575	0	1,330	80,579
Cook	1,113	486	3,301	0	4,900	538	512	1,008	1	2,059	26	14	36	0	76	7,035
Coweta	18,273	9,400	23,824	4	51,501	5,330	9,288	9,578	14	24,210	498	304	283	3	1,088	76,799
Crawford	1,152	562	2,713	1	4,428	263	524	827	1	1,615	21	10	28	0	59	6,102
Crisp	977	780	3,227	3	4,987	571	886	1,527	2	2,986	23	10	33	0	66	8,039
Dade	2,010	635	3,414	7	6,066	243	377	640	1	1,261	51	12	44	0	107	7,434
Dawson	2,336	1,964	9,095	3	13,398	254	1,051	1,181	0	2,486	62	44	90	1	197	16,081
Decatur	1,469	832	4,451	6	6,758	788	1,472	2,512	8	4,780	20	23	46	0	89	11,627
DeKalb	12,126	16,074	29,966	203	58,369	33,634	110,579	162,718	1,209	308,140	1,122	1,354	1,707	19	4,202	370,711
Dodge	2,335	711	2,793	4	5,843	550	580	1,040	1	2,171	34	10	11	1	56	8,070
Dooly	466	259	1,431	3	2,159	482	476	951	2	1,911	10	7	18	0	35	4,105
Dougherty	4,259	2,350	3,818	22	10,449	7,317	8,051	9,124	84	24,576	133	70	74	3	280	35,305
Douglas	4,735	5,434	15,139	15	25,323	5,807	13,998	22,804	44	42,653	252	227	349	2	830	68,806
Early	799	416	1,504	3	2,722	646	684	1,107	0	2,437	7	6	15	0	28	5,187
Echols	226	121	909	0	1,256	33	32	102	0	167	4	3	11	0	18	1,441
Effingham	7,350	2,520	13,471	17	23,358	1,752	2,333	3,623	12	7,720	233	92	167	0	492	31,570
Elbert	1,837	981	3,408	0	6,226	529	1,082	1,268	0	2,879	30	13	23	0	66	9,171
Emanuel	2,528	896	3,126	1	6,551	842	808	1,234	0	2,884	36	7	22	1	66	9,501
Evans	471	491	1,926	0	2,888	236	347	741	0	1,324	12	12	11	0	35	4,247
Fannin	4,163	2,253	5,730	23	12,169	384	1,159	1,028	0	2,571	43	32	35	0	110	14,850
Fayette	6,352	7,382	22,585	56	36,375	3,400	11,152	17,315	70	31,937	279	232	420	2	933	69,245
Floyd	7,897	4,436	14,612	175	27,120	2,154	3,976	4,806	36	10,972	199	98	199	0	496	38,588
Forsyth	9,740	14,612	60,739	31	85,122	3,375	15,682	23,125	21	42,203	415	477	1,087	1	1,980	129,305
Franklin	2,299	1,404	5,364	2	9,069	348	598	647	0	1,593	31	25	47	0	103	10,765
Fulton	19,552	29,479	87,293	916	137,240	38,143	115,788	224,688	2,525	381,144	1,448	1,727	3,004	96	6,275	524,659
Gilmer	4,371	2,183	6,863	12	13,429	453	1,270	1,209	0	2,932	64	35	64	1	164	16,525
Glascock	403	205	795	0	1,403	40	53	62	0	155	3	1	4	0	8	1,566
Glynn	4,701	4,388	16,492	35	25,616	2,153	5,735	7,969	22	15,879	149	105	234	1	489	41,984
Gordon	6,986	2,538	9,866	15	19,405	1,003	1,464	1,916	1	4,384	107	51	86	0	244	24,033
Grady	2,028	1,103	3,896	7	7,034	635	1,112	1,861	11	3,619	25	11	18	0	54	10,707
Greene	844	1,275	4,947	2	7,068	583	1,532	1,965	8	4,088	21	19	51	0	91	11,247
Gwinnett	35,271	40,396	90,472	274	166,413	35,793	81,502	124,125	407	241,827	1,742	1,679	2,186	18	5,625	413,865
Habersham	2,628	2,905	11,083	21	16,637	511	1,315	1,733	4	3,563	64	42	126	0	232	20,432
Hall	11,111	12,005	40,999	55	64,170	3,847	9,215	11,951	18	25,031	402	305	611	4	1,322	90,523
Hancock	274	244	641	0	1,159	624	1,223	1,135	3	2,985	10	7	4	0	21	4,165
Haralson	4,317	1,786	6,224	4	12,331	375	671	746	0	1,792	55	30	40	0	125	14,248
Harris	5,592	2,087	6,627	13	14,319	1,278	2,067	2,106	6	5,457	103	62	50	0	215	19,991
Hart	2,338	1,437	5,687	2	9,464	560	1,128	1,467	2	3,157	43	20	43	0	106	12,727
Heard	1,641	677	2,197	1	4,516	184	296	343	1	824	21	11	19	0	51	5,391
Henry	8,143	8,134	31,879	31	48,187	8,191	20,858	44,156	71	73,276	322	310	645	2	1,279	122,742

Houston	11,644	8,163	21,677	50	41,534	6,349	11,867	13,970	46	32,232	422	294	339	2	1,057	74,823
Irwin	655	369	2,106	4	3,134	227	257	523	1	1,008	8	1	17	0	26	4,168
Jackson	4,961	4,395	20,135	6	29,497	1,053	2,797	3,791	1	7,642	157	116	258	0	531	37,670
Jasper	1,547	808	3,455	12	5,822	294	680	785	2	1,761	22	18	21	0	61	7,644
Jeff Davis	1,418	528	2,749	0	4,695	248	273	507	0	1,028	18	13	17	0	48	5,771
Jefferson	1,096	446	1,992	3	3,537	1,056	1,274	1,723	8	4,061	18	6	20	0	44	7,642
Jenkins	579	335	1,244	3	2,161	292	416	557	1	1,266	15	5	8	0	28	3,455
Johnson	771	331	1,748	0	2,850	209	420	593	0	1,222	9	6	13	0	28	4,100
Jones	3,023	1,272	5,666	4	9,965	841	1,689	2,356	2	4,888	47	18	47	1	113	14,966
Lamar	1,743	807	3,772	8	6,330	472	936	1,204	3	2,615	40	14	40	0	94	9,039
Lanier	481	250	1,778	0	2,509	204	298	517	0	1,019	13	10	25	0	48	3,576
Laurens	5,660	2,351	6,479	3	14,493	1,884	2,735	3,451	3	8,073	62	38	63	0	163	22,729
Lee	3,054	1,221	7,728	4	12,007	895	1,243	2,418	2	4,558	62	19	68	0	149	16,714
Liberty	1,704	1,311	4,941	3	7,959	1,666	4,301	7,129	3	13,099	102	93	136	0	331	21,389
Lincoln	904	442	1,832	1	3,179	265	628	540	2	1,435	13	10	13	0	36	4,650
Long	1,126	290	2,102	10	3,528	379	500	1,148	6	2,033	33	14	48	0	95	5,656
Lowndes	5,351	3,379	16,795	166	25,691	2,892	5,929	11,017	279	20,117	168	122	249	8	547	46,355
Lumpkin	2,002	2,022	8,138	1	12,163	332	1,245	1,549	0	3,126	63	48	131	0	242	15,531
Macon	348	139	1,296	0	1,783	692	706	1,459	0	2,857	10	2	10	0	22	4,662
Madison	3,502	1,718	6,103	3	11,326	740	1,192	1,478	1	3,411	83	40	77	0	200	14,937
Marion	759	295	1,221	0	2,275	220	471	620	0	1,311	12	6	20	0	38	3,624
McDuffie	826	898	4,445	0	6,169	600	1,522	2,046	0	4,168	40	23	55	0	118	10,455
McIntosh	810	834	2,371	1	4,016	442	853	1,317	0	2,612	34	15	19	0	68	6,696
Meriwethe	2,230	980	3,312	2	6,524	1,189	1,489	1,604	5	4,287	25	17	24	0	66	10,877
Miller	530	264	1,269	3	2,066	174	221	354	0	749	7	2	11	0	20	2,835
Mitchell	1,551	681	2,701	2	4,935	818	1,499	1,673	5	3,995	17	9	7	0	33	8,963
Monroe	3,102	1,062	6,890	6	11,060	690	1,372	2,320	2	4,384	52	27	69	0	148	15,592
Montgome	1,109	356	1,495	0	2,960	250	310	419	0	979	12	3	12	0	27	3,966
Morgan	1,865	938	5,424	3	8,230	496	1,042	1,815	2	3,355	50	19	53	0	122	11,707
Murray	3,893	1,361	7,689	0	12,943	530	679	1,093	0	2,302	50	22	72	0	144	15,389
Muscogee	6,527	6,399	17,106	17	30,049	6,579	17,690	25,227	33	49,529	305	261	397	2	965	80,543
Newton	10,888	4,860	8,103	18	23,869	6,745	10,471	12,556	22	29,794	289	158	129	0	576	54,239
Oconee	2,680	2,696	11,216	3	16,595	723	2,993	4,444	2	8,162	113	76	222	0	411	25,168
Oglethorpe	1,061	946	3,584	2	5,593	417	868	1,150	1	2,436	26	28	47	1	102	8,131
Paulding	9,710	9,582	35,174	59	54,525	3,763	10,525	15,376	40	29,704	327	278	550	1	1,156	85,385
Peach	954	810	4,728	10	6,502	809	1,741	3,364	6	5,920	44	12	66	1	123	12,545
Pickens	5,994	1,786	6,287	8	14,075	645	1,119	1,044	0	2,808	135	34	64	0	233	17,116
Pierce	1,208	923	5,768	0	7,899	122	368	610	0	1,100	14	6	29	0	49	9,048
Pike	2,341	919	5,864	3	9,127	285	523	695	2	1,505	27	20	41	0	88	10,720
Polk	2,849	1,707	9,021	12	13,589	607	1,088	1,957	6	3,658	58	24	67	3	152	17,399
Polaski	336	313	2,155	1	2,805	165	337	715	0	1,217	10	9	18	0	37	4,059
Putnam	1,547	1,760	4,983	1	8,291	470	1,478	1,500	0	3,448	35	34	47	0	116	11,855
Quitman	163	88	353	0	604	163	137	196	1	497	3	1	1	0	5	1,106
Rabun	1,207	1,663	4,604	0	7,474	199	888	897	0	1,984	28	33	49	0	110	9,568
Randolph	321	214	856	0	1,391	402	464	802	3	1,671	6	2	4	0	12	3,074
Richmond	8,584	6,233	11,931	33	26,781	11,843	21,348	25,780	153	59,124	428	322	359	2	1,111	87,016
Rockdale	2,526	3,005	7,466	15	13,012	3,543	9,429	18,248	24	31,244	126	115	189	0	430	44,686
Schley	304	154	1,341	1	1,800	65	157	240	0	462	4	3	6	0	13	2,275
Screven	1,260	505	2,140	11	3,916	601	789	1,264	7	2,661	24	5	22	0	51	6,628
Seminole	944	277	1,390	0	2,611	294	269	691	0	1,254	15	1	3	0	19	3,884
Spalding	5,234	3,490	8,801	532	18,057	2,554	4,264	4,600	366	11,784	132	53	78	12	275	30,116
Stephens	1,234	1,365	6,765	4	9,368	291	806	1,288	0	2,385	33	24	75	0	132	11,885
Stewart	229	105	462	5	801	292	378	505	7	1,182	2	2	3	0	7	1,990
Sumter	1,524	837	3,358	13	5,732	1,139	2,023	3,150	6	6,318	26	18	56	0	100	12,150
Talbot	464	241	686	1	1,392	541	955	618	0	2,114	9	2	5	0	16	3,522
Taliaferro	96	64	200	0	360	100	237	223	1	561	4	1	2	0	7	928
Tattnall	1,536	818	3,699	0	6,053	412	546	1,103	0	2,061	34	10	25	0	69	8,183
Taylor	349	292	1,764	13	2,418	272	489	624	2	1,387	13	3	18	0	34	3,839
Telfair	958	358	1,506	3	2,825	317	618	545	7	1,487	10	2	9	0	21	4,333
Terrell	665	270	1,069	0	2,004	567	839	969	1	2,376	15	12	9	0	36	4,416
Thomas	2,718	1,670	8,565	1	12,954	1,473	2,412	4,819	4	8,708	65	35	91	0	191	21,853
Tift	2,721	1,221	6,833	9	10,784	1,110	1,464	2,732	16	5,322	54	33	88	2	177	16,283
Toombs	1,797	1,217	4,852	6	7,872	569	1,078	1,288	4	2,939	49	16	38	0	103	10,914
Towns	984	1,227	4,165	8	6,384	118	711	720	1	1,550	17	10	18	0	45	7,979
Treutlen	418	274	1,409	0	2,101	123	303	526	0	952	10	4	10	0	24	3,077
Troup	4,673	2,905	10,519	46	18,143	2,809	3,459	5,276	34	11,578	139	60	129	0	328	30,049
Turner	377	233	1,738	1	2,349	332	289	788	1	1,410	6	5	22	0	33	3,792
Twiggs	841	310	1,219	0	2,370	426	736	878	4	2,044	15	7	8	0	30	4,444
Union	3,400	2,232	7,008	11	12,651	300	1,303	1,198	0	2,801	49	23	36	0	108	15,560
Upson	1,364	1,175	6,063	6	8,608	646	1,572	1,983	0	4,201	28	20	48	0	96	12,905
Walker	5,560	3,517	14,089	8	23,174	994	2,206	2,567	2	5,769	162	76	173	0	411	29,354
Walton	9,202	6,031	22,594	15	37,842	2,145	4,254	6,272	11	12,682	225	111	235	0	571	51,095
Ware	2,577	1,368	5,900	20	9,865	563	1,556	2,066	26	4,211	46	17	52	1	116	14,192
Warren	190	205	771	0	1,166	297	540	632	0	1,469	6	1	9	0	16	2,651
Washington	1,481	719	2,458	5	4,663	1,071	1,811	1,843	5	4,730	25	14	27	0	66	9,459
Wayne	2,495	1,354	6,131	7	9,987	460	736	1,489	2	2,687	35	16	53	0	104	12,778
Webster	139	121	488	0	748	142	227	270	0	639	0	2	1	0	3	1,390
Wheeler	438	202	943	0	1,583	197	195	297	0	689	5	1	7	0	13	2,285

White	3,448	2,088	6,680	6	12,222	372	973	1,066	0	2,411	80	27	76	0	183	14,816
Whitfield	8,963	3,544	13,084	45	25,636	2,814	2,840	4,997	19	10,670	194	84	162	0	440	36,746
Wilcox	743	343	1,317	0	2,403	285	212	365	0	862	8	2	6	0	16	3,281
Wilkes	704	467	1,649	3	2,823	504	754	897	4	2,159	16	11	20	0	47	5,029
Wilkinson	1,293	259	1,109	3	2,664	528	602	942	3	2,075	17	4	10	0	31	4,770
Worth	2,779	766	3,285	0	6,830	581	820	994	0	2,395	22	10	28	0	60	9,285
Total:	588,725	451,148	1,414,363	3,885	2,458,121	367,385	849,640	1,248,031	7,042	2,472,098	20,640	16,056	25,136	234	62,066	4,992,285

Exhibit 9

GA Secretary of State Brad Raffensperger - **Lin Wood Lawsuit** My team secured and...

In case you missed it

Mike the Deplorable #MAGA #Qanon
#wwg1wga Retweeted



Donald J. Trump @realDonaldTrump · 21h

Absentee Ballots are fine. A person has to go through a process to get and use them. Mail-In Voting, on the other hand, will lead to the most corrupt Election in USA history. Bad things happen with Mail-Ins. Just look at Special Election in Patterson, N.J. 19% of Ballots a FRAUD!

29.1K 42.5K 147K



GA Secretary of State Brad Raffensperger

Lin Wood Lawsuit

My team secured and strengthened absentee ballots for the first time since 2005. As Secretary of State the first thing I did was push legislation that —OUTLAWED—absentee ballot harvesting in Georgia.

Next, for the first time in the history of Georgia, Absentee ballots submitted through our electronic portal required photo ID. My team—we made that happen.

Lastly, let's address this disinformation about signature match. We strengthened signature match. We helped train election officials on GBI signature match—which is confirmed twice before a ballot is ever cast. Failed candidate Doug Collins is a liar— but what's new?

Photo to grab* ya.

Timeline Photos · Sunday at 11:44 PM ·

[View Full Size](#) · [More Options](#)



Like



Comment



Share

778

196 Shares



Write a comment...

Post



Chuck Hufstetler

Great job by our Secretary of State. And I will take your conservative voting record (Top five out of 236 State legislators as ranked by the Family, Faith and Freedom coalition when you were in the house) over his any day.

65

on Mon Like Reply More

Exhibit 10



REUTERS

World

Business

Markets

Breakingviews

Video

More



U.S. LEGAL NEWS

NOVEMBER 11, 2020 / 5:54 PM / UPDATED 7 DAYS AGO

Republican Georgia secretary of state says no sign of widespread fraud in vote count

By Tim Reid, Lisa Lambert



FILE PHOTO: An employee of the Fulton County Board of Registration and Elections processes ballots in Atlanta, Georgia U.S., November 4, 2020. REUTERS/Brandon Bell

(Reuters) - Georgia's Republican Secretary of State said on Wednesday there was no sign yet of widespread fraud in his state's vote count, where Democratic President-elect Joe Biden currently has a 14,000 vote lead over President Donald Trump.

Brad Raffensperger, in an interview with CNN, said he has ordered a hand recount because of the closeness of the vote count, but he believed votes had so far been tallied accurately. Biden's current lead, with nearly all votes counted, is 0.3%.

Asked about voter fraud, Raffensperger said: "We have ongoing investigations but we have not seen something widespread." He added there was no evidence yet of any discrepancies large enough that could reverse Biden's lead.

Raffensperger said he also believed a hand recount, which he wants completed by Nov. 20, will not overturn the machine count that is near completion. "We believe the ballots were counted

accurately,” he said.

The Georgia recount will take place as Republican Trump, who has refused to concede the election to Biden, pushed ahead with legal challenges in several states to try and upend the result.

Reporting by Tim Reid; Editing by Chris Reese and Aurora Ellis

Our Standards: The Thomson Reuters Trust Principles.

MORE FROM REUTERS

[Apps](#) [Newsletters](#) [Advertise with Us](#) [Advertising Guidelines](#) [Cookies](#) [Terms of Use](#) [Privacy](#)



All quotes delayed a minimum of 15 minutes. See [here](#) for a complete list of exchanges and delays.

© 2020 Reuters. All Rights Reserved.

MORE FROM REUTERS



Trump cuts troop levels in
Afghanistan but stops short of full...

17 Nov



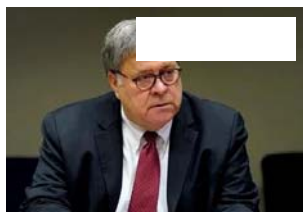
Pfizer to start COVID-19
immunization pilot program in four
U.S....

17 Nov



Лукашенко
пригрозил начать
отбор нефти из
транзитной трубы--
БелТА

14 Feb



Exclusive: U.S.
investigators were told
to take 'no further...

18 Nov



Pfizer ends COVID-19
trial with 95% efficacy,
to seek emergency-
use...

18 Nov

MORE FROM REUTERS



Taiwan's Foxconn opens display manufacturing factory in Vietnam

18 Nov



Analysis: Can first COVID-19 vaccines bring herd immunity? Experts...

18 Nov



Ericsson takes issue with Swedish ban on Huawei: FT

18 Nov



Thousands protest in Berlin against Merkel's coronavirus plans

18 Nov



Biden to focus on coronavirus as Trump pushes to overturn election

18 Nov

Exhibit 11

The Washington Post

Democracy Dies in Darkness

Ga. secretary of state says fellow Republicans are pressuring him to find ways to exclude ballots

By **Amy Gardner**

November 16, 2020 at 6:30 p.m. EST



Georgia Secretary of State Brad Raffensperger said Monday that he has come under increasing pressure in recent days from fellow Republicans, including Sen. Lindsey O. Graham (S.C.), who he said questioned the validity of legally cast absentee ballots, in an effort to reverse President Trump's narrow loss in the state.

In a wide-ranging interview about the election, Raffensperger expressed exasperation over a string of baseless allegations coming from Trump and his allies about the integrity of the Georgia results, including claims that Dominion Voting Systems, the Colorado-based manufacturer of Georgia's voting machines, is a "leftist" company with ties to Venezuela that engineered thousands of Trump votes to be left out of the count.

The atmosphere has grown so contentious, Raffensperger said, that he and his wife, Tricia, have received death threats in recent days, including a text to him that read: "You better not botch this recount. Your life depends on it."

"Other than getting you angry, it's also very disillusioning," Raffensperger said of the threats, "particularly when it comes from people on my side of the aisle. Everyone that is working on this needs to elevate their speech. We need to be thoughtful and careful about what we say." He said he reported the threats to state authorities.

The pressure on Raffensperger, who has bucked his party in defending the state's voting process, comes as Georgia is in the midst of a laborious hand recount of about 5 million ballots. President-elect Joe Biden has a 14,000-vote lead in the initial count.

The normally mild-mannered Raffensperger saved his harshest language for Rep. Douglas A. Collins (R-Ga.), who is leading the president's efforts in Georgia and whom Raffensperger called a "liar" and a "charlatan."

Collins has questioned Raffensperger's handling of the vote and accused him of capitulating to Democrats by not backing allegations of voter fraud more strongly.

Raffensperger has said that every accusation of fraud will be thoroughly investigated, but that there is currently no credible evidence that fraud occurred on a broad enough scale to affect the outcome of the election.

The recount, Raffensperger said in the interview Monday, will "affirm" the results of the initial count. He said the hand-counted audit that began last week will also prove the accuracy of the Dominion machines; some counties have already reported that their hand recounts exactly match the machine tallies previously reported. Election officials in one county, Floyd, discovered about 2,600 eligible votes that were not included in the initial tallies because of a failure to upload them off a memory stick. The secretary of state's office said those votes probably would have been discovered, but it called for the resignation of the county election director.

“I’m an engineer. We look at numbers. We look at hard data,” Raffensperger said. “I can’t help it that a failed candidate like Collins is running around lying to everyone. He’s a liar.”

A spokeswoman for Collins replied to a request for comment by [linking](#) to a tweet Collins sent on Monday in which he described Raffensperger’s “incompetence as Secretary of State.”

Collins ran unsuccessfully for Senate this year and is blamed by some Republicans for pushing the incumbent in that race, fellow Republican Sen. Kelly Loeffler, into a runoff against the Rev. Raphael Warnock, a Democrat.

In the interview, Raffensperger also said he spoke on Friday to Graham, the chairman of the Senate Judiciary Committee, who has echoed Trump’s unfounded claims about voting irregularities.

In their conversation, Graham questioned Raffensperger about the state’s signature-matching law and whether political bias could have prompted poll workers to accept ballots with nonmatching signatures, according to Raffensperger. Graham also asked whether Raffensperger had the power to toss all mail ballots in counties found to have higher rates of nonmatching signatures, Raffensperger said.

Raffensperger said he was stunned that Graham appeared to suggest that he find a way to toss legally cast ballots. Absent court intervention, Raffensperger doesn’t have the power to do what Graham suggested because counties administer elections in Georgia.

“It sure looked like he was wanting to go down that road,” Raffensperger said.

In an interview on Capitol Hill on Monday evening, Graham denied that he had suggested that Raffensperger toss legal ballots, calling that characterization “ridiculous.”

But he said he did seek out the secretary of state to understand the state’s signature-matching requirements. Graham said he contacted Raffensperger on his own and was not asked to do so by Trump.

“The main issue for me is: How do you protect the integrity of mail-in voting, and how does signature verification work?” he said.

“If he feels threatened by that conversation, he’s got a problem,” Graham added. “I actually thought it was a good conversation.”

On the same day that Graham spoke to Raffensperger about signature matching, a lawsuit was filed in federal court in Georgia challenging the way county election officials check signatures and allow voters a chance to fix ballots with errors.

The suit, filed by Atlanta lawyer and Trump supporter Lin Wood, seeks to block certification of Georgia’s election until all ballot envelopes are inspected.

Also that day, Trump tweeted about signature-matching in Georgia and criticized Raffensperger for his management of the state elections: “Georgia Secretary of State, a so-called Republican (RINO), won’t let the people checking the ballots see the signatures for fraud. Why? Without this the whole process is very unfair and close to meaningless. Everyone knows that we won the state.”

Raffensperger said he will vigorously fight the lawsuit, which would require the matching of ballot envelopes with ballots — potentially exposing individual voters’ choices.

“It doesn’t matter what political party or which campaign does that,” Raffensperger said. “The secrecy of the vote is sacred.”

The secretary of state also warned that the Republican attacks on Dominion voting machines could create issues for the state’s Republican U.S. senators, Loeffler and David Perdue, who face runoffs on Jan. 5 that will be administered using the same Dominion machines.

Over the weekend, social media posts began appearing from Trump supporters questioning whether they feel comfortable using Dominion machines in the two runoff elections, which will determine which party controls the Senate.

“I don’t think it’s helpful when you create doubt in the election process,” Raffensperger said. “People might throw up their arms and say, ‘Why vote?’ ”

Seung Min Kim and Paul Kane contributed to this report.

Updated November 16, 2020

Election 2020: Biden defeats Trump

The latest: [Live updates](#)

Election results under attack: [Here are the facts](#)

Biden beats Trump: His victory is a repudiation of Trump, powered by legions of women and minority voters.

Kamala Harris makes history as first woman of color elected vice president.

Biden’s agenda: He plans immediate flurry of executive orders to reverse Trump policies.

Victory speeches: [Joe Biden transcript](#) | [Kamala Harris transcript](#)

Exhibit 12

[Election 2020](#) | [Full Election Results](#) | [Download The CBS News App](#) | [Sign Up For Newsletters](#) | [Obama Inter](#)

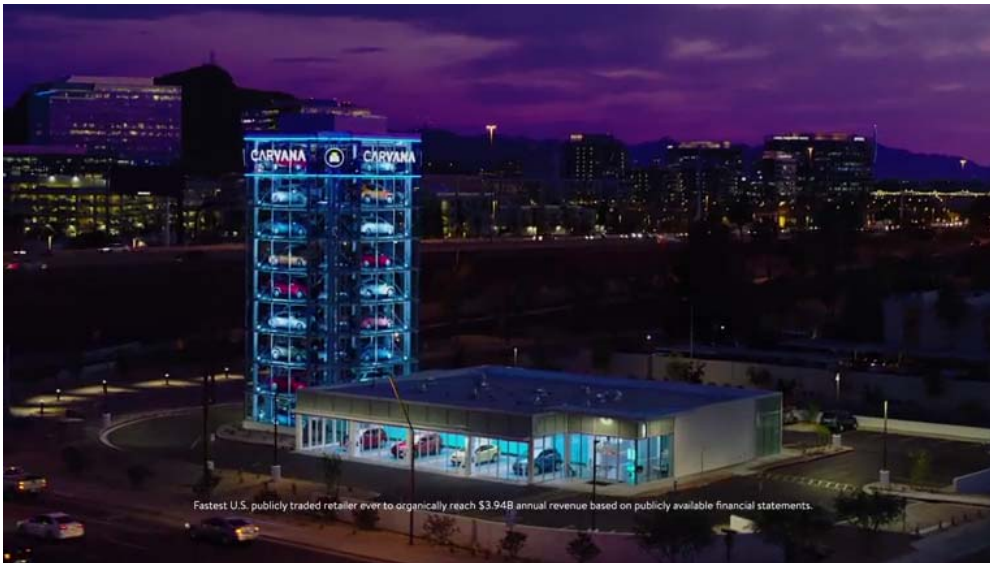


CBS NEWS

LIVE

2020 election "most secure in history," security officials say

BY STEFAN BECKET, MELISSA QUINN, GRACE SEGERS AND CAROLINE LINTON
UPDATED ON: NOVEMBER 13, 2020 / 7:43 AM / CBS NEWS



Federal election infrastructure officials said in a joint statement on Thursday that the 2020 election was the "most secure in American history." Meanwhile, President-elect Biden picked up 11 more Electoral College votes as CBS News projected he had won Arizona, giving him a 73 vote margin over President Trump and putting him well over the 270 electoral vote threshold with a total of 290 projected votes.

President Trump continued to spread baseless claims of widespread voter fraud in key battleground states. Mr. Trump on Thursday had still not conceded, and advisers confirmed to CBS News that he has openly discussed running for president again in 2024. While no decisions have been made, one Trump adviser familiar with conversations with the president told CBS News that his allies were working to keep his options open as they plot his political future.

High-ranking Republican senators said Thursday that Mr. Biden should begin receiving intelligence briefings. GOP Senators Chuck Grassley of Iowa, the most senior GOP senator, and Lindsey Graham of South Carolina, a close ally of Mr. Trump's, separately told reporters on Capitol Hill that they believe Mr. Biden should be receiving the high-level briefings. South Dakota Senator John Thune, the second highest-ranking Republican in the upper chamber, said it "makes sense" for the president-elect to be briefed on the nation's most sensitive intelligence.

"As these election challenges play out in court, I don't have a problem with, and I think it's important from a national security standpoint, continuity," Thune said. "And you've seen other members suggesting that."

Texas Senator John Cornyn told reporters he believes the information "needs to be communicated in some way."

"I just don't know of any justification for withholding the briefing," he said, adding that if Mr. Biden "does win in the end, I think they need to be able to hit the ground running."

Presidential Election

Updated: **2H Ago** Exit Poll +

Biden (D)



Electoral College

306

Votes

51.0% 79,377,147

Trump (R)



Electoral College

232

Votes

47.2% 73,522,264

270 to Win

Get Breaking News Delivered to Your Inbox

enter your email

Sign Up

By signing up, you agree to the CBS [Terms of Use](#) and acknowledge the data practices in our [Privacy Policy](#).

☐ Receive updates, offers & other information from the CBS family of companies & our partners. Opt out through the unsubscribe link in any marketing email.

Exhibit 13

11/18/2020

Georgia starts processing absentee ballots 15 days before Election Day

A large, light gray rectangular area occupies the center of the page. In the top right corner of this area is a small white circle. In the center of the gray area is a large, faint, white "AJC" watermark.

Absentee ballots can begin to be opened, but not counted, in Georgia

<https://www.ajc.com/politics/absentee-ballots-can-begin-to-be-opened-but-not-counted-in-georgia/BRBLHVUJOFHB5OEHAMZV34HPDA/>

1/4

11/18/2020

Georgia starts processing absentee ballots 15 days before Election Day

POLITICS | Oct 19, 2020

By [Mark Niese](#), The Atlanta Journal-Constitution

Election workers were able to begin opening and scanning absentee ballots Monday under a new Georgia rule.

The rule, [passed](#) by the State Election Board in August, allows county election officials to start processing absentee ballots 15 days before Election Day.

But the rule also [forbids](#) tabulation of absentee ballots until polls close on Election Day. Scanned votes will be stored in the memory of optical scanning computers, the same as votes cast in person during [early voting](#).

Processing absentee ballots in advance will help election officials manage unprecedented levels of remote voters during the [coronavirus pandemic](#). Over 1.6 million voters have requested absentee ballots in Georgia, and more than 676,000 of them have been filled out and returned, according to state election records.

Election officials will be able to get a head start on the time-consuming job of processing absentee ballots. They're permitted to verify, open, separate and scan absentee ballots.

Election results in close races might not be known for days because of the time it takes to count every vote. State law gives county election officials until Nov. 13 to certify the election, and then Secretary of State Brad Raffensperger must finalize results by Nov. 20.

Handling absentee ballots ahead of time will reduce the number of ballots left after Election Day.

11/18/2020

Georgia starts processing absentee ballots 15 days before Election Day

Absentee ballot processing must be open to the view of the public, but only designated election employees can touch ballots, according to the [State Election Board rule](#).

Before the rule change, absentee ballots couldn't be processed until Election Day in Georgia.

Explore

Map: Where to find absentee ballot drop boxes in metro Atlanta

County election workers verify voter signatures and registration information when absentee ballots are returned, before they're opened.

If ballots are [rejected](#), election officials are required to quickly notify voters and give them time to correct problems. So far, just 261 returned absentee ballots had been rejected across Georgia through Sunday, according to state election records.

It's not too late for voters to request and return absentee ballots to drop boxes located in about 120 counties across Georgia. Absentee ballots can be requested online at ballotrequest.sos.ga.gov or by filling out a form on the [secretary of state's website](#).

Completed absentee ballots must be [received by](#) county election officials by 7 p.m. Nov. 3 to be counted.

Three weeks of in-person early voting is also underway in every county in Georgia.

In Other News

<https://www.ajc.com/politics/absentee-ballots-can-begin-to-be-opened-but-not-counted-in-georgia/BRBLHVUJOFHB5OEHAMZV34HPDA/>

3/4

11/18/2020

Georgia starts processing absentee ballots 15 days before Election Day



Sign up for our newsletters 

About



Contact Us



Subscriptions



Our Products

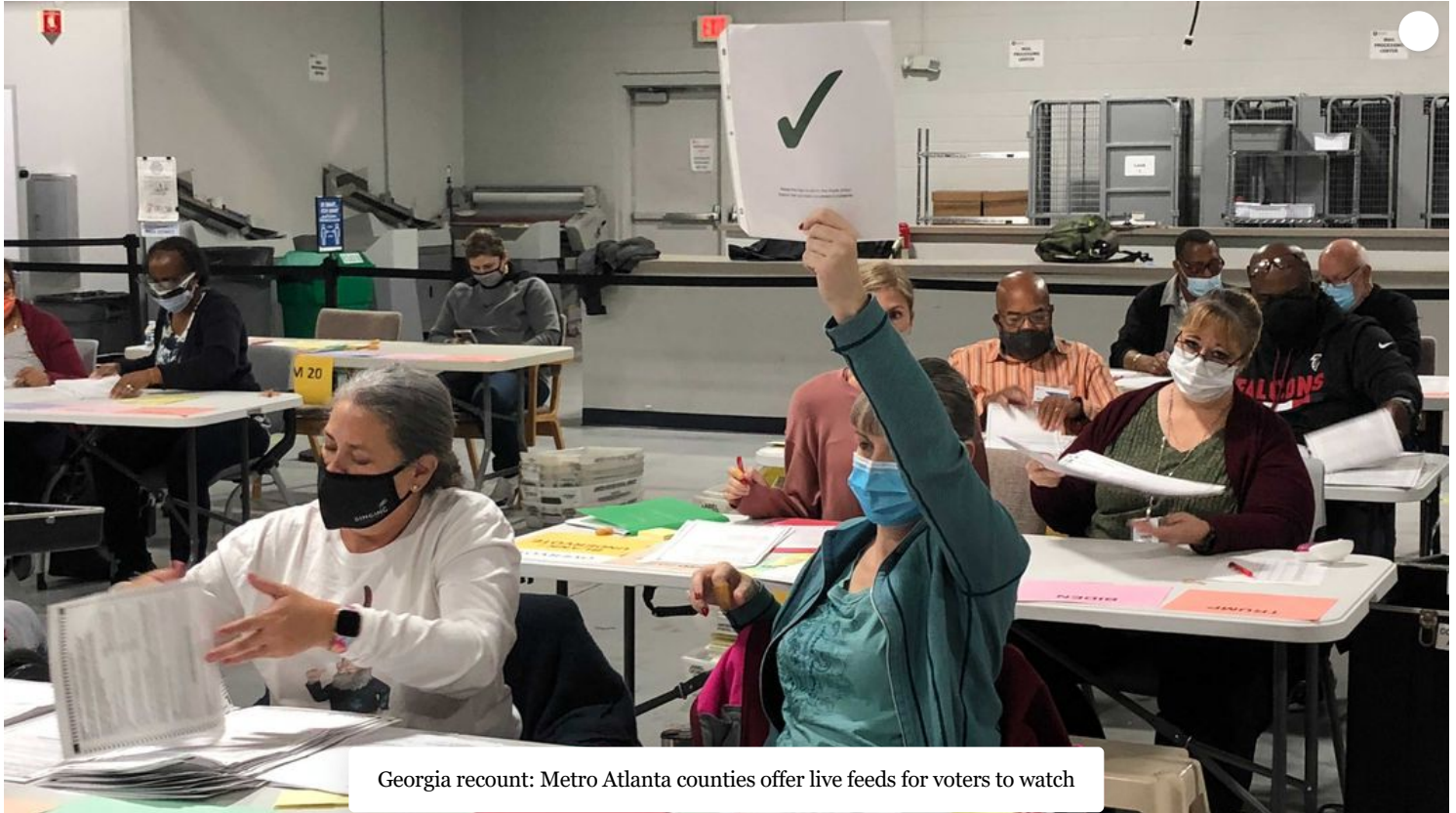


© 2020 The Atlanta Journal-Constitution. All Rights Reserved. By using this website, you accept the terms of our [Visitor Agreement](#) and [Privacy Policy](#), and understand your options regarding [Ad Choices](#). [Learn about Careers at Cox Enterprises](#).

Exhibit 14

AJC

Atlanta. News. Now.

It's worth knowing what's really going on. **Subscribe today for 99¢.**

Georgia recount: Metro Atlanta counties offer live feeds for voters to watch

ELECTION 2020 | Updated Nov 15, 2020

By Brian O'Shea, The Atlanta Journal-Constitution

Advertisement

While every county in Georgia takes part in the massive, manual statewide recount of the presidential election in Georgia, many counties are offering livestreams to allow the public to observe the process.

This article will include links to watch for a number of metro Atlanta counties.

Advertisement

My colleague Mark Niesse wrote about [how the recount will work](#), and that may be helpful in understanding what you are watching. There is no audio, and what you can generally see from the livestream is a fixed camera view. Election workers sit at tables in teams of two. For each ballot, both members of the team check and verify the voter's choice for president. And then the ballot is put into a pile for that candidate. The process repeats.

After the ballots are sorted into stacks, the audit team will count up the votes for each candidate, write them on a form and return the ballots to their containers. Then those totals will be entered into laptops by different election workers at another table.

The recounts began Friday and must be completed by the end of Wednesday. Fulton and DeKalb counties have finished their counts.

The recount is open to the public. Anyone can watch from an observation area. [Read more about the process.](#)



Gabriel Sterling
@GabrielSterling

In the state's and counties' continuing unprecedented level of transparency, here is a link to watch Fulton County's hand tallied audit today. The process continues across the state with about 50 counties already having completed their audit.

FultonGovernmentTV Live Stream
[youtube.com](#)

8:30 AM · Nov 14, 2020 from Sandy Springs, GA

♥ 115

💬 60 people are Tweeting about this

Find the livestream for various metro Atlanta counties:

Advertisement

[Gwinnett County](#) - Additional county recount info

[Athens Clarke County](#)

[Cherokee County](#) - No livestream reported. [County recount info](#)

[Clayton County](#) - No livestream reported. [County recount info](#)

[Cobb County](#) - No livestream reported. [County recount info](#)

[DeKalb County](#) finished its recount - Additional [county recount info](#)

[Douglas County](#) - No livestream reported. [County recount info](#)

[Fayette County](#) - No livestream reported. [County recount info](#)

[Forsyth County](#) - No livestream reported. [County recount info](#)

[Fulton County](#) finished its recount - Additional [county recount info](#)

[Henry County](#) - No livestream reported. [County recount info](#)

[Rockdale County](#) - No livestream reported. [County recount info](#)

Note: If you know of a metro county livestream not linked [here](#), please email [Brian O'Shea](#) with the link.

Explore

Follow complete updates on the Georgia election recount from the AJC Politics team

In Other News



ELECTION 2020
Georgia has two runoff election dates after the general election



ELECTION 2020
Recount, Day 4: Counties continue work, Chambliss disputes Trump claims



ELECTION 2020
Georgia election recount nears finish line with few hiccups



ELECTION 2020



Maps: Compare how Georgia counties voted for president in 2008-2020

CONTENT BY

Trivia.com | Sponsored

"She Was The Love Of My Life" At Almost 66 Kevin Costner Confirm Rumors of Decades

Capital One Shopping | Sponsored

The Apple Buying Hack You Need to Know in 2020

Elite Herald | Sponsored

Kate Middleton Has News On William's Family Plans That May Upset Royal Fans

Capital One Shopping | Sponsored

The Nintendo shopping trick you need to know before Cyber Monday

Paws Zilla | Sponsored

Decades After She Disappeared, Natalee Holloway's Mother Reveals What We All Suspected

UrbanAunty | Sponsored

20 Funny Photos Of Dogs With A Sense Of Humor

Noteabley | Sponsored

Airport Security Couldn't Believe These Jaw-Dropping Moments

bonvoyaged.com | Sponsored

Shaq Flexes On His New Baller Yacht in Illinois

thedelite.com | Sponsored

Netflix Cancellations And Renewals: Effective Immediately

Forbes.com | Sponsored

Donald Trump's Biggest Supporters Ranked In Order

Opulent Express | Sponsored

Prince Charles' Reported Regret About Baby Archie Is Devastating

Medicare Observer | Sponsored

Chrissy Metz, 40, Shows Off Massive Weight Loss In Fierce New Photo

Affluent Times | Sponsored

Jada Pinkett Smith Revealed How She Really Felt After Her Son's Sudden Decision

Drivepedia | Sponsored

Fabio Lanzoni Is 61 & Looks Very Different Today

Medicare Observer 2 | Sponsored

Remember Janet Jackson's Son? Better Sit Down Before You See What He Looks Like Now.

Zen Herald | Sponsored

After Céline Dion's Major Weight Loss, She Confirms What We Suspected All Along

HealthCentral | Sponsored

Living With Hep C? Check Out These Liver-Friendly Mocktails

BrainSharper | Sponsored

This Is Our List For The Top Movies Ever - Yes, Ever

HealthCentral.com | Sponsored

Lung Cancer Risk Factors: Not Just Smoking

MoneyWise.com | Sponsored

This Is Who Really Makes Costco's Kirkland Items

StyleBistro | Sponsored

Photos of Helen Mirren In Her Heyday

the delite | Sponsored

The Best Shows On Netflix: There's A New Top 5

Horizontimes | Sponsored

Teenagers Notice Girl With 'Dad' Acting Strange, They Follow Her Because They Knew Something Is Wrong

Forbes.com | Sponsored

Joe Biden's Biggest Supporters Ranked In Order

Dental Implants | Search Ads | Sponsored

Here is What Full Mouth Dental Implants Should Cost You in 2020

Gadgettheory | Sponsored

Take A Closer Look, The Photographer Was Not Expecting This Photo

Money Versed | Sponsored

'Worthless' Antique Makes Appraiser Break Down

Unleashed Finance | Sponsored

Kevin Costner Has Come Clean About Whitney Houston — We Are In Shock

Loans Observer 2 | Sponsored

At Age 38, Danica Patrick Actually Lives In Such A House

Money Pail | Sponsored

Fox News Prettiest Anchors Of All Times, Ranked

Big Edition | Sponsored

Best Dressed Couples at the 2020 Grammys

Thrillist | Sponsored

Agree? The Best and Worst Fast Food Cheeseburgers

Spicy Trends | Sponsored

ABC News Anchor David Muir Lives in This \$7M House on Skaneateles Lake

MoneyWise.com | Sponsored

Avoid These 25 US States When You Retire

maternityweek.com | Sponsored


Donny & Marie Osmond Hid This Big Secret For Years

Equity Mirror | Sponsored

If You See This In A Thrift Store, You Should Definitely Buy It

AJC

Atlanta. News. Now.
The Atlanta Journal-Constitution

Sign up for our newsletters 




- About 
- Contact Us 
- Subscriptions 
- Our Products 



Exhibit 15



OFFICIAL ELECTION BULLETIN

November 13, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, Elections Division Director

**RE: Allowing More Credentialed Monitors at Risk Limiting Audit
Allowing Libertarian Party Monitors**

There has been some concern about the appropriate number of political party monitors eligible to view the audit process. The rules that the Secretary of State's office put out require that Superintendents allow a minimum of two political party monitors from each party, with additional monitors if there are more than twenty audit teams. For example, if Dekalb has 75 audit teams, they would have to allow a minimum of 8 designated monitors for each party. Additionally, as the Libertarian Party (technically a political body) has a candidate on the ballot for President, the same standards should be applied to the designated monitors from the Libertarian Party.

As an addendum to the rules on political parties monitors and because transparency should be a guiding principle throughout this process, if Election Superintendents can safely allow more than the minimum number of designated political party monitors consistent with maintaining an orderly process, space limitations, social distancing/public health guidelines then you should. Please allow as much transparency as you can while maintaining a secure, orderly process and abiding your public health regulations.

November 18, 2020

***Woods v. Raffensperger, et al.*, Case No. 1:20-cv-04651-SDG**

United States District Court for Northern District of Georgia

Preliminary Expert Report of Jonathan Rodden, PhD

**737 Mayfield Avenue
Stanford, CA 94305**

A handwritten signature in black ink, appearing to read 'J. Rodden', is positioned above a horizontal line.

Jonathan Rodden, PhD

I. INTRODUCTION AND SUMMARY

Today I received a declaration from Christos Makridis, which makes a variety of claims about fraud and irregularities associated with the 2020 general election in Georgia. I have been asked by Counsel to provide a preliminary assessment of those claims. In this report, I respond to each of Dr. Makridis' claims. Some are mere assertions without citations or they are based on data or vague stories that appear to have been culled from the internet. Others are illogical or fallacious or both. Some appear to be based on basic misunderstandings of the academic literature. None are supported in any way by data analysis. While some of his claims are too vague or illogical to subject to data analysis, others can be easily cast aside with rudimentary analysis, which I perform in the report that follows. Overall, it is my opinion that Dr. Makridis' report is unreliable, out of line with the standard practices in the fields of political science, statistics, and the study of election administration, and as a result cannot be used to form any opinions about the integrity of the 2020 elections in Georgia.

II. QUALIFICATIONS

I am currently a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab ("the Lab")—a center for research and teaching with a focus on the analysis of geo-spatial data in the social sciences. In my affiliation with the Lab, I am engaged in a variety

of research projects involving large, fine-grained geo-spatial data sets including ballots and election results at the level of polling places, individual records of registered voters, census data, and survey responses. I am also a senior fellow at the Stanford Institute for Economic Policy Research and the Hoover Institution. Prior to my employment at Stanford, I was the Ford Professor of Political Science at the Massachusetts Institute of Technology. I received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science. A copy of my current C.V. is included as an Appendix to this report.

In my current academic work, I conduct research on the relationship between the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. I have published papers using statistical methods to assess political geography, balloting, and representation in a variety of academic journals including *Statistics and Public Policy*, *Proceedings of the National Academy of Science*, *American Economic Review Papers and Proceedings*, the *Journal of Economic Perspectives*, the *Virginia Law Review*, the *American Journal of Political Science*, the *British Journal of Political Science*, the *Annual Review of Political Science*, and the *Journal of Politics*. One of these papers was recently selected by the American Political Science Association as the winner of the Michael Wallerstein Award for the best paper on political economy published

in the last year, and another received an award from the American Political Science Association section on social networks.

I have recently written a series of papers, along with my co-authors, using automated redistricting algorithms to assess partisan gerrymandering. This work has been published in the *Quarterly Journal of Political Science*, *Election Law Journal*, and *Political Analysis*, and it has been featured in more popular publications like the *Wall Street Journal*, the *New York Times*, and *Boston Review*. I have recently completed a book, published by *Basic Books* in June of 2019, on the relationship between political districts, the residential geography of social groups, and their political representation in the United States and other countries that use winner-take-all electoral districts. The book was reviewed in *The New York Times*, *The New York Review of Books*, *Wall Street Journal*, *The Economist*, and *The Atlantic*, among others.

I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent paper published in the *Annals of Internal Medicine* and *The New England Journal of Medicine*. I have developed a national data set of geo-coded precinct-level election results that has

been used extensively in policy-oriented research related to redistricting and representation.¹

I have been accepted and testified as an expert witness in six recent election law cases: *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, No. 4:2014-CV-02077 (E.D. Mo. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-CV-00357 (E.D. Va. 2015); *Democratic Nat’l Committee et al. v. Hobbs et al.*, No. 16-1065-PHX-DLR (D. Ariz. 2016); *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014); and *Jacobson et al. v. Lee*, No. 4:18-cv-00262 (N.D. Fla. 2018). I also worked with a coalition of academics to file Amicus Briefs in the Supreme Court in *Gill v. Whitford*, No. 16-1161, and *Rucho v. Common Cause*, No. 18-422. Much of the testimony in these cases had to do with geography, voting, ballots, and election administration. I am being compensated at the rate of \$500/hour for my work in this case. My compensation is not dependent upon my conclusions in any way.

III. DATA SOURCES

I have collected county-level data on presidential elections for each year from 1988 to 2020 from the Georgia Secretary of State from the following web page: https://sos.ga.gov/index.php/Elections/current_and_past_elections_results

¹ The dataset can be downloaded at <http://projects.iq.harvard.edu/eda/home>.

I have also collected 2016 precinct-level data on Georgia from the Metric Geometry and Gerrymandering Group at Tufts University. Finally, I have also consulted my own precinct-level dataset from the 2008 election.

IV. ANALYSIS

First, in bullet point number 4 of his report, Dr. Makridis points out that Georgia uses a relatively new voting system manufactured by Dominion Voting Systems. He remarks that this system has “a history of technical glitches.” He makes no specific allegations about such glitches in Georgia in November of 2020, other than to point out that “roughly 80,000” ballots were “affected” in Gwinnett County. He makes no specific claims about where these numbers come from or what these effects might be, and cites no sources. It seems likely that he is drawing on media reports that election-night counting was delayed in Gwinnett County due to software complications.² He also suggests, without evidence or citations, that “it is possible” that there were other “glitches” that went undetected.

Next, in bullet point number 5, he introduces a vague discussion of “glitches” in Morgan and Spalding counties. He makes no specific claim about Morgan County at all, but includes a quote from an election administrator in Spalding County about a “glitch,” while providing no citation or context. Here, he appears to be referring to

² https://www.gwinnettdailypost.com/local/a-software-glitch-caused-delays-in-getting-thousands-of-gwinnett-ballots-counted/article_f0e26324-2123-11eb-a16d-837ea9d8cc56.html

an issue not with voting machines, but with e-pollbooks used to check voters in.³ In any case, Marcia Ridley, who Dr. Makridis quoted making a vague description that the voting technology company “uploaded something last night,” later clarified to the local media that she misunderstood, and this did not in fact happen.⁴ Dr. Makridis did not provide an update on this in his report.

Next, in bullet point number 6, Dr. Makridis points out that a large number of Georgia voters requested absentee ballots compared with 2016. The increase in absentee ballot requests had to do, of course, with concerns about in-person voting during a pandemic. Dr. Makridis does not make any specific claims about problems with absentee ballots. Rather, he quickly moves on to discuss provisional ballots, and seems to intimate that the number of provisional ballots was somehow large or suspicious in 2020. Without citation, he claims that 14,200 provisional ballots remained to be counted on November 6 at 6 PM. It is hard to know where this number came from, or why it is relevant. According to the Secretary of State’s data, there were a total of 11,161 total provisional ballots counted for president in 2020. Given that 2020 was an extremely high-turnout election and attracted a large number of first-time voters, this number of provisional ballots does not seem surprising. It is

³ <https://www.wsbtv.com/news/local/spalding-county-experiencing-county-wide-glitch-bringing-down-voting-machines/EPCV6RSBRFBLTJUVQXJZAIFO2U/>

⁴ <https://the-grip.net/2020/11/12/voting-machine-glitch-not-caused-by-software-update-investigation-ongoing/>

quite common for provisional ballots to be counted last in the days after the election, and there is nothing about the reported number that would indicate that any discrepancy or other issue occurred.

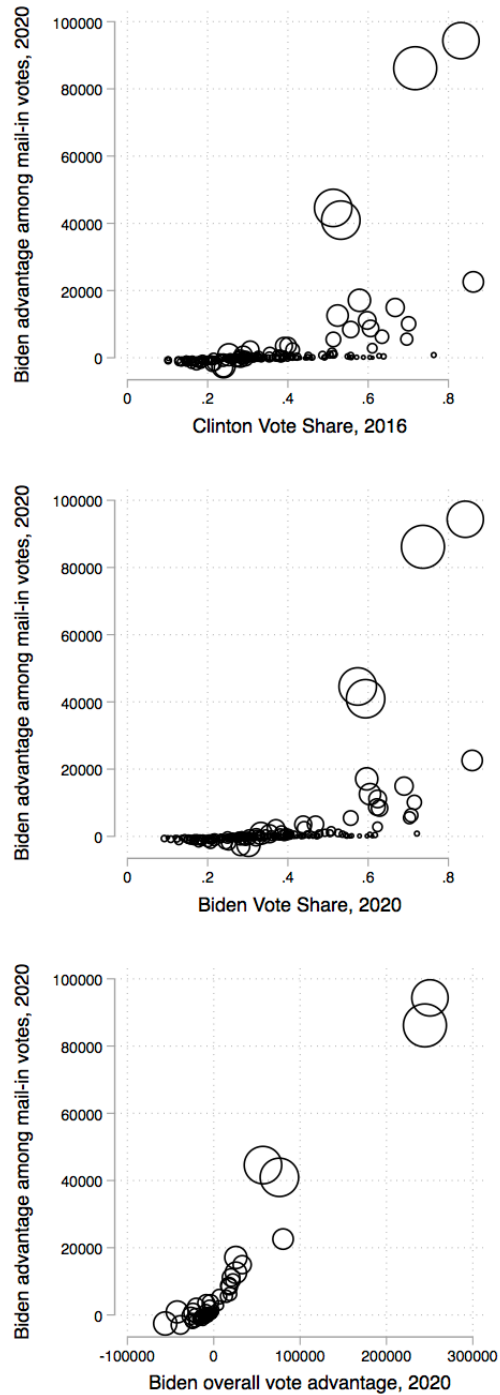
Dr. Makridis includes a discussion of provisional ballots in Mercer County. It is difficult to know what Dr. Makridis might be referring to, since there is no county called Mercer in Georgia. He appears to be citing some statistics from a county in Pennsylvania, and the relevance to this case is unclear.

Next, Dr. Makridis makes the following claim: “It is also curious that the correlation between the number of mail-in votes for Biden net of Trump and the 2016 share of votes for Clinton is stronger than the total votes for Biden net of Trump.” This sentence is very difficult to follow, and I have no idea why any such thing would be curious, but let us examine the data. Dr. Markridis seems to suggest that he has calculated the county-level advantage for Biden among mail-in votes, and examined the correlation between that quantity and Hillary Clinton’s share of the vote in 2016. In the first panel of Figure 1, I present a scatter plot of that relationship. On the horizontal axis is Hillary Clinton’s share of the two-party vote in 2016 in each Georgia county. On the vertical axis is Biden’s advantage over Trump in mail-in ballots in 2020. The size of the data marker corresponds to the total number of ballots (of any kind) cast in the county in 2020, in order to give us a sense of the size of the county. The graph shows a strong positive relationship, indicating

that Biden outperformed Trump among mail-in voters in 2020 in the same counties where Clinton outperformed Trump in 2016. This is not the least bit surprising. The next graph is identical, except that the horizontal axis corresponds to Biden's vote share in 2020. Not surprisingly, Biden performs better among mail-in voters in counties where he performs better overall. The third graph appears to be the one that Dr. Makridis has in mind when he writes "the total votes for Biden net of Trump." The horizontal axis now corresponds to Biden's advantage over Trump in raw overall votes. Again, of course, Biden has a larger mail-in advantage in the counties where he has a larger overall advantage.

None of this is surprising and none of it indicates any type of abnormality, as Dr. Makridis appears to insinuate. Dr. Makridis seems to be arguing that the correlation depicted in the first panel of Figure 1 is greater than that in the third panel, and that this is somehow "curious." I have no idea why it would be curious, but in any case, it is not even true. The simple correlation between Biden's mail-in advantage and Hillary Clinton's vote share, illustrated in the top panel in Figure 1, is .48. The correlation between Biden's mail-in advantage and his overall advantage (illustrated in the bottom graph) is .95.

Figure 1: Scatterplots of Mail-in Democratic Advantage and Overall Democratic Voting



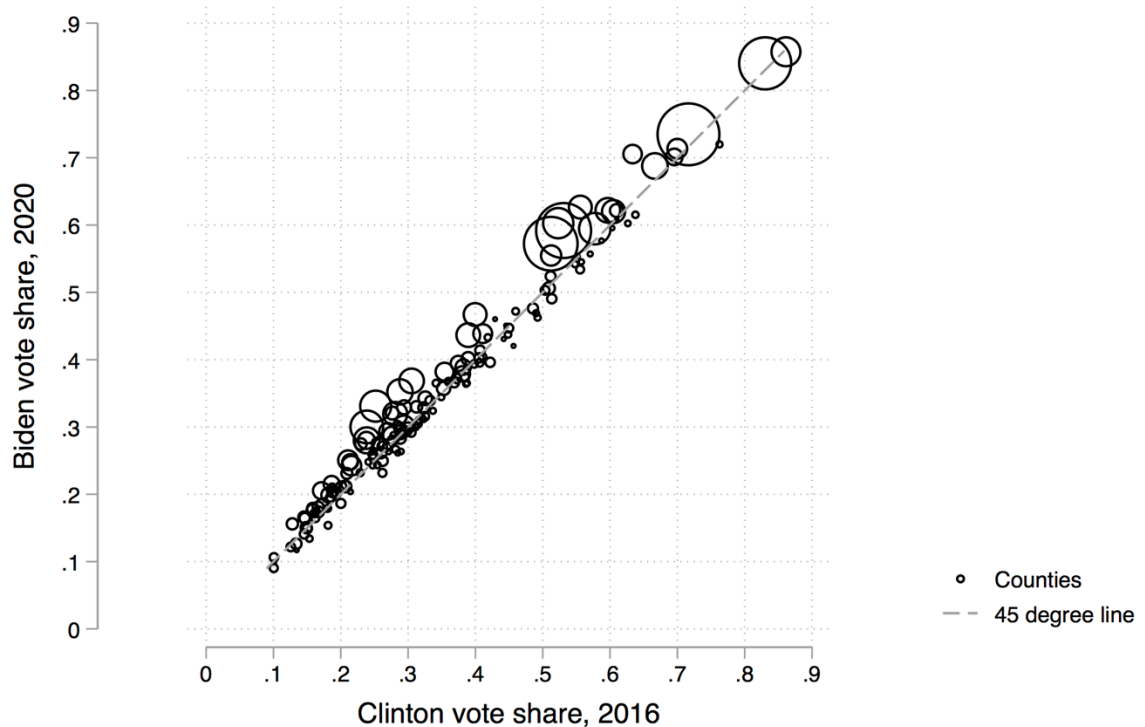
Note: Size of data marker corresponds to total number of votes cast in 2020

Perhaps Dr. Makridis means to suggest that Biden's mail-in advantage was more highly correlated with Clinton's 2016 vote share than was his overall advantage. Again, it is unclear why this would be suspicious, and again, it is untrue. While the simple correlation between Clinton's 2016 vote share and Biden's mail-in advantage was .48, the correlation with his overall advantage is .53. Quite simply, there is nothing surprising or unusual about these correlations, and I have no reason to anticipate that one of these correlations should be higher than the other, and Dr. Makridis provides no explanation whatsoever about how these correlations might relate to allegations of fraud or irregularities.

Perhaps Dr. Makridis means to imply that larger, denser, and more Democratic counties in the top right corners of the graphs in Figure 1 had fewer Republican poll-watchers, and as a result, somehow exhibited unusually high Democratic vote shares, but he provides no evidence that would be consistent with such a claim. It is useful to simply plot Biden's 2020 county-level vote share against Clinton's in 2016. This plot is provided in Figure 2, which again displays data markers for counties according to their size. It also includes a 45-degree line, so that any county that is above the line is one where Biden out-performed Clinton, and any county below the line is one where Biden under-performed Clinton. Figure 2 clarifies that it is simply not true that Biden's gains were concentrated in extremely Democratic counties. We can see that Biden did *not* outperform Clinton in the most

Democratic counties. His largest gains were in the pivotal suburban counties in the middle of the graph, and he also made substantial gains in counties (many of them also suburban) on the left-hand side of the graph where voters have typically supported Republicans. In general, Figure 2 reveals that Biden's gains were spread broadly throughout the state.

Figure 2: Scatterplot of 2020 Versus 2016 Democratic Vote Share



Note: Size of data marker corresponds to total number of votes cast in 2020

In fact, if we regress the *change* in Democratic vote share (from 2016 to 2020) on the 2016 Clinton vote share, the coefficient is not statistically significant from zero. If we weight the counties by population and perform that same regression, the coefficient is *negative* and borderline statistically significant. This means we can

reject the claim that Biden's support increased the most in more Democratic counties. If anything, it actually increased more in more *Republican* counties. This is completely inconsistent with the story about nefarious Democratic election administrators that Dr. Makridis appears to be pushing in his report.

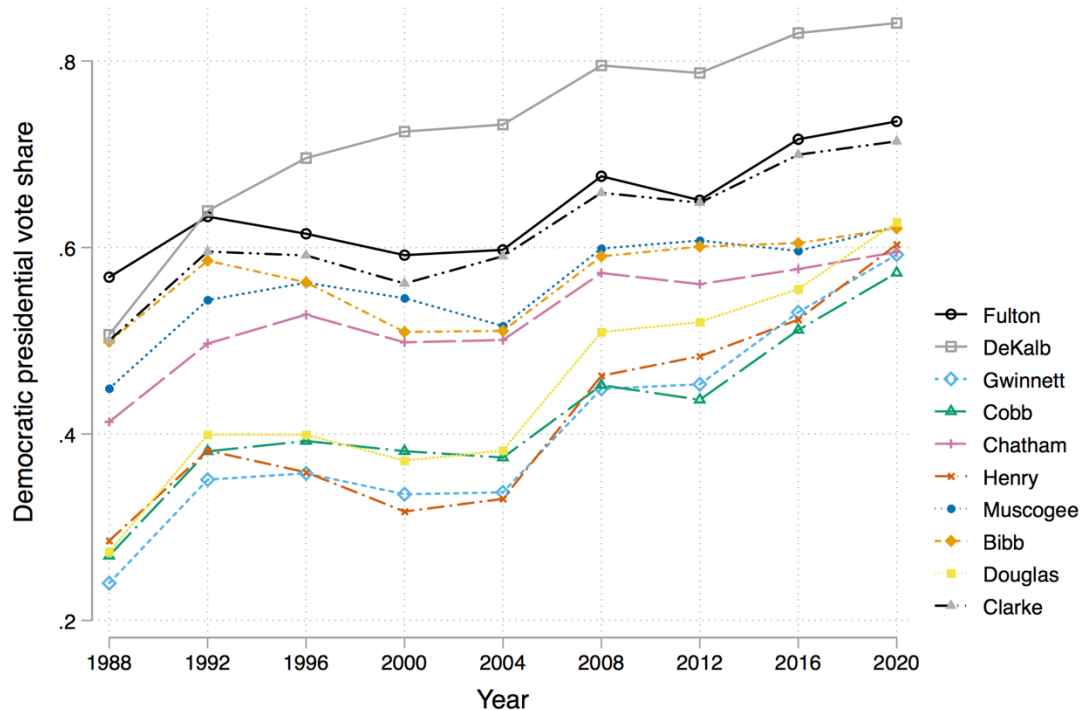
Next, in bullet point 7, Dr. Makridis claims that "the counties with the greatest reported software glitches and delays are also the counties with the biggest swings in votes for Biden." He provides no evidence about how he measures "reported software glitches and delays." He provides no citations to media reports or investigations about glitches or delays. In fact, he only makes oblique mentions of media reports about "glitches or delays" in two counties—Morgan, where Biden received only 29 percent of the vote, and Spalding, where he received 39 percent.

Quickly abandoning his claims about glitches, Dr. Makridis proceeds to provide a table displaying increases in Democratic votes for the most Democratic counties in Georgia from 2008 to 2012, from 2012 to 2016, and 2016 to 2020. Dr. Makridis points out that there were larger increases in Democratic votes in 2020 than in previous elections. What he neglects to mention is that there were also large increases in *Republican* votes in most of those same counties, simply because turnout was extremely and unusually high in 2020. He also neglects to point out that, as indicated in Figure 2 above, Democratic votes increased substantially in many of the most *Republican* counties in the state. Since Dr. Makridis asserts that the mere

observation of a large increase in Democratic voting is sufficient evidence of fraud, it is not clear if Dr. Makridis believes that election administrators in these suburban Republican counties were also involved in the same corrupt practices that he attributes to administrators in more Democratic and urban counties.

Simply because raw votes for the Democratic candidate were higher in Democratic counties than in previous elections, Dr. Makridis makes the stunningly absurd claim that this provides evidence of “a high likelihood of fraudulent alterations within the software or the system” (page 3). Let us conduct the analysis intended by Dr. Makridis in a way that is not patently absurd, and examine the evolution of Democratic vote shares in these counties over time. This is taken up in Figure 3, which displays the evolution of Democratic vote shares over time in the counties highlighted by Dr. Makridis. In these mostly urban and suburban counties, the Democratic vote share has been increasing steadily over time. Perhaps the largest inflection point was in 2008. It is clear that in each of these counties, 2020 was an unremarkable continuation of the trend from previous elections—precisely the opposite of the claim made by Dr. Makridis. The suburban counties where the Democratic vote share was trending upwards, like Cobb and Gwinnett, continued those trends in 2020. As discussed above, in many of the most Democratic counties, the Democratic vote share actually flattened out, falling below what would have been predicted from previous trends, in 2020.

Figure 3: Democratic Presidential Vote, 1988 to 2020, Selected Georgia Counties



Surprisingly, Dr. Makridis singles out Fulton county (page 4) as a “hotspot for fraud” that he surmises was large enough to sway the overall election outcome. This is a bizarre argument, since Biden’s performance was relatively flat in Fulton County relative to his large gains in relatively Republican counties and indeed, relative to his gains in the state as a whole (again, see Figure 2 above).

Next, Dr. Makridis suggests that rural counties “that are on the Northeastern border of Alabama have a much lower increase in Democratic votes for Biden,” and should be viewed as some kind of control group. Dr. Makridis believes that the swing in vote share should be uniform across urban, suburban, and rural counties, and it is “suspect” that higher-density suburban areas with more diverse and educated voters

trended more toward the Democratic candidate in Georgia than rural counties. Evidently Dr. Makridis is unaware that this same persistent pattern—a correlation between population density and Democratic gains—has been identified in almost every U.S. state for decades,⁵ and this pattern has continued in 2020, in Georgia and around the United States.

Figure 4: Democratic Presidential Vote and Population Density, Georgia Counties, 1988 to 2020

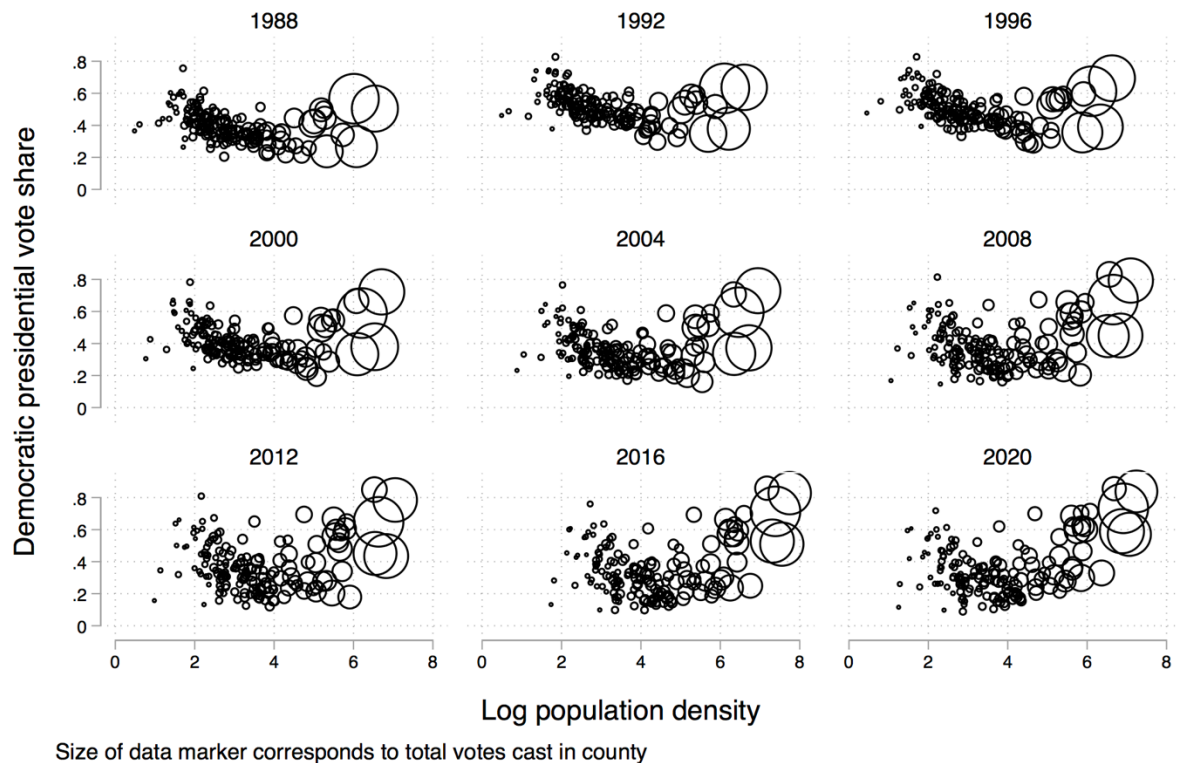
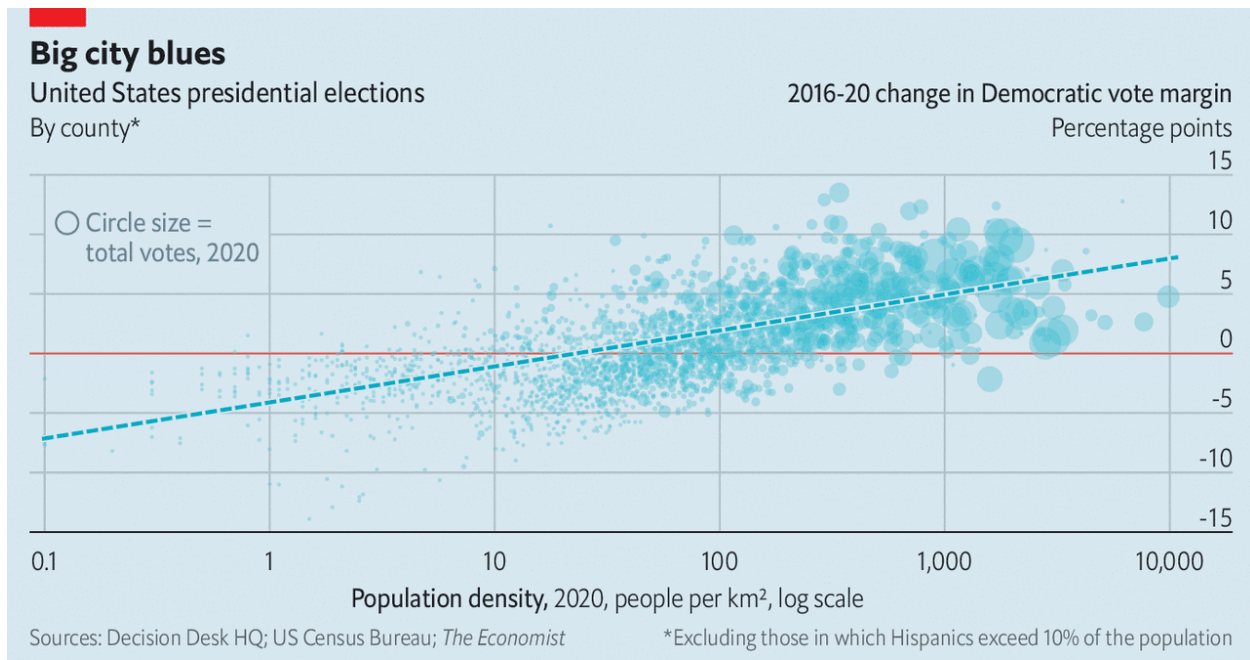


Figure 4 plots the relationship between population density (log scale) and Democratic presidential vote share across Georgia counties from 1988 to 2020. On

⁵ Jonathan Rodden, *Why Cities Lose: The Deep Roots of the Urban-Rural Divide*. Basic Books (2019).

the left side of each graph are low-density majority-African-American counties that vote overwhelmingly for Democrats. But many lower-density counties with larger white populations have become increasingly Republican over time. And higher-density counties on the right side of the graphs have become increasingly Democratic over time. Some of the largest increases in Democratic vote share in 2020 were in higher-density counties in suburban Atlanta. There is nothing in Figure 4 that is remotely indicative of fraud. Rather, 2020 was merely the continuation of a long-term trend—something that any credible social scientist could easily determine with very simple analysis of readily available data.

Figure 5: Population Density and *Change* in Democratic Vote Margin from 2016 to 2020



The Economist

Figure 5 is taken from a recent article in *The Economist*.⁶ It shows that Georgia was not alone. The Democratic vote share increased in relatively dense, mostly suburban counties around the United States in 2020. Dr. Makridis wishes to argue that increased Democratic vote share in suburban Atlanta relative to rural North Georgia is indicative of vote fraud, even in majority-Republican counties. However, this pattern can be found in virtually every state, including those that Donald Trump won handily. Dr. Makridis has provided no explanation about what this nationwide demographic pattern might possibly have to do with election fraud.

Next, Dr. Makridis argues that it is “highly suspect” that he was able to find a precinct in Fulton County, and one in DeKalb county, where Biden received 97 percent of the vote. In fact, Democratic vote shares nearing 100 percent are extremely common in American cities. They are reflections of American geographic polarization, not election fraud. I have consulted precinct-level results of the 2016 presidential election—one that Dr. Makridis appears to claim was not fraudulent—and note that there were 130 precincts where Hillary Clinton received over 97 percent of the vote. I have assembled a first-of-its kind nationwide precinct-level data set for the 2008 election. In that data set, which contains results for over 185,000 precincts, there are well over 6,000 precincts where the Democratic candidate,

⁶ <https://www.economist.com/united-states/2020/11/14/our-analysis-of-the-election-results-suggests-that-2020-accelerated-a-long-running-trend>

Barack Obama, received over 97 percent of the vote. These urban precincts can be found in the majority of U.S. states. Their existence tells us nothing about election fraud.

Next, in bullet point number 8, Dr. Makridis discusses “Benford’s Law,” which is a set of observations about the frequency distribution of leading digits in a variety of real-world data sets. Analysts have noticed that in many different types of data sets, it is possible to characterize how frequently the leading digit is likely to be 1, 2, and so on. Financial analysts and accountants have attempted to use these expected distributions to search for fraud. The intuition is that someone who is inventing numbers is likely to be lazy or follow some rule of thumb that creates a set of numbers with a different distribution of first (or second) digits than one typically sees in canonical data sets.

Some scholars have attempted to bring this type of analysis to the study of elections—an area of considerable controversy. For instance, studies using the so-called First Digit Newcomb-Benford Law have come under heavy criticism for electoral applications. Among other reasons, it is widely understood that the first digits of precinct-level vote counts are not useful for trying to identify electoral fraud, in part because they are driven by the number of registered voters in the precinct. It is not reasonable, then, to expect the first digit of precinct-level vote totals to resemble the distributions found in a large set of canonical data sets, for

instance financial records, city sizes, molecular weights, or surface areas of rivers.⁷ It is important to craft one's analysis of digits to the actual data set at hand. The type of analysis undertaken by scholars in this literature cannot be written up in a breezy paragraph that lacks crucial details, such as Dr. Makridis' brief exposition on page 4 of his report. Dr. Makridis merely claims that he is using a precinct-level data set for Georgia with 2,656 observations, and tells the reader that 1,017 precincts are "suspicious" when we look at "advance" ballots (presumably he is referring to early voting totals rather than mail-in ballots), and 1,530 precincts are "suspicious" when he looks at election-day votes. He does not fill the reader on what he means by "suspicious." He does not explain whether he is using First Digit Newcomb-Benford Law, Second Digit Newcomb-Benford Law, or something else. It simply does not make sense in this literature to inform the reader that over half of the precincts reported "suspicious" numbers. It would be necessary to report distributions of digits and explore some of the common statistics used in the literature. To my knowledge, there is not any concept in this literature that remotely corresponds to a claim that 58 percent of the precincts in a large state have "suspicious" digits. In any case, Dr.

⁷ See Luis Perrichi and David Torres. 2011. "Quick Anomaly Detection by the Newcomb-Benford Law, with Applications to Electoral Processes Data from the USA, Puerto Rico and Venezuela." *Statistical Science* 26(4):502–516. Water Mebane, Jr., 2014. Can Votes Counts' Digits and Benford's Law Diagnose Elections? In *The Theory and Applications of Benford's Law*, ed. Steven J. Miller. Princeton: Princeton University Press pp. 206–216.

Makridis does not provide any analysis, output, computer code, or data, so there is nothing here to evaluate, other than a rather nonsensical claim. His approach is also inconsistent with other claims in his report, where he surmises that fraud took place only in certain majority-Democratic counties. It makes little sense, then, to anticipate some discernable deviation from a typical digit distribution in the state as a whole. It is not clear why his analysis does not focus on the list of counties, for instance, that he accuses of fraud on page three of his report.

Next, Dr. Makridis claims that it is useful to “detect statistical anomalies” by looking at the distributions of changes in total votes cast from 2016 to 2020 for the two main presidential candidates. He does not explain why he believes we should expect a normal distribution, a skewed distribution, or any other type of distribution on these variables, or why we might view one type of distribution as “suspicious.” He provides a histogram of changes in raw Trump votes as well as changes in raw Biden votes. He does not inform the reader about the units of analysis in these figures. Given the numbers on the horizontal axis, it seems likely that these are supposed to be precinct-level results. However, given that changes to precinct boundaries take place quite frequently, it is extremely unlikely that Dr. Makridis has already done the complex geo-spatial analysis needed to weave together a 2016 and 2020 precinct-level data set. If precinct boundaries have changed, it makes little sense to subtract 2016 votes from 2020 votes. The numbers in the tails of the

distributions would be essentially meaningless. If indeed these are meant to be precincts, it is not clear how Dr. Makridis might have dealt with late-emerging precinct consolidations due to COVID.

In any case, in the figure on page 5 of his report, Dr. Makridis presents two histograms, both of which are clearly right-skewed. That is to say, both have a large density of precincts with a moderate number of increased votes in the middle of the figure, and a long right tail—a small set of precincts where the candidate received a relatively large number of additional votes in 2020 relative to 2016. For some reason, Dr. Makridis describes the Trump histogram as “perfectly normal,” even though the reader can clearly see that it has a pronounced right skew.

Perhaps Dr. Makridis is trying to claim that the right skew is more pronounced in the Biden histogram than in the Trump histogram. However, he fails to explain why he believes this would be meaningful. One possibility is that precinct consolidations took place disproportionately in urban, Democratic areas, which would lead to much larger Biden votes in 2020 than in 2016 in the precincts that Dr. Makridis was able to match based on name and county (if this is indeed what he has done). It is also the case that Georgia has not increased the number of precincts in the large suburban counties in metro Atlanta, even as population growth has exploded in these counties. As a result, these precincts are far larger than precincts in the rest of the state. Since these are the precincts where Biden’s vote share

increased the most, it is not surprising that we would see a long right tail in the distribution of Biden's raw precinct-level vote totals. In all likelihood, his vote shares are increasing the most in the largest precincts, which would create a long right tail in the distribution of Biden vote change. It is very difficult to discern a logic whereby these histograms would tell us anything about election fraud.

Finally, Dr. Makridis expresses concern that there were "surges of votes for Biden" at "odd hours of the morning on November 4th." The incumbent Republican presidential candidate made very strong negative statements about voting by mail, and encouraged his supporters to vote on Election Day. Moreover, provisional ballots very frequently favor Democrats. Thus, every knowledgeable election watcher understood that in states where absentee and provisional ballots were likely to be counted after election-day votes, observers would observe what analysts refer to as a "blue shift" as votes were counted late at night and in the days to follow. This was not the least bit surprising. Dr. Makridis argues that Florida "did not have similar concerns about fraud," and thus did not display evidence of a "blue shift" on election night. However, the obvious explanation is that Florida is accustomed to handling a heavy volume of mail ballots, and has laws that encourage early counting of absentee ballots, for instance by letting counties process absentee ballots weeks in advance. The early results announced in Florida included pre-tabulated mail ballots, which led to early results that were skewed toward Democrats. If Dr. Makridis wishes to

argue that shifts toward one party or another in vote counts over time are indicative of fraud, he would be required to argue that Florida's election was fraudulent as well. In reality, there are obvious explanations why different states, and different counties, would count more Democratic or Republican ballots earlier or later in the counting process. By no means does this constitute evidence related to fraud.

In conclusion, Dr. Makridis has provided a set of loose conjectures and innuendo that are difficult to understand or evaluate. His report contains some snippets of data that have nothing whatsoever to do with fraud or irregularities. He examines patterns of votes in Georgia that are mere descriptions of what any qualified political scientist knows about trends in the geography of American elections, but without explanation, he insinuates that these trends are somehow indicative of fraud. Dr. Makridis' report contains nothing resembling evidence of fraud, and there is nothing in the report that could help the Court draw conclusions about the integrity of the 2020 election.

Jonathan Rodden

Stanford University
Department of Political Science
Encina Hall Central
616 Serra Street
Stanford, CA 94305

Phone: (650) 723-5219
Fax: (650) 723-1808
Email: jrodden@stanford.edu

Personal

Born on August 18, 1971, St. Louis, MO.

United States Citizen.

Education

Ph.D. Political Science, Yale University, 2000.

Fulbright Scholar, University of Leipzig, Germany, 1993–1994.

B.A., Political Science, University of Michigan, 1993.

Academic Positions

Professor, Department of Political Science, Stanford University, 2012–present.

Senior Fellow, Hoover Institution, Stanford University, 2012–present.

Senior Fellow, Stanford Institute for Economic Policy Research, 2020–present.

Director, Spatial Social Science Lab, Stanford University, 2012–present.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2010–2012.

Associate Professor, Department of Political Science, Stanford University, 2007–2012.

Fellow, Center for Advanced Study in the Behavioral Sciences, Palo Alto, CA, 2006–2007.

Ford Career Development Associate Professor of Political Science, MIT, 2003–2006.

Visiting Scholar, Center for Basic Research in the Social Sciences, Harvard University, 2004.

Assistant Professor of Political Science, MIT, 1999–2003.

Instructor, Department of Political Science and School of Management, Yale University, 1997–1999.

Publications

Books

Why Cities Lose: The Deep Roots of the Urban-Rural Divide. Basic Books, 2019.

Decentralized Governance and Accountability: Academic Research and the Future of Donor Programming. Co-edited with Erik Wibbels, Cambridge University Press, 2019.

Hamilton's Paradox: The Promise and Peril of Fiscal Federalism, Cambridge University Press, 2006. Winner, Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fiscal Decentralization and the Challenge of Hard Budget Constraints, MIT Press, 2003. Co-edited with Gunnar Eskeland and Jennie Litvack.

Peer Reviewed Journal Articles

Partisan Dislocation: A Precinct-Level Measure of Representation and Gerrymandering, 2020, *Political Analysis* forthcoming (with Daryl DeFord Nick Eubank).

Who is my Neighbor? The Spatial Efficiency of Partisanship, 2020, *Statistics and Public Policy* (with Nick Eubank).

Handgun Ownership and Suicide in California, 2020, *New England Journal of Medicine* 382:2220-2229 (with David M. Studdert, Yifan Zhang, Sonja A. Swanson, Lea Prince, Erin E. Holsinger, Matthew J. Spittal, Garen J. Wintemute, and Matthew Miller).

Viral Voting: Social Networks and Political Participation, 2020, *Quarterly Journal of Political Science* (with Nick Eubank, Guy Grossman, and Melina Platas).

It Takes a Village: Peer Effects and Externalities in Technology Adoption, 2020, *American Journal of Political Science* (with Romain Ferrali, Guy Grossman, and Melina Platas). Winner, 2020 Best Conference Paper Award, American Political Science Association Network Section.

Assembly of the LongSHOT Cohort: Public Record Linkage on a Grand Scale, 2019, *Injury Prevention* (with Yifan Zhang, Erin Holsinger, Lea Prince, Sonja Swanson, Matthew Miller, Garen Wintemute, and David Studdert).

Crowdsourcing Accountability: ICT for Service Delivery, 2018, *World Development* 112: 74-87 (with Guy Grossman and Melina Platas).

Geography, Uncertainty, and Polarization, 2018, *Political Science Research and Methods* doi:10.1017/psrm.2018.12 (with Nolan McCarty, Boris Shor, Chris Tausanovitch, and Chris Warshaw).

Handgun Acquisitions in California after Two Mass Shootings, 2017, *Annals of Internal Medicine* 166(10):698-706. (with David Studdert, Yifan Zhang, Rob Hyndman, and Garen Wintemute).

Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders, 2015, *Election Law Journal* 14,4:1-15 (with Jowei Chen).

The Achilles Heel of Plurality Systems: Geography and Representation in Multi-Party Democracies, 2015, *American Journal of Political Science* 59,4: 789-805 (with Ernesto Calvo). Winner, Michael Wallerstein Award for best paper in political economy, American Political Science Association.

Why has U.S. Policy Uncertainty Risen Since 1960?, 2014, *American Economic Review: Papers and Proceedings* May 2014 (with Nicholas Bloom, Brandice Canes-Wrone, Scott Baker, and Steven Davis).

- Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures, 2013, *Quarterly Journal of Political Science* 8: 239-269 (with Jowei Chen).
- How Should We Measure District-Level Public Opinion on Individual Issues?, 2012, *Journal of Politics* 74, 1: 203-219 (with Chris Warshaw).
- Representation and Redistribution in Federations, 2011, *Proceedings of the National Academy of Sciences* 108, 21:8601-8604 (with Tiberiu Dragu).
- Dual Accountability and the Nationalization of Party Competition: Evidence from Four Federations, 2011, *Party Politics* 17, 5: 629-653 (with Erik Wibbels).
- The Geographic Distribution of Political Preferences, 2010, *Annual Review of Political Science* 13: 297-340.
- Fiscal Decentralization and the Business Cycle: An Empirical Study of Seven Federations, 2009, *Economics and Politics* 22,1: 37-67 (with Erik Wibbels).
- Getting into the Game: Legislative Bargaining, Distributive Politics, and EU Enlargement, 2009, *Public Finance and Management* 9, 4 (with Deniz Aksoy).
- The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting, 2008. *American Political Science Review* 102, 2: 215-232 (with Stephen Ansolabehere and James Snyder).
- Does Religion Distract the Poor? Income and Issue Voting Around the World, 2008, *Comparative Political Studies* 41, 4: 437-476 (with Ana Lorena De La O).
- Purple America, 2006, *Journal of Economic Perspectives* 20,2 (Spring): 97-118 (with Stephen Ansolabehere and James Snyder).
- Economic Geography and Economic Voting: Evidence from the U.S. States, 2006, *British Journal of Political Science* 36, 3: 527-47 (with Michael Ebeid).
- Distributive Politics in a Federation: Electoral Strategies, Legislative Bargaining, and Government Coalitions, 2004, *Dados* 47, 3 (with Marta Arretche, in Portuguese).
- Comparative Federalism and Decentralization: On Meaning and Measurement, 2004, *Comparative Politics* 36, 4: 481-500. (Portuguese version, 2005, in *Revista de Sociologia e Politica* 25).
- Reviving Leviathan: Fiscal Federalism and the Growth of Government, 2003, *International Organization* 57 (Fall), 695-729.
- Beyond the Fiction of Federalism: Macroeconomic Management in Multi-tiered Systems, 2003, *World Politics* 54, 4 (July): 494-531 (with Erik Wibbels).
- The Dilemma of Fiscal Federalism: Grants and Fiscal Performance around the World, 2002, *American Journal of Political Science* 46(3): 670-687.
- Strength in Numbers: Representation and Redistribution in the European Union, 2002, *European Union Politics* 3, 2: 151-175.
- Does Federalism Preserve Markets? *Virginia Law Review* 83, 7 (with Susan Rose-Ackerman). Spanish version, 1999, in *Quorum* 68.

Working Papers

Federalism and Inter-regional Redistribution, Working Paper 2009/3, Institut d'Economia de Barcelona.

Representation and Regional Redistribution in Federations, Working Paper 2010/16, Institut d'Economia de Barcelona (with Tiberiu Dragu).

Chapters in Books

Political Geography and Representation: A Case Study of Districting in Pennsylvania (with Thomas Weighill), forthcoming 2021.

Decentralized Rule and Revenue, 2019, in Jonathan Rodden and Erik Wibbels, eds., *Decentralized Governance and Accountability*, Cambridge University Press.

Geography and Gridlock in the United States, 2014, in Nathaniel Persily, ed. *Solutions to Political Polarization in America*, Cambridge University Press.

Can Market Discipline Survive in the U.S. Federation?, 2013, in Daniel Nadler and Paul Peterson, eds, *The Global Debt Crisis: Haunting U.S. and European Federalism*, Brookings Press.

Market Discipline and U.S. Federalism, 2012, in Peter Conti-Brown and David A. Skeel, Jr., eds, *When States Go Broke: The Origins, Context, and Solutions for the American States in Fiscal Crisis*, Cambridge University Press.

Federalism and Inter-Regional Redistribution, 2010, in Nuria Bosch, Marta Espasa, and Albert Sole Olle, eds., *The Political Economy of Inter-Regional Fiscal Flows*, Edward Elgar.

Back to the Future: Endogenous Institutions and Comparative Politics, 2009, in Mark Lichbach and Alan Zuckerman, eds., *Comparative Politics: Rationality, Culture, and Structure* (Second Edition), Cambridge University Press.

The Political Economy of Federalism, 2006, in Barry Weingast and Donald Wittman, eds., *Oxford Handbook of Political Economy*, Oxford University Press.

Fiscal Discipline in Federations: Germany and the EMU, 2006, in Peter Wierts, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

The Political Economy of Pro-cyclical Decentralised Finance (with Erik Wibbels), 2006, in Peter Wierts, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

Globalization and Fiscal Decentralization, (with Geoffrey Garrett), 2003, in Miles Kahler and David Lake, eds., *Governance in a Global Economy: Political Authority in Transition*, Princeton University Press: 87-109. (Updated version, 2007, in David Cameron, Gustav Ranis, and Annalisa Zinn, eds., *Globalization and Self-Determination: Is the Nation-State under Siege?* Routledge.)

Introduction and Overview (Chapter 1), 2003, in Rodden et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Soft Budget Constraints and German Federalism (Chapter 5), 2003, in Rodden, et al, *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Federalism and Bailouts in Brazil (Chapter 7), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Lessons and Conclusions (Chapter 13), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Online Interactive Visualization

Stanford Election Atlas, 2012 (collaboration with Stephen Ansolabehere at Harvard and Jim Herries at ESRI)

Other Publications

How America's Urban-Rural Divide has Shaped the Pandemic, 2020, *Foreign Affairs*, April 20, 2020.

An Evolutionary Path for the European Monetary Fund? A Comparative Perspective, 2017, Briefing paper for the Economic and Financial Affairs Committee of the European Parliament.

Representation and Regional Redistribution in Federations: A Research Report, 2009, in *World Report on Fiscal Federalism*, Institut d'Economia de Barcelona.

On the Migration of Fiscal Sovereignty, 2004, *PS: Political Science and Politics* July, 2004: 427-431.

Decentralization and the Challenge of Hard Budget Constraints, *PREM Note* 41, Poverty Reduction and Economic Management Unit, World Bank, Washington, D.C. (July).

Decentralization and Hard Budget Constraints, *APSA-CP* (Newsletter of the Organized Section in Comparative Politics, American Political Science Association) 11:1 (with Jennie Litvack).

Book Review of *The Government of Money* by Peter Johnson, *Comparative Political Studies* 32,7: 897-900.

Fellowships and Honors

Fund for a Safer Future, Longitudinal Study of Handgun Ownership and Transfer (LongSHOT), GA004696, 2017-2018.

Stanford Institute for Innovation in Developing Economies, Innovation and Entrepreneurship research grant, 2015.

Michael Wallerstein Award for best paper in political economy, American Political Science Association, 2016.

Common Cause Gerrymandering Standard Writing Competition, 2015.

General support grant from the Hewlett Foundation for Spatial Social Science Lab, 2014.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2012.

Sloan Foundation, grant for assembly of geo-referenced precinct-level electoral data set (with Stephen Ansolabehere and James Snyder), 2009-2011.

Hoagland Award Fund for Innovations in Undergraduate Teaching, Stanford University, 2009.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, beginning Fall 2010.

Research Grant on Fiscal Federalism, Institut d'Economia de Barcelona, 2009.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2008.

United Postal Service Foundation grant for study of the spatial distribution of income in cities, 2008.

Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fellow, Center for Advanced Study in the Behavioral Sciences, 2006-2007.

National Science Foundation grant for assembly of cross-national provincial-level dataset on elections, public finance, and government composition, 2003-2004 (with Erik Wibbels).

MIT Dean's Fund and School of Humanities, Arts, and Social Sciences Research Funds.

Funding from DAAD (German Academic Exchange Service), MIT, and Harvard EU Center to organize the conference, "European Fiscal Federalism in Comparative Perspective," held at Harvard University, November 4, 2000.

Canadian Studies Fellowship (Canadian Federal Government), 1996-1997.

Prize Teaching Fellowship, Yale University, 1998-1999.

Fulbright Grant, University of Leipzig, Germany, 1993-1994.

Michigan Association of Governing Boards Award, one of two top graduating students at the University of Michigan, 1993.

W. J. Bryan Prize, top graduating senior in political science department at the University of Michigan, 1993.

Other Professional Activities

International Advisory Committee, Center for Metropolitan Studies, Sao Paulo, Brazil, 2006–2010.

Selection committee, Mancur Olson Prize awarded by the American Political Science Association Political Economy Section for the best dissertation in the field of political economy.

Selection committee, Gregory Luebbert Best Book Award.

Selection committee, William Anderson Prize, awarded by the American Political Science Association for the best dissertation in the field of federalism and intergovernmental relations.

Courses

Undergraduate

Politics, Economics, and Democracy

Introduction to Comparative Politics

Introduction to Political Science

Political Science Scope and Methods

Institutional Economics

Spatial Approaches to Social Science

Graduate

Political Economy of Institutions

Federalism and Fiscal Decentralization

Politics and Geography

Consulting

- 2017. Economic and Financial Affairs Committee of the European Parliament.
- 2016. Briefing paper for the World Bank on fiscal federalism in Brazil.
- 2013-2018: Principal Investigator, SMS for Better Governance (a collaborative project involving USAID, Social Impact, and UNICEF in Arua, Uganda).
- 2019: Written expert testimony in *McLemore, Holmes, Robinson, and Woullard v. Hosemann*, United States District Court, Mississippi.
- 2019: Expert witness in *Nancy Corola Jacobson v. Detzner*, United States District Court, Florida.
- 2018: Written expert testimony in *League of Women Voters of Florida v. Detzner* No. 4:18-cv-002510, United States District Court, Florida.
- 2018: Written expert testimony in *College Democrats of the University of Michigan, et al. v. Johnson, et al.*, United States District Court for the Eastern District of Michigan.
- 2017: Expert witness in *Bethune-Hill v. Virginia Board of Elections*, No. 3:14-CV-00852, United States District Court for the Eastern District of Virginia.
- 2017: Expert witness in *Arizona Democratic Party, et al. v. Reagan, et al.*, No. 2:16-CV-01065, United States District Court for Arizona.
- 2016: Expert witness in *Lee v. Virginia Board of Elections*, 3:15-cv-357, United States District Court for the Eastern District of Virginia, Richmond Division.
- 2016: Expert witness in *Missouri NAACP v. Ferguson-Florissant School District*, United States District Court for the Eastern District of Missouri, Eastern Division.
- 2014-2015: Written expert testimony in *League of Women Voters of Florida et al. v. Detzner, et al.*, 2012-CA-002842 in Florida Circuit Court, Leon County (Florida Senate redistricting case).
- 2013-2014: Expert witness in *Romo v Detzner*, 2012-CA-000412 in Florida Circuit Court, Leon County (Florida Congressional redistricting case).
- 2011-2014: Consultation with investment groups and hedge funds on European debt crisis.
- 2011-2014: Lead Outcome Expert, Democracy and Governance, USAID and Social Impact.
- 2010: USAID, Review of USAID analysis of decentralization in Africa.
- 2006-2009: World Bank, Independent Evaluations Group. Undertook evaluations of World Bank decentralization and safety net programs.
- 2008-2011: International Monetary Fund Institute. Designed and taught course on fiscal federalism.
- 1998-2003: World Bank, Poverty Reduction and Economic Management Unit. Consultant for *World Development Report*, lecturer for training courses, participant in working group for assembly of decentralization data, director of multi-country study of fiscal discipline in decentralized countries, collaborator on review of subnational adjustment lending.

Last updated: October 19, 2020

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,)	
)	
Plaintiff,)	Civil Action No.
)	1:20-cv-04651-SDG
)	
v.)	
)	
BRAD RAFFENSPERGER, <i>et al.</i>,)	
)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

Defendants Brad Raffensperger, Georgia Secretary of State, and State Election Board members Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Ahn Le (collectively, "State Defendants") submit the following response in opposition to Plaintiff's Motion for Preliminary Injunction:

INTRODUCTION

Plaintiff's motion makes the extraordinary and unprecedented request that the Court enjoin the certification of the 2020 general election in Georgia unless all absentee ballots are removed from the tabulation. Inexplicably, Plaintiff waited to move for this relief until *two days before* the November 20th deadline for the Secretary of State to certify the election results, even though his claim is based upon

rule-making by the State Defendants that was implemented in March and in full effect during the entirety of the 2020 primary and general election cycles. At this point, ballots have been cast, tabulated, and audited statewide. It is simply impossible for the Court to grant Plaintiff's requested relief, even if there were any merit to Plaintiff's constitutional claims—and there is not. Plaintiff fails to state a legally cognizable or even coherent constitutional claim. The Court should decline Plaintiff's legally unsupportable efforts to trigger a constitutional crisis and overturn the election results, based upon nothing more than Plaintiff's personal dissatisfaction with the outcome.

Plaintiff seeks to set aside the election results based upon two complaints: (1) that State Defendants and the Democratic Party of Georgia entered into a March 2020 settlement agreement that allegedly altered the process by which counties verify voter signatures on absentee ballots in a way that he asserts is contrary to the Georgia election code; and (2) that monitors for the Trump Campaign and the Republican Party were not permitted to observe the vote tabulations or post-election audit. Setting aside the lack of factual support for either of these claims, neither establish constitutional violations, and injunctive relief should be denied because Plaintiff will not succeed on the merits of his claims.

More importantly, however, the Court lacks subject-matter jurisdiction over the action because Plaintiff cannot demonstrate Article III standing. Plaintiff has not shown a concrete and particularized injury to his own, individual right to vote. Instead, Plaintiff asserts a generalized grievance against State Defendants on behalf of all Georgia voters, which courts repeatedly have held insufficient to establish standing.

Finally, Plaintiff's claims are barred by laches, as well as moot, because Plaintiff delayed in bringing this action until it was too late for the Court to grant any effectual, equitable relief. More than 1.3 million Georgians cast absentee ballots in the presidential election, which have been processed, tabulated, certified, and audited by the counties. Plaintiff's inexcusable delay is extremely prejudicial to the Secretary of State's timely certification of the election results, which is necessary to certify presidential electors, hold state and federal runoffs, and allow newly elected officials to take office. Accordingly, the Court should deny Plaintiff's motion.

FACTUAL BACKGROUND

In 2019, the Georgia General Assembly enacted HB 316, a bipartisan effort to reform to the state's election code and implement a new electronic voting system. The reforms kept in place Georgia's policy of "no excuse" absentee voting, but modified the technical requirements for absentee ballots in an effort to prevent them

from being rejected, with no option to cure, for missing or mismatched signatures. Specifically, HB 316 modified the language of the oath on the absentee ballot envelope to remove requests for the elector's address and date of birth, which was deemed to potentially subject voters to increased risk of identity theft, while leaving the signature requirement. *See* O.C.G.A. § 21-2-384. While the election code already required that election officials “promptly notify” the voter of a rejected absentee ballot due to a missing or mismatched signature, HB 316 added a cure provision, whereby election officials must give a voter until three days after the date of the election to cure a signature before rejecting an absentee ballot for a missing or mismatched signature on the outer envelope. *See* O.C.G.A. § 21-2-386(a)(1)(C).

On November 6, 2019, the Democratic Party of Georgia, DSCC, and DCCC (collectively, “Political Party Organizations”) filed a lawsuit against the State Defendants, alleging that the “promptly notify” language of O.C.G.A. § 21-2-386(a)(1)(C) was vague and ill-defined and left counties with a standard-less procedure for verifying signatures on absentee ballots. *See Democratic Party of Georgia v. Raffensperger*, Civil Action No. 1:19-cv-05028-WMR.

While this action was pending, the State Election Board (“SEB”) approved a rule that established a uniform standard for counties to follow to “promptly notify” voters when their absentee ballot is rejected as required by O.C.G.A. § 21-2-

386(a)(1)(C). The rule provides that when a timely-submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk must send the voter notice of the rejection and opportunity to cure within three business days, or by the next business day if within ten days of Election Day. Ga. Comp. R. & Regs. r. 183-1-14-.13 (the “Prompt Notification Rule”).

The Prompt Notification Rule was adopted pursuant to the SEB’s rule-making authority under O.C.G.A. § 21-2-31(2), and is in no respects inconsistent with O.C.G.A. § 21-2-386(a)(1)(C). It provides a uniform 3-day standard for “prompt” notification when an absentee ballot is rejected, so that all counties follow the procedures set forth in O.C.G.A. § 21-2-386(a)(1)(C) in a consistent manner. The Prompt Notification Rule was legally promulgated pursuant to the Georgia Administrative Procedure Act, published for public comment, and discussed at multiple public hearings before it became effective on March 22, 2020.¹

Because the Prompt Notification Rule resolved the pending issues in the DPG Action, the parties agreed to resolve the matter in a settlement agreement along the following terms: (1) the State Election Board would promulgate and enforce the

¹ The rule was subsequently amended at the April 15, 2020, SEB meeting to further modify *only* the notification to a voter if their ballot was rejected. Both the original rule as well as the modified rule were transmitted to the General Assembly for consideration of legislative rejection or modification, and no action was taken by the General Assembly as to either version of the rule.

Prompt Notification Rule (which had already been approved by the State Election Board prior to settlement); (2) the Secretary of State would issue guidance to county election officials regarding the signature matching process; and (3) the Secretary of State would consider sending to counties training materials prepared by the Political Party Organizations' handwriting expert (the "Settlement Agreement").² (Doc. 6-1.)

On May 1, 2020, the Secretary of State distributed an Official Election Bulletin ("OEB"), which advised county election officials of the Prompt Notification Rule and provided guidance on absentee ballot envelope signature review. (Declaration of Chris Harvey ¶ 5 & Ex. 1.) The OEB notified officials that after an election official makes an initial determination that the signature on the absentee ballot envelope does not match the signature on file for the voter pursuant to O.C.G.A. §21-2-386(a)(1)(B) and (C), two additional registrars, deputy registrars, or absentee ballot clerks should also review the signature, and the ballot would be rejected if at least two agree that the signature does not match. (*Id.*) The OEB in no way is contrary to or inconsistent with the procedures in O.C.G.A. § 21-2-386, and clearly instructs county officials to comply with the applicable law. (*Id.*)

² The Secretary did consider in good faith the training materials provided by the Political Party Organizations but ultimately decided *not* to distribute the Political Party Organizations' materials to county election officials.

Contrary to Plaintiff's claim that the Prompt Notification Rule and the OEB have significantly disrupted the signature verification process, there has been no detectable effect on the absentee ballot rejection rate since the last general election in 2018. An analysis was undertaken of the number of absentee ballot rejections for signature issues for 2020 as compared to 2018 which found that the rejection rate for absentee ballots with missing or non-matching signatures in the 2020 general election was 0.15%, which is the same rejection rate for signature issues in 2018. (Harvey Dec. ¶¶ 6, 7.)

Following the November election, the Secretary of State ordered a statewide audit of all ballots cast in the presidential election, which was conducted by manual tabulation at the county level. (Harvey Dec. ¶ 8.) Political parties were permitted to have certified monitors present in every county, and the Secretary of State's office issued an OEB with instructions that political parties (Republicans and Democrats) were permitted to have one designated monitor for each ten audit teams, with a minimum of two designated monitors in each county per party per room. (*Id.*) The manual tabulation for the audit was conducted solely by the counties, and the State Defendants had no control or responsibility over how the counties instructed, placed, or interacted with party monitors.

ARGUMENT AND CITATION OF AUTHORITY

I. The Court Lacks Jurisdiction over the Action Because Plaintiff Cannot Establish Article III Standing.

Plaintiff raises three separate constitutional counts: (1) that the Litigation Settlement violates the Equal Protection Clause of the Fourteenth Amendment (Count I); (2) that the Litigation Settlement violates the Electors and Elections Clauses of Articles I and II (Count II); and (3) a Due Process claim based upon the allegation that the State Defendants denied Republican party monitors meaningful access to observe and monitor the tabulation of votes or the statewide audit (Count III). However, because Plaintiff cannot establish standing as to any of these causes of action, the Court lacks jurisdiction to consider the merits of Plaintiff's motion.

Federal courts have an independent obligation to ensure that subject-matter jurisdiction exists before reaching the merits of a dispute. *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (vacating and ordering dismissal of voting rights case due to lack of standing). “For a court to pronounce upon . . . the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires.” *Id.* (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998)). “If at any point a federal court discovers a lack of jurisdiction, it must dismiss the action.” *Id.* (citation omitted).

Article III of the Constitution limits the subject-matter jurisdiction of federal courts to “Cases” and “Controversies.” U.S. Const. art. III, § 2. A party invoking federal jurisdiction bears the burden of establishing standing at the commencement of the lawsuit. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). As an irreducible constitutional minimum, Plaintiff must show he has (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Lujan*, 504 U.S. at 561. As the party invoking federal jurisdiction, Plaintiff bears the burden at the pleadings phase of “clearly alleg[ing] facts demonstrating each element.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

A. Plaintiff lacks standing to assert an Equal Protection claim.

To establish injury-in-fact sufficient to establish standing, Plaintiff must show he suffered “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.” *Id.* at 1548 (quoting *Lujan*, 504 U.S. at 560). Rather than allege a particularized or concrete injury, Plaintiff alleges that he has standing “as a qualified elector and registered voter.” (Doc. 5 ¶ 8.) Plaintiff further alleges that he “made donations to various Republican candidates on the ballot for the November 3, 2020 general elections, and

his interests are aligned with those of the Georgia Republican Party for the purposes of the instant lawsuit.” (*Id.*)

These facts, however, do not demonstrate that Plaintiff has “a personal stake in the outcome” that is “distinct from a generally available grievance about government.” *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018). When alleged injuries are undifferentiated and common to members of the public, courts routinely dismiss such cases as “generalized grievances” that cannot support standing. *United States v. Richardson*, 418 U.S. 166, 173–75 (1974). Plaintiff’s factual allegations are the very definition of a generalized grievance, as Plaintiff fails to point to any injury that affects him “in a personal and individual way,” rather than as part of a collective of voters. *Spokeo*, 136 S. Ct. at 1548.

The Eleventh Circuit’s recent decision in *Jacobson* is instructive here, as it rejected both of Plaintiff’s theories of standing. The plaintiffs in *Jacobson* included two individual voters who challenged the constitutionality of Florida’s ballot order statute, arguing that Republican candidates reaped the benefit of a “primacy” effect due to their top placement on the ballot. 974 F.3d at 1246. The Court held that the individual voters lacked standing because they could not prove an injury in fact. *Id.* The Court rejected the argument that all voters have standing to bring claims involving voting rights, stating, “the Supreme Court has made clear that ‘a person’s

right to vote is individual and personal in nature,’ so ‘voters who allege facts showing disadvantage to themselves as individuals have standing to sue.’” *Id.* (quoting *Gill*, 138 S. Ct. at 1929).

The Court similarly rejected the voters’ self-identification as Democrat voters as a basis for standing, stating, “[a] candidate’s electoral loss does not, by itself, injure those who voted for the candidate,” as “[v]oters have no judicially enforceable interest in the outcome of the election.” *Id.*

As in *Jacobson*, Plaintiff cannot show any particularized, concrete injury to his individual right to vote that is traceable to the State Defendants. He asserts a number of generalized grievances regarding the Litigation Settlement, such as speculating that it has “created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots.” (Doc. 6 at 18.) But he fails to make any cognizable allegation that he personally has been injured by this process.

B. Plaintiff lacks standing under the Electors and Elections Clauses.

Federal courts are not venues for parties to assert a bare right “to have the Government act in accordance with law.” *Allen v. Wright*, 468 U.S. 737, 754 (1984). The Third Circuit recently rejected a similar claim in *Bognet v. Secretary Commonwealth of Pennsylvania*, No. 20-3214, 2020 U.S. App. LEXIS 35639 (3d Cir. Nov. 13, 2020), holding that individual voters lacked standing to sue for alleged

injuries attributable to a state government’s violations of the Elections Clause and Electors Clause. *Id.* at *19. The Court stated, “[b]ecause Plaintiffs are not the General Assembly, nor do they bear any conceivable relationship to state lawmaking processes, they lack standing to sue over the alleged usurpation of the General Assembly’s rights under the Elections and Electors Clauses.” *Id.* at *21; *see also Lance v. Coffman*, 549 U.S. 437, 442 (2007) (“The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed.”); *Dillard v. Chilton Cty. Comm’n*, 495 F.3d 1324, 1332-33 (11th Cir. 2007) (holding that an allegation that the law has not been followed is “the kind of undifferentiated, generalized grievance about the conduct of government” that will not satisfy standing).

C. Plaintiff lacks standing under the Due Process Clause.

Plaintiff’s standing to assert a due process claim is even more tenuous because he attempts to assert claims on behalf of third-party Republican monitors. (*See* Doc. 6 at 21.) However, Plaintiff may only assert prudential standing based on the rights of another if he “has a ‘close’ relationship with the person who possesses the right” and “there is a ‘hindrance’ to the possessor’s ability to protect his own interests.” *Bognet*, 2020 U.S. App. LEXIS 35639, *21 (quoting *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004)). Plaintiff makes no such allegations here.

Not only does Plaintiff lack an injury-in-fact sufficient to establish standing for his due process claim, the alleged injury is not traceable to any action by the State Defendants. “To satisfy the causation requirement of standing, a plaintiff’s injury must be ‘fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” *Jacobson*, 974 F.3d at 1253 (citation omitted). As in *Jacobson*, Plaintiff’s gripe is with county election officials, who are the ones who allegedly excluded party monitors from observing the audit. Plaintiff does not allege that any of the State Defendants controlled or even participated in this conduct. *See id.* (holding that there was no injury traceable to the Florida Secretary of State when the injury complained of was the responsibility of county officials not under the Secretary’s control).

Accordingly, because Plaintiff cannot satisfy the threshold requirement of standing, the Court should deny Plaintiff’s motion for injunctive relief.

II. Plaintiff’s Claim is Moot.

Plaintiff’s claims related to the validation of signatures on absentee ballots by local elections officials, or to any perceived irregularities during either the initial tabulation of votes by county officials or during Georgia’s statewide risk-limiting audit have been mooted by the completion of those processes, and the case “no longer presents a live controversy with respect to which the court can give

meaningful relief.” *Troiano v. Supervisor of Elections in Palm Beach Cty., Fla.*, 382 F.3d 1276, 1282 (11th Cir. 2004). Mootness is jurisdictional—because a federal court may only adjudicate cases and controversies, and a ruling that cannot provide meaningful relief is an impermissible advisory opinion. *Id.*

The Court “cannot prevent what has already occurred.” *De La Fuente v. Kemp*, 679 F. App’x 932, 933 (11th Cir. 2017); *Yates v. GMAC Mortg. LLC*, No. 1:10-CV-02546-RWS, 2010 WL 5316550, at *2 (N.D. Ga. Dec. 17, 2010) (“The Court is powerless to enjoin what has already occurred.”). While Plaintiff purportedly seeks re-counting and re-certification from counties that have already certified and audited their election returns, the Eleventh Circuit made clear in *Jacobson* that federal courts do not have the authority to exercise jurisdiction to order relief against county officials who have not been named as parties, especially where those county election officials have already completed their statutory obligations regarding the 2020 general election. 974 F.3d at 1253.

III. Plaintiff’s Motion Fails to Satisfy the Preliminary Injunction Factors.

In order to prevail on a motion for preliminary injunction, the movant must show: (1) a substantial likelihood of prevailing on the merits; (2) that the plaintiff will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damages the proposed injunction may

cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Duke v. Cleland*, 954 F.2d 1526, 1529 (11th Cir. 1992). A preliminary injunction is a drastic remedy “which should not be granted unless the movant clearly carries the burden of persuasion.” *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (11th Cir. 1974). Because Plaintiff is seeking a mandatory injunction, which are particularly disfavored, the burden is further heightened, and Plaintiff must show that the facts and the law *clearly* favor him. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

A. Plaintiff is not substantially likely to succeed on the merits.

1. Plaintiff’s equal protection claim fails because he cannot show arbitrary and disparate treatment among different classes of voters.

In the voting rights context, equal protection means that “[h]aving once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104 (2000) (citation omitted). Typically, when deciding a constitutional challenge to state election laws, federal courts apply the *Anderson-Burdick* framework that balances the burden on the voter with the state’s interest in the voting regulation. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190 (2008); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318-19 (11th Cir. 2019).

But Plaintiff's equal protection claim does not even implicate *Anderson-Burdick*, because he fails to articulate how the Litigation Settlement affects his right to vote in the first place. Both the Prompt Notification Rule and the OEB guidance are facially neutral, and Plaintiff does not explain how either values one person's vote over another or treats voters arbitrarily or disparately. Instead, he alleges (similar to his elections clause argument) that "Defendants are not part of the Georgia Legislature and cannot exercise legislative power to enact rules or regulations ... that are contrary to the Georgia Election Code." (Doc. 6 at 17-18.) But erroneously alleging that the State Defendants have acted contrary to state law is not the same thing as alleging that a policy enforced by State Defendants treats *voters* differently.

The Supreme Court's decision in *Bush v. Gore* does not support Plaintiff's case (*see* Doc. 6 at 16-17), as that case found a violation of equal protection where certain counties were utilizing varying standards for what constituted a legal vote in the 2000 Florida recount. 531 U.S. at 105 ("The question before us ... is whether the recount procedures ... are consistent with its obligation to avoid arbitrary and disparate treatment of the members of its electorate"). Here, the Prompt Notification Rule and OEB guidance provide uniform and consistent standards *in complete harmony with the statutory framework* for each county to employ when verifying

signatures on absentee ballot envelopes, in order to avoid the kind of ad hoc standards that varied from county to county as found unconstitutional in *Bush*. They are the exact opposite of arbitrary and disparate treatment.

2. Plaintiff's claim under the Electors and Elections Clauses fails.

The electors clause of the United States Constitution provides that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, ”who, in turn, cast the State’s votes for president. U.S. Const. art. II, § 1, cl. 2. The General Assembly established the manner for the appointment of presidential electors in O.C.G.A. § 21-2-10, which provides that electors are *selected by popular vote* in a general election. Plaintiff fails to show how any act of the State Defendants has altered this process.

Similarly, Plaintiff fails to show how State Defendants have violated the elections clause, which provides that “[t]he Times, Places, and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. Plaintiff contends that the State Defendants have usurped the power of the legislature by “imposing a different procedure for handling defective absentee ballots” than the one specified by statute. (Doc. 4 ¶ 89.) Yet Plaintiff concedes that the State Election Board has the authority, delegated by the legislature, “[t]o formulate, adopt, and promulgate such rules and

regulations ... as will be conducive to the fair, legal, and orderly conduct of primaries and elections” so long as those rules are “consistent with law.” O.C.G.A. 21-2-31(2); *see* Doc. 4 ¶ 27. Thus, while no one disagrees that State Defendants are not members of the Georgia legislature, Plaintiff’s claim depends on the assumption that the rules and guidance resulting from the Litigation Settlement are inconsistent with Georgia’s election code. They are not.

When an absentee ballot is defective because of a signature mismatch, the statute provides that “[t]he board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, [and] a copy of [that] notification shall be retained in the files of the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-386(a)(1)(C). Once notified, the elector has the opportunity to “cure” any defects so the ballot may be counted. *See id.* The Litigation Settlement (and subsequent OEB guidance to county officials) merely elaborates on that procedure. If the clerk determines that a signature does not match, the clerk “must seek review from two other ... absentee ballot clerks,” and a ballot will only be rejected if a majority of the consulted clerks agree that the signatures do not match. (*See* Doc. 4 ¶ 33.) If the ballot is rejected, the clerk writes the names of the reviewing officials on the face of the ballot, along with the reason for the rejection. *Id.* These types of

procedures might add detail to the statutory scheme, but they do not supplant or contradict the text of the statute.

The Georgia Administrative Procedure Act, O.C.G.A. §§ 50-13-1 through 50-13-44, specifically provides a framework for the General Assembly to review and acquiesce in the rules promulgated by regulatory bodies such as the State Election Board. O.C.G.A. § 50-13-4. The Prompt Notification Rule received final approval on February 28, 2020, and the General Assembly signaled its favorable acceptance of said rule by making *no* efforts to legislatively reject said rule prior to its final adjournment on June 26, 2020. The General Assembly took *no* action to reverse or modify the State Election Board's rule prior to the commencement, or during the pendency, of the 2020 election cycle, and Plaintiff fails to make any cognizable claim that the State Election Board's actions violate state law.

3. Plaintiff's due process claim fails.

Plaintiff's motion fails to articulate a discernable claim under the due process clause. It is unclear whether Plaintiff asserts a substantive or procedural due process claim, but neither is supported by the facts. First, Plaintiff fails to cite to any statutory process he claims party monitors were denied. Second, Plaintiff fails to show how State Defendants participated in any alleged denial of access by monitors to observe a process that was taking place at the county level. While the Secretary issued OEB

guidance instructing counties to allow party monitors to observe the audit process, to the extent any county failed to comply with this guidance, any legal claim should have been brought by the monitors or the affected political party against the county at the time of the alleged violation.

Moreover, Plaintiff's factual assertion that monitors were denied access is not supported by his evidence. For example, one would-be monitor appears to have simply misunderstood when she should arrive, and the other had good enough access to identify various perceived problems. (Doc 6-3 ¶¶ 6-11; 12 (noting that at one point "there were too many party monitors" such that county officials had to "[ask] the Republican watchers to gather and decide which 17 would be on the floor").)

The most that can be gleaned from Plaintiff's motion is that he believes *not enough* monitors were granted access. But a plaintiff challenging the constitutionality of a state election law must show that "the character and magnitude of the burden" imposed on the right to vote is greater than "the interests the State contends justify that burden." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997). Plaintiff fails to explain how limiting each party to 17 poll watchers is so burdensome that it outweighs a state's interest in an orderly environment for conducting a statewide audit.

B. Plaintiff will suffer no irreparable harm if the Court denies his motion.

Plaintiff’s claim of irreparable harm borders on the delusional: if the Court denies his request to exclude all absentee ballots, “then Georgia’s election results are improper and suspect, resulting in Georgia’s electoral college votes going to Joseph R. Biden contrary to the votes of the majority of Georgia[’s] qualified electors.” (Doc. 6 at 22.) Of course, if a sufficient number of votes for the winning candidate are improperly excluded, the losing candidate will have a higher vote total. Such exclusion, however, frustrates the will of the electorate expressed through their lawfully cast ballot and is patently unconstitutional. Certifying the expressed will of the electorate is not irreparable harm, but rather inevitable and legally required within our constitutional framework. To the extent that the losing candidate—rather than a dissatisfied supporter—seeks post-certification remedies, both a recount and election contest are available under Georgia law. *See* O.C.G.A. §§ 21-2-495; 21-2-522.

C. The Balance of Equities Weighs Heavily against Injunctive Relief.

Courts in this district have considered the remaining two factors, balancing the equities and public interest, together in election cases. *See Curling v. Kemp*, 334 F. Supp. 3d 1303, 1326 (N.D. Ga. 2018). Both of these factors clearly weigh in favor of the State Defendants.

The State Defendants have a “strong interest in their ability to enforce state election law requirements.” *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 244 (6th Cir. 2011). For this reason, the Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S.Ct. 1205, 1207 (April 6, 2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U. S. 1 (2006)).

The Supreme Court and Eleventh Circuit have repeatedly stayed lower court injunctions that altered election rules once the 2020 general election cycle commenced. *See, e.g., Andino v. Middleton*, No. 20A55, 592 U.S. ___, 2020 WL 5887393, at *1 (Oct. 5, 2020) (Kavanaugh, J., concurring) (“By enjoining South Carolina’s witness requirement shortly before the election, the District Court defied [the *Purcell*] principle and this Court’s precedents.” (citations omitted)); *Merrill v. People First of Ala.*, No. 19A1063, 591 U.S. ___, 2020 WL 3604049, at *1 (July 2, 2020); *New Ga. Project v. Raffensperger*, No. 20-13360, 2020 U.S. App. LEXIS 31405, at *11-12 (11th Cir. Oct. 2, 2020) (“[W]e are not on the eve of the election—we are in the middle of it, with absentee ballots already printed and mailed. An injunction here would thus violate *Purcell*’s well-known caution against federal courts mandating new election rules—especially at the last minute.”).

Here, an election *has already been conducted*, and Plaintiff seeks relief that, if fully granted, would result in wide-spread disenfranchisement. Any personal dissatisfaction by Plaintiff pales in comparison to the risk that the over 1.3 million Georgia voters who lawfully cast their absentee ballots in the general election would be disenfranchised if Plaintiff's requested relief were granted.

IV. Laches Bars Plaintiff's Request for Post-Election Equitable Relief.

Plaintiff's inexcusable delay in bringing his claim also warrants denial of his motion. Laches bars a request for equitable relief when (1) the plaintiff delays in asserting the claim; (2) the delay is not excusable; and (3) the delay causes the non-moving party undue prejudice. *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005). In the context of elections, "any claim against a state electoral procedure must be expressed expeditiously." *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (citing *Williams v. Rhodes*, 393 U.S. 23, 34-35 (1968)). As time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made. *Id.*

Where, as here, the challenge to an election procedure is not filed until *after* an election has already been conducted, the prejudice to the state and to the voters that have cast their votes in the election becomes particularly severe. Once the election has been conducted, any harm that might arise from a purported

constitutional violation must be weighed against “such countervailing equitable factors as the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity.” *Soules v. Kauaians for Nukolii Campaign Committee*, 849 F.2d 1176, 1177 (9th Cir. 1988). For this reason, “if aggrieved parties, without adequate explanation, do not come forward before the election, they will be barred from the equitable relief of overturning the results of the election.” *Id.* at 1180-81 (citing *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177, 182-83 (4th Cir. 1983); see also *Curtin v. Va. State Bd. of Elections*, No. 1:20-cv-0546, 2020 U.S. Dist. LEXIS 98627, *16-17 (E.D. Va. May 29, 2020) (rejecting a similar challenge to state official guidance as barred by laches due to plaintiffs’ failure to raise the challenge prior to the election).

Plaintiff offers no justification for his failure to bring his challenge to the Litigation Settlement prior to the election, so that a court could decide the validity of his claims in ample time to make any changes to the signature match validation process *before* elections officials began validating signatures on absentee ballot envelopes for the general election. Plaintiff’s delay now poses the risk of substantial prejudice to the State and the members of the public who have cast *lawful* ballots in exercise of their constitutional rights. Election officials processed ballots in compliance with Georgia law, and voters who submitted those ballots did so with

the reasonable and legitimate expectation that their validly cast votes would be counted. Plaintiff's failure to raise this issue in a timely fashion therefore "created expectation interests that cannot lightly be discounted." *Lopez v. Hale County*, 797 F. Supp. 547, 550 (N.D. Tx. 1992).

CONCLUSION

For the foregoing reasons, Plaintiff's emergency motion for injunctive relief must be denied.

Respectfully submitted, this 19th day of November, 2020.

CHRISTOPHER M. CARR 112505
Attorney General

BRYAN K. WEBB 743580
Deputy Attorney General

Russell D. Willard 760280
Senior Assistant Attorney General

/s/ Charlene S. McGowan
Charlene S. McGowan 697316
Assistant Attorney General
40 Capitol Square SW
Atlanta, GA 30334
cmcgowan@law.ga.gov
404-458-3658 (tel)

Attorneys for State Defendants

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing has been formatted using Times New Roman font in 14-point type in compliance with Local Rule 7.1(D).

/s/ Charlene S. McGowan
Charlene S. McGowan
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing **STATE DEFENDANTS' RESPONSE TO PLAINTIFF'S EMERGENCY MOTION FOR INJUNCTIVE RELIEF AND MEMORANDUM IN SUPPORT** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel for all parties of record via electronic notification.

Dated: November 19, 2020.

/s/ Charlene S. McGowan
Charlene S. McGowan
Assistant Attorney General

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his
official capacity as the Secretary of
State of the State of Georgia;
REBECCA N. SULLIVAN, in her
official capacity as the Vice Chair of
the Georgia State Election Board;
DAVID J. WORLEY, in his official
capacity as a member of the Georgia
State Election Board; MATTHEW
MASHBURN, in his official capacity as
a member of the Georgia State Election
Board; and AHN LE, in her official
capacity as a member of the Georgia
State Election Board,**

Defendants.

**Civil Action No.
1:20-cv-04651-SDG**

DECLARATION OF CHRIS HARVEY

Pursuant to 28 U.S.C. § 1746, I, Chris Harvey, make the following
declaration:

1.

My name is Chris Harvey. I am over the age of 21 years, and I am under no legal disability that would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.

2.

I currently am the Director of Elections for the State of Georgia. I have held that position since July 2015. From August 2007 to July 2015, I was the Chief Investigator and Deputy Inspector General for the Secretary of State's office, investigating, among other things, potential violations of state election law. For more than a decade, I have acquired firsthand knowledge of Georgia's election processes at both the state and county level.

3.

In Georgia, elections are administered at the county level, and the counties are responsible for receiving and processing absentee ballots. Thus, the counties are responsible for verifying the elector's information and signature on the outer envelope of the absentee ballot when it is received before processing and tabulating the ballot. The Secretary of State's office strengthened the signature verification process for the 2020 general election. County elections officials received training on signature matching from experts with the Georgia Bureau of Investigation.

Additionally, voter signatures go through two layers of signature verification in the absentee ballot process. The voter's signature is first checked against the signatures on file with the county elections office when the voter submits an application for an absentee ballot. If the voter requests an absentee ballot through the Secretary's online absentee ballot request portal, the voter's identity is verified by matching the voter's name, date of birth, and Georgia driver's license or state identification card number contained in the state voter registration system pursuant to State Election Board Emergency Rule 183-1-14-0.10-.16. The voter's signature is matched a second time when the absentee ballot is received by the county election office.

4.

In my capacity as Director of Elections, I occasionally send out Official Election Bulletins to county elections officials and county registrars, which provide updates on changes in state election laws and rules and guidance on election administration to assist county officials in their duties. The guidance is simply recommendations on best practices and does not supplant or replace Georgia law; county officials are still bound to follow the election code and the rules and regulations of the State Election Board.

5.

On May 1, 2020, my office distributed an OEB providing guidance on absentee ballot signature review. A true and correct copy of this guidance is attached as **Exhibit 1**. The purpose of the OEB was to remind county elections officials of the recent updates to Georgia law and regulations regarding verifying signatures on absentee ballots and provide guidance on the procedures that should be followed when a signature on an absentee ballot does not match. The OEB advised county officials on HB 316's reforms to absentee ballot procedures set forth in O.C.G.A. § 21-2-386, as well as State Election Board Rule 183-1-14-.13, which addressed how quickly and by what methods electors need to be notified concerning absentee ballot issues. The OEB in no way is contrary to or inconsistent with the procedures in O.C.G.A. § 21-2-386(a)(1)(C). To the contrary, the OEB clearly states, **"If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C)."**

6.

Following the November 3, general election, the Secretary of State's office conducted an analysis of the number of absentee ballot rejections for signature issues for 2020 as compared to 2018. We found that the total number of absentee ballot rejections for signature issues in the November 2020 election increased 343% from the 2018 election, about the same rate of increase as the total number of absentee

ballots accepted. The rejection rate for absentee ballots with missing or non-matching signatures in the 2020 General Election was 0.15%, the same rejection rate for signature issues as the 2018 General Election.

7.

Out of the 1,322,529 absentee ballots cast in the November 2020 election, 2,011 absentee ballots were rejected for missing or non-matching signatures. For the November 2018 election, 454 absentee ballots were rejected for missing or non-matching signatures out of 284,393 absentee ballots cast. The 0.15% rejection rate for signature issues was the same in both the 2018 and 2020 General Elections. The rejection numbers from 2018 cited above are the ones cited by the plaintiffs in the *Democratic Party of Georgia, et al. v. Raffensperger, et al.*, Civil Action No. 1:19cv5028.

8.

Last week, the Secretary of State ordered a statewide audit of all ballots cast in the presidential election, which was conducted by manual tabulation. Political parties were permitted to have certified monitors present in every county to observe the audit. An OEB was distributed to county election officials that included the following instructions: “The State Executive Committee of each political party

(Republicans and Democrats) shall have the right to have one properly designated person act as monitor of the audit for each ten audit teams that are conducting the audit, with a minimum of two designated monitors in each county per party per room where the audit is being conducted.” A true and correct copy of the OEB is attached as **Exhibit 2**.

9.

The results of the audit are still being tabulated and will be released prior to certification of the election results. Four counties discovered that some ballots had not been tabulated in the original count, and those counties are re-certifying their results to include those ballots.

10.

The Secretary of State also ordered Pro V&V, an independent certified testing laboratory, to conduct an additional audit of a random sample of the Dominion Systems voting equipment to determine if it had been tampered with or hacked. Pro V&V conducted an audit of a random sample of Dominion Voting Systems voting machines throughout the state using forensic techniques, including equipment from Cobb, Douglas, Floyd, Morgan, Paulding, and Spalding Counties. ICP (precinct

ballot scanners), ICX (ballot marking devices), and ICC (central absentee ballot scanners) components were all subject to the audit. In conducting the audit, Pro V&V extracted the software or firmware from the components to check that the only software or firmware on the components was certified for use by the Secretary of State's office. The testing was conducted on a Pro V&V laptop independent of the system. According to the Pro V&V audit, all of the software and firmware on the sampled machines was verified to be the software and firmware certified for use by the Office of the Secretary of State.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of November, 2020.



CHRIS HARVEY

EXHIBIT



OFFICIAL ELECTION BULLETIN

May 1, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, State Elections Director

RE: Absentee Ballot Signature Review Guidance

Verifying that a voter's signature on his or her absentee ballot matches his or her signature on the absentee ballot application or in the voter registration record is required by Georgia law and is crucial to secure elections. Ensuring that signatures match is even more crucial in this time of increased absentee voting due to the COVID-19 crisis. The purpose of this OEB is to remind you of some recent updates to Georgia law and regulations regarding verifying signatures on absentee ballots and to make you aware of the procedures that should be followed when a signature on an absentee ballot does not match. HB 316, which passed in 2019, modified the absentee ballot laws and the design of the oath envelope. The State Election Board also adopted Rule 183-1-14.13 this year, which addresses how quickly and by what methods electors need to be notified concerning absentee ballot issues. What follows are the procedures that should be followed when the signature on the absentee ballot does not match the voter's signature on his or her application or voter registration record:

County registrars and absentee ballot clerks are required, upon receipt of each mail-in absentee ballot, to compare the signature or mark of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C).

When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.¹ If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks.

A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

¹ Once the registrar or clerk verifies a matching signature, they do not need to continue to review additional signatures for the same voter.

RULE 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected within eleven days of Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure by mailing written notice, and attempt to notify the elector by telephone and email, if a telephone number or email is on the elector's voter registration record or absentee ballot application, no later than close of business on the next business day.

EXHIBIT



OFFICIAL ELECTION BULLETIN

November 12, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, Elections Division Director

RE: Audit Instructions

Pursuant to O.C.G.A. § 21-2-498 and SEB Rule 183-1-15-.04, the Secretary has selected the contest for President of the United States to audit. While many risk-limiting audits rely on samples of ballots, the design of risk-limiting audits combined with the margin of this race mean that this risk-limiting audit is required to be a full manual tally of the votes cast. SEB Rule 183-1-15-.04 requires that the Superintendent follow instructions issued by the Secretary of State on how to specifically conduct the audit. While there will be additional instructions issued regarding more specific processes, initial instructions are below:

1. Start and Completion Times

Each county must start their audit no later than 9:00 a.m. on Friday, November 13, 2020 and must complete their audit no later than 11:59 p.m. on Wednesday, November 18, 2020.

Public notice of the date, time, and location of the audit must be posted on the county election office's website, or, if the county election's office does not have a website, in another prominent location.

2. Public Access and Political Party Monitors

The audit shall be open to the public and the press, but no person except the persons designated by the Superintendent shall touch any ballot or ballot container. The Superintendent shall designate a viewing area from which members of the public and press may observe the audit for the purpose of good order and maintaining the integrity of the audit. The Superintendent may also choose to make the audit proceeding available via livestream or webcast. If any member of the public or press interferes with

the process or persists in not following reasonable regulations and instructions set by the Superintendent, that person shall be removed.

The State Executive Committee of each political party (Republicans and Democrats) shall have the right to have one properly designated person act as monitor of the audit for each ten audit teams that are conducting the audit, with a minimum of two designated monitors in each county per party per room where the audit is being conducted. Properly designated monitors shall have complete access to monitor the audit. They do not have to remain in the public viewing areas. The designated monitors shall be given a letter by the designating entity containing the name of the monitor, his or her address, and the county in which he or she may monitor the audit. A copy of the letter shall be delivered to the county elections superintendent prior to the monitor being allowed to monitor the process. The designating entity shall provide their monitors with name tags that clearly indicate their names and the entity the designated them. Such name tags shall be worn at all times while monitoring the audit.

The Superintendent may make reasonable regulations, including regulations regarding social distancing measures and required personal protective equipment, that designated monitors and public observers shall follow so that they do not interfere with the auditing process. If a designated monitor or public observer interferes with the audit after being warned by an election official, or if he or she violated any of the prohibited activities listed herein, the superintendent may revoke the person's designation to monitor the process, remove them from any further monitoring or observing, and refer the incident to the Secretary of State's office for investigation. Any infraction or irregularity observed by a monitor or observer shall be reported to the superintendent or to the Secretary of State. If a monitor's designation is revoked by the Superintendent, the designating entity shall have the right to designate a new monitor in the manner set forth herein.

While monitoring the process, designated monitors are prohibited from:

- (a) In any way interfering with the audit process;
- (b) Speaking to any member of the audit team or vote review panel;
- (c) When outside of the public viewing area, using any photographic, electronic monitoring or recording devices, cellular telephones, or other electronic equipment;
- (d) Touching any ballot or ballot container; or
- (e) Engaging in any form of campaigning or campaign activity.

Before being allowed to monitor the process, each designated monitor shall execute an oath swearing or affirming, under penalty of perjury, that they understand the prohibitions set forth above, that they will not engage in any prohibited activity, and that

they understand any violations of this rule will be punishable by the State Election Board.

3. Audit Teams

Audit teams shall consist of at least two sworn designees. The Superintendent may designate non-employees to be a member of an audit team, but any non-employees designated to audit teams shall be residents of the State of Georgia. Every member of the audit team shall be a person of good moral character and shall take and sign an oath that they will conduct the audit fairly and accurately prior to conducting the audit. In determining the candidate for which the vote was cast, the audit teams shall refer to and rely on SEB Rule 183-1-15-02 (Definition of a Vote) for Optical Scan Voting Systems.

4. Vote Review Panels

Any ballot where the audit team does not agree on the selection for President shall be sent to a Vote Review Panel. Each Vote Review Panel shall consist of a designee of the Election Superintendent and a nominee of the county or state executive committee of each political party (Republican and Democrat) designated via letter provided to the Superintendent. Notice of the members and location of any Vote Review Panels shall be posted prominently at the office of the Superintendent. Prior to beginning its work, each member of the Vote Review Panel shall take and sign an oath. The panel shall manually review all ballots sent to it by any audit team and shall determine by a majority vote "if the elector has marked his or her ballot in such a manner that he or she has indicated **clearly and without question** the candidate for whom he or she desires to cast his or her vote." O.C.G.A. 21-2-438(c). The determination of the Vote Review Panel shall be final. The Superintendent may create multiple Vote Review Panels.

In making its determination, the Vote Review Panel shall refer to and rely on SEB Rule 183-1-15-.02 (Definition of a Vote) for Optical Scan Voting Systems.

5. Re-Certifying if Vote Counts Change

In cases like this, where the risk-limiting audit of the selected contest has led to a full manual tally of the ballots cast, the vote counts according to the manual tally shall replace the vote previously reported vote counts and each county shall re-certify the new counts for the audited race, if necessary, prior to November 20, 2020.



OFFICIAL ELECTION BULLETIN

November 13, 2020

TO: County Election Officials and County Registrars

FROM: Chris Harvey, Elections Division Director

**RE: Allowing More Credentialed Monitors at Risk Limiting Audit
Allowing Libertarian Party Monitors**

There has been some concern about the appropriate number of political party monitors eligible to view the audit process. The rules that the Secretary of State's office put out require that Superintendents allow a minimum of two political party monitors from each party, with additional monitors if there are more than twenty audit teams. For example, if DeKalb has 75 audit teams, they would have to allow a minimum of 8 designated monitors for each party. Additionally, as the Libertarian Party (technically a political body) has a candidate on the ballot for President, the same standards should be applied to the designated monitors from the Libertarian Party.

As an addendum to the rules on political parties monitors and because transparency should be a guiding principle throughout this process, if Election Superintendents can safely allow more than the minimum number of designated political party monitors consistent with maintaining an orderly process, space limitations, social distancing/public health guidelines then you should. Please allow as much transparency as you can while maintaining a secure, orderly process and abiding your public health regulations.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

**BRAD RAFFENSPERGER, in his
official capacity as Secretary of State
of the State of Georgia, et al.,**

Defendants.

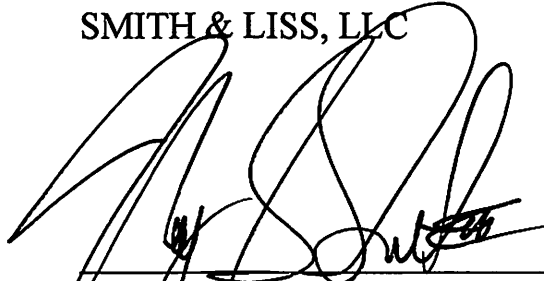
**CIVIL ACTION FILE NO,
1:20-cv-04651-SDG**

**NOTICE OF FILING AFFIDAVIT OF BRIDGT THORNE IN SUPPORT
OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

COMES NOW Ray S. Smith, III, Counsel of Record, and gives notice of the filing of the Affidavit of Bridget Thorne attached hereto.

Respectfully submitted this 19th day of November, 2020.

SMITH & LISS, LLC

A large, stylized handwritten signature in black ink, appearing to read 'Ray S. Smith III', is written over a horizontal line.

RAY S. SMITH III
Georgia Bar No. 662555
rsmith@smithliss.com
Counsel for Plaintiff

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone 404-760-6006
Facsimile 404-760-0225

CERTIFICATE OF SERVICE

This is to certify that I have this day served the within and foregoing **Notice of Filing Affidavit of Bridget Thorne** via electronic mail as follows:

Charlene S McGowan
Georgia Attorney General's Office
Assistant Attorney General
40 Capitol Square SW
Atlanta, GA 30334
404-656-3389
Email: cmcgowan@law.ga.gov

Russell D. Willard
Attorney General's Office-Atl
Department of Law
40 Capitol Square, SW
Atlanta, GA 30334
404-656-3300
Email: rwillard@law.ga.gov

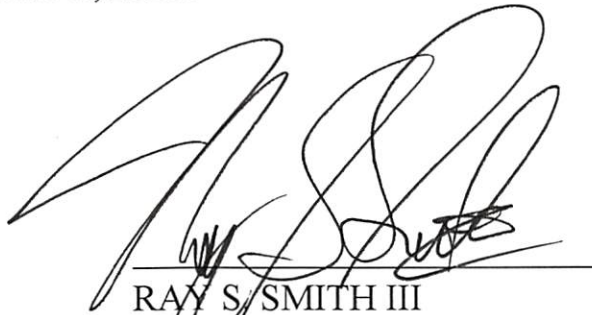
Marc E. Elias
Perkins Coie LLP
700 13th St NW
Ste 800
Washington, DC 20005
202-654-6200
Email: melias@perkinscoie.com

Adam Martin Sparks
Krevolin & Horst, LLC

One Atlantic Center, Ste 3250
1201 West Peachtree St., NW
Atlanta, GA 30309
404-888-9700
Email: sparks@khlawfirm.com

Bryan Ludington Sells
The Law Office of Bryan L. Sells, LLC
P.O. Box 5493
1226 Springdale Road, NE
Atlanta, GA 31107-0493
404-480-4212
Email: bryan@bryansellsllaw.com

This 19th day of November, 2020.



RAY S. SMITH III
Georgia Bar No. 662555
rsmith@smithliss.com
Counsel for Plaintiff

SMITH & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
Telephone 404-760-6006
Facsimile 404-760-0225

AFFIDAVIT OF BRIDGET THORNE

Comes now, Bridget Thorne, and after being duly sworn makes the following statement under oath:

1. My name is Bridget Thorne.
2. I am over the age of 21 years, and I am under no legal disability which would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.
3. [REDACTED]
4. I was certified by Fulton County as a voting technician. I was hired as a certified technician to temporarily assist Dominion Voting Systems with preparation for the Fulton County Georgia General Election from October 27 thru November 1, 2020 at the Georgia World Congress Center, Building B, where all of the Fulton County voting machinery was tested and calibrated.
5. The testing and calibration process entailed printing 21 test ballots for each ballot marking device (BMD) from each voting precinct. (The number of test ballots was dictated by the 21 candidates in the Loeffler senate race.)
6. Based on my knowledge and belief, the test ballots could have been run on plain paper, making them easily distinguishable from live Georgia ballots.

7. The test ballots were printed on the same Roland Voter Paper (heavy cardstock) as used for actual ballots, making them, in every way, indistinguishable from live Georgia ballots.

8. Over the entire course of my experience, these test ballots were handled by Dominion employees in a haphazard and careless way. At times there were stacks of “test ballots” unsecured all over the facility.

9. I am personally aware that some batches of test ballots were lost during the process and I was required to reprint entire polling districts test ballots a second time.

10. On October 28, I became concerned that these ballots were unsecure and indistinguishable from live ballots, so I began, with my daughter, Kenedy Thorne (also a technician for Dominion Voting) to “spoil” some of the ballots by either marking through the QR code on the ballot with a pen or simply tearing the ballot.

11. I spoiled approximately a couple thousand test ballots.

12. Based on my knowledge and belief, there were thousands of test ballots that were not spoiled.

13. The test ballots were ostensibly collected for shredding, but I do not know if they were ever shredded.

14. During the testing and calibration process, a consultant from The Elections Group named Mike (LNU) was present.

15. On November 1, 2020 approximately 10 pm, I observed Mike assisting another employee with generating test ballots for a district. Mike, however, was generating random ballots. He was not using the procedure for generating test ballots. I explained to Mike that he needed to generate the test ballots in a particular way, specifically, voting for the first candidate first, the second candidate on the next, etc. Mike asked me, "Do I have to vote for Trump?" I told him he did.

16. During the testing and calibration process, Richard Barron, the Fulton County Supervisor of Elections was present during much of the time.

17. On October 30, 2020, after the conclusion of early voting, all the equipment from the State Farm Arena was brought to Georgia World Congress Center, Building B to be prepared for election day voting.

18. When the equipment was brought in, Dominion personnel began to prep the equipment for election day. As part of the process, the vote tabulators (scanners) were all opened. There were approximately 50 tabulators from State Farm Arena.

19. Every tabulator had voted ballots in the ballot bins. These were, based on my knowledge and belief, actual voted ballots from early voting that were not removed and secured.

20. The ballots were removed by Dominion personnel and stacked, haphazardly. Some were left unattended for periods of time.

21. Based on my knowledge as a poll manager, these voted ballots should have been securely transported using two-person security. These ballots were simply left in the scanners and dropped at the warehouse.

22. There were Dominion personnel alone with scanners in all parts of the facility removing ballots from these machines.

23. During the process, these ballots were eventually gathered in suitcases (ballot cases) and collected into the corner of the facility.

24. At one point, I saw 50-60 ballot cases stacked in the corner. I estimate that each case could have held over 6,000 ballots.

25. I was upset by this. One of the warehouse employees, Tia (LNU) told me, "Bridget, don't worry about it...we've been doing this all week."

26. On election day, I was credentialed as the Poll Manager at the Johns Creek polling location. I was told in an email sent to all poll managers from my regional supervisor (supervisor of elections office) the Sunday before election day that we would have ACLU "clerks" for absentee ballots in each precinct.

27. I replied all and asked what, exactly, these ACLU clerks would be doing. Nobody of authority from Fulton County answered.

28. I was at the Georgia World Congress Center, Building B when the email exchange took place and Richard Barron was behind me, so I went and asked him about the ACLU clerks.

29. He gave me the impression that the supervisor should not have mentioned the ACLU. He said, "She shouldn't have said that [meaning ACLU clerk]. She should have just said you are having absentee clerks," or words to that effect.

30. I looked on the Atlanta ACLU website and they were advertising to have people come to volunteer as absentee clerks.

31. When I arrived at Johns Creek on election day, there was a woman from the ACLU there who served as the absentee clerk.

32. She told me she was a lawyer and was trained earlier that week.

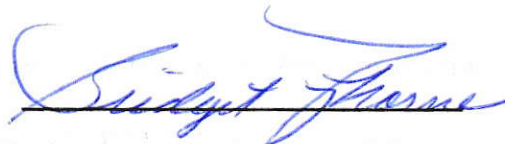
33. I was given a laptop for her to use, but we could not find the password. She told me she would just use her personal laptop.

34. She, apparently, had access on her personal device to the voter database in order to clear the absentee voter.

35. I do not recall if she had a name tag or badge, but she was in the voting area near the poll pad station.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of November 2020.

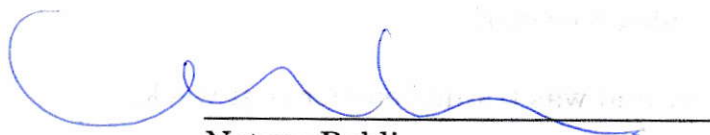


Bridget Thorne

State of Georgia

County of Fulton

Appeared before me Bridget Thorne, this 17th day of November 2020 and after being duly sworn, stated the forgoing statements are true and correct to the best of her knowledge and belief.



Notary Public

My commission expires 05/04/2021



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

**NOTICE OF FILING OF AFFIDAVITS IN SUPPORT OF PROPOSED
RESPONSE IN OPPOSITION TO PLAINTIFF’S EMERGENCY MOTION
FOR INJUNCTIVE RELIEF**

Proposed Intervenor-Defendants Democratic Party of Georgia, Inc.

(“DPG”), DSCC, and DCCC (together, “Political Party Committees”) hereby give notice of filing of the following sworn affidavits offered in support of their Response in Opposition to Plaintiff’s Emergency Motion for Injunctive Relief filed earlier today.

1. Attached hereto as Exhibit 1 is a true and correct copy of the Affidavit of Shameika Vailes, a DPG-credentialed recount observer for Fulton County.
2. Attached hereto as Exhibit 2 is a true and correct copy of the Affidavit of Angela Thomas, a DPG-credentialed recount observer for Fulton County.

3. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit of Kimberly Brandon, a DPG-credentialed recount observer for Cobb County.

4. Attached hereto as Exhibit 4 is a true and correct copy of the Affidavit of Doris Sumner, a DPG-credentialed recount observer for Gwinnett County.

5. Attached hereto as Exhibit 5 is a true and correct copy of the Affidavit of Robin Lourie, a DPG-credentialed recount observer for Fulton County.

6. Attached hereto as Exhibit 6 is a true and correct copy of the Affidavit of Olivia Alston, a DPG-credentialed recount observer for Fulton County.

7. Attached hereto as Exhibit 7 is a true and correct copy of the Affidavit of Russell Cason, a DPG-credentialed recount observer for Fulton County.

8. Attached hereto as Exhibit 8 is a true and correct copy of the Affidavit of Steve Young, a DPG-credentialed recount observer for DeKalb County.

9. Attached hereto as Exhibit 9 is a true and correct copy of the Affidavit of Beth Graham, a DPG-credentialed recount observer for Fulton County.

10. Attached hereto as Exhibit 10 is a true and correct copy of the Affidavit of Rebecca Short, a DPG-credentialed recount observer for Fulton County.

11. Attached hereto as Exhibit 11 is a true and correct copy of the Affidavit of Sara T. Ghazal, a DPG-credentialed recount observer for Cobb County.

12. Attached hereto as Exhibit 12 is a true and correct copy of the Affidavit of Sharon Zydney, a DPG-credentialed recount observer for Henry County.

13. Attached hereto as Exhibit 13 is a true and correct copy of the Affidavit of Komal Patel, a DPG-credentialed recount observer for Clayton County.

Dated: November 19, 2020.

Amanda R. Callais

Amanda R. Callais*

PERKINS COIE LLP

700 Thirteenth Street NW, Suite 800

Washington, DC 20005

Telephone: (202) 654-6200

Facsimile: (202) 654-6211

acallais@perkinscoie.com

*Counsel for Proposed Intervenor-
Defendants*

**Pro Hac Vice Application Pending*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: November 19, 2020.

Adam M. Sparks
*Counsel for Proposed Intervenor-
Defendants*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF SHAMEIKA VAILES

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Shameika Vailes, who being duly sworn, deposed and stated as follows:

1. My name is Shameika Vailes. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia.

3. On November 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia (“DPG”) to observe the statewide hand recount of

ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the “Recount”). As part of becoming credentialed, I received training in what the Recount would entail and what I would expect to observe.

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 8:00 a.m.

5. On arrival, I had no problems accessing the Center where the Recount was happening, though I was unable at first to locate and connect with fellow credentialed observers.

6. Check-in went smoothly.

7. After check-in, it took me some time to find the DPG appointed Site Lead. As I asked around seeking where I should go, Fulton County election employees or volunteers shared that a great deal of progress was made in the Recount on Saturday, such that the auditors were nearing completion of the Recount. No one tried to stop me from proceeding, or to get me or anyone else to leave on the premise that the Recount was complete or nearly complete.

8. . The Recount was ongoing when I arrived.

9. By 8:30 a.m., I had connected with the Site Lead and fellow observers and learned that there were more DPG-credentialed observers than were permitted to access the floor at that time.

10. The numbers of credentialed observers from DPG and from the Georgia Republican Party appeared to be roughly equal. Both parties appeared to have more credentialed observers present than were permitted to approach the audit teams who were conducting the Recount. Both parties had credentialed observers in the space where the audit teams were conducting the Recount

11. At no time did I see or hear of a credentialed observer being denied access to the Recount, other than for the reason that the observer's political party already had the maximum permitted number of credentialed observers in the space. I observed no disparate treatment by Fulton County elections employees or volunteers of observers credentialed by a particular party, or of members of the public.

12. Around 9:30 a.m., I left the Recount because there were sufficient numbers of DPG-credentialed observers on site and I had other commitments that day.

13. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 17th day of November 2020.

Shameika Vailes

SHAMEIKA VAILES

Sworn to and subscribed to
before me this 17th day of
November 2020.

Laura Tucker
Notary Public



My commission expires: March 28, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF ANGELA THOMAS

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, ANGELA THOMAS who being duly sworn, deposed and stated as follows:

1. My name is ANGELA THOMAS. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia.

3. On November 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the "Recount").

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 6:30 a.m.

5. On arrival, I had no problems accessing the space where the Recount was happening. There was a sign that said "Monitors" when I walked in, and I went directly to it. I sat for an hour or so before counting began, around 7:30 a.m.

6. I did not observe anyone claiming that the Recount had "just finished" or was otherwise complete, until after 9 a.m., when we were told that each party (Democratic and Republican) had to reduce number on the floor to 17, and myself and several others prepared to leave.

7. While I was observing the Recount, there were approximately 40 other credentialed observers present, with about 20 representing the Democratic Party of Georgia, and at least 20 I understood to be representing the Georgia Republican Party.

8. At no time did I see or hear of a credentialed observer being denied access to the Recount.

9. While observing, I had access to view each of the two-person audit teams from about six feet away. From this distance, I could hear the auditors announce and discuss the votes they counted on each ballot. I could see into what designated stack a given audit team placed each ballot.

10. Based on my personal observation, there were no inaccuracies, improprieties, inconsistencies, or other problems during the Recount. The audit teams I observed all appeared to be counting correctly.

11. I reviewed the Affidavit of Amanda Coleman stating that she saw people walking around and that there were no observers at the tables where counting was happening. However, observers were not assigned to specific tables and that was not our role. We were instructed to roam and observe the activities at multiple tables.

12. I reviewed the Affidavit of Maria Diedrich, stating that tables were left unattended. I did not observe any tables left unattended, but I did hear an announcement that at least one person must remain at each counting table at all times.

13. Around 9 a.m., after approximately 1.5 hours of observation, I left the Recount because the county elections officials announced that they were limiting

the number of observers on the floor to 17 per party. I would estimate that at least 30 credentialed observers were still there observing the Recount when I left.

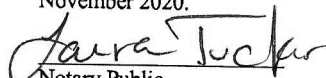
14. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.

 (signed)
Angela Thomas

Sworn to and subscribed to
before me this 18th day of
November 2020.


Notary Public

My commission expires: March 28, 2023



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF KIMBERLY BRANDON

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Kimberly Brandon, who being duly sworn, deposed and stated as follows:

1. My name is Kimberly Brandon. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Cobb County, Georgia.

3. I volunteered to work as the Democratic site volunteer supervisor for Cobb County, Georgia on November 13 through 15 of 2020, and was present on all

three days as a monitor credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Cobb County, Georgia (the “Recount”).

4. I arrived at the Event Center in Jim R. Miller Park, in Marietta, Georgia, where the Recount was held each day I worked as a volunteer supervisor at around 1:00 p.m. My assigned shift on each day I volunteered was from 1:00 p.m. until 6:00 p.m.

5. I did not witness or otherwise observe any Cobb County election official or officials treat credentialed monitors for the Republican Party any differently than the way they treated credentialed monitors for the Democratic Party.

6. I did not witness or otherwise observe any Cobb County election official or officials treat any credentialed monitors, regardless of party affiliation, with any hostility.

7. I did not witness Cobb County Director of Elections Janine Eveler treating monitors or public observers any differently based upon their party affiliation.

8. I did not witness Director Eveler treating anyone with hostility or behaving in any way that was less than professional.

9. Instead, at least based on what I observed, Director Eveler appeared to respond promptly to all inquiries, complaints, and questions from monitors and observers regardless of their party affiliation. On Saturday, another election official was supervising, and she also seemed to treat everyone fairly based on what I observed.

10. I understand that an individual who claims to have observed the recount in Cobb County on Monday, November 16, 2020, has submitted that the process was “sloppy, unorganized, and suspicious.” However, I consider myself to be highly organized and particular and, based on what I saw, nothing could be further from the truth.

11. This is not to say that everything was constantly perfect. To be sure, election officials had to hand count almost 400,000 ballots in Cobb County alone, and invariably humans will make occasional mistakes. However, whenever anyone reported any concern or mistake to Director Eveler, it was my observation that any such issue was promptly, efficiently, and thoroughly addressed.

12. In addition, it was my observation that Director Eveler, or other elections officials, were constantly available to questions and concerns.

13. On several occasions, I did witness Republican observers standing closer to the audit tables than is recommended under Centers for Disease Control

guidelines as a result of the COVID-19 pandemic. During the first day or two of the Recount this was reported to Director Eveler and promptly addressed by her. It was clear to me that the Republican monitors wanted to be close enough to read each ballot, which is more difficult from the necessary distance of six feet.

14. I did continue to escalate concerns when I observed Republican credentialed monitors attempting to talk to or engage with the auditors, as this clearly violated the rules that were explained to us.

15. I understand that an individual has submitted an affidavit to this Court alleging that certain ballots looked and felt different. While I touched no ballots personally, in accordance with the rules, I saw many ballots that were cast on election day and marked by Ballot Marking Devices (“BMDs”) and absentee ballots during the three days that I volunteered as a monitor. The BMD ballots from election day do look different than absentee ballots. Absentee ballots are creased from mailing and longer in size, and the BMD ballots generated by the in-person voting machines are not creased, shorter, and list the name of the selected candidate, rather than indicating the voter’s choice with a marked bubble next to the name of the selected candidate in a list of all candidates.

16. I understand that certain individuals have submitted affidavits to this Court claiming they observed irregularities in Cobb County during the Recount

without providing further evidence of same. Notably, however, I witnessed credentialed Republican monitors constantly taking video recordings and photographs on their phone. Indeed, at one point a Republican credentialed monitor took a video recording of me and my volunteer monitors where we were standing and sitting outside of the counting area for what felt like ten minutes. We simply ignored her and continued doing what we were there to do: observe the Recount. However, if these individuals have credible allegations of irregularities or improprieties having occurred, it would shock me that they would not have captured any such occurrences on camera.

17. Each day I was present, there were at least ten monitors from each political party present. At no point did I observe Republican monitors being denied access or otherwise turned away.

18. To the extent any minor problems arose, I observed election officials promptly address and rectify such issues with the audit teams directly. In general, the process ran smoothly, everyone was treated fairly, and election officials were working hard to complete the enormous task of hand counting hundreds of thousands of ballots, under the watchful eye of tens of credentialed observers and more that remained in the public viewing area, before the Recount deadline.

19. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.

Kimberly Brandon (signed)

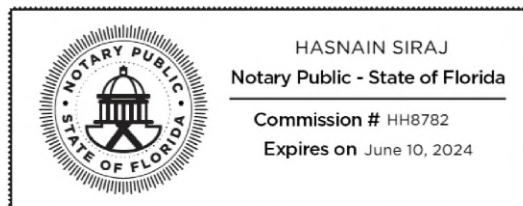
Kimberly Brandon

State of Florida, County of Duval

Sworn to and subscribed to
before me this 18th day of
November 2020. Type of identification presented is driver license.

Hasnain Siraj

Notary Public Hasnain Siraj



My commission expires: 06/10/2024 Notarized online using audio-video communication

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

AFFIDAVIT OF DORIS SUMNER

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, DORIS SUMNER, who being duly sworn, deposed and stated as follows:

1. My name is DORIS SUMNER. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Gwinnett County, Georgia.

3. On November 13, 14, and 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand

recount of ballots cast in the 2020 Presidential Election in Gwinnett County, Georgia (the “Recount”).

4. I arrived at 455 Grayson Highway, Lawrenceville, GA 30046, where the Recount was held, at approximately 1:00 p.m. on November 13 and approximately 8:00 a.m. on November 14 and 15. I had no difficulty accessing the space in which the Recount was held on any of these days.

5. Throughout my time observing the Recount, there were many more GOP-credentialed observers than DPG-credentialed observers. At no time did I see or hear of a credentialed observer being denied access to the Recount.

6. When I first began observing on November 13, GOP-credentialed observers stationed themselves close to or in the personal space of the audit teams. By November 15, these observers had stopped getting so close to the audit teams.

7. In all but a few instances, the auditing teams counted ballots aloud, with both members of each audit team examining the ballot. The few times that didn’t occur, a credentialed observer would notify a county elections official and the election official would promptly correct the auditors.

8. From what I observed, the election officials secured ballots well. I never saw any unattended ballots. There was always an elections worker present around any of the plastic black boxes (for absentee ballots) and blue security bags

(for election day ballots) used to store and organize the batches of ballots being counted.

9. I saw no unauthorized party handling ballots at any point.

10. Based on my personal observations over three days, I have no concerns about Gwinnett County's ability to count, control, and keep secure the voted ballots examined in the Recount.

11. The Recount process seemed like a professional operation each day I observed.

12. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

observed.

12. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

13. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18 day of November 2020.

Doris W. Sumner

DORIS SUMNER

Sworn to and subscribed to
before me this 18 day of
November 2020.

Laura Tucker
Notary Public



My commission expires: March 28, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF ROBIN LOURIE

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Robin Lourie, who being duly sworn, deposed and stated as follows:

1. My name is Robin Lourie. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in DeKalb County, Georgia.

3. On November 14 and 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand

recount of ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the "Recount").

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 8:00 a.m. on November 14 and 8:20 a.m. on November 15.

5. On arrival on the 14th, the entrance to the recounting area was not marked well and it took some time to find the entrance. This difficulty in finding the space where the recount was happening would have affected everyone attempting to enter equally. Once I found the correct location and provided my credentials, I was given access to the recount area around 8:45 a.m. I saw numerous credentialed Republican and Democratic observers in that area.

6. On November 14, I estimate there were approximately 170 tables with 2 individuals per table engaged in the Recount. To the best of my knowledge, the Recount began with mail-in or absentee ballots.

7. On November 14, there were numerous credentialed observers from both parties observing the recount. Credentialed observers had access to view each of the two-person audit teams. We were asked to social distance, but we were allowed to get within approximately 2-4 feet of the tables. There were aisles in front and behind the rows of tables and we were allowed to walk in front and behind the tables. I was able to hear and observe individuals at the tables read off

the name of the person who received the vote, hand the ballot to their partner to verify, and put the ballot in one of 4-5 piles marked on the table. I observed pieces of paper with Trump, Biden, and Joregensen on them and I saw counters put ballots in the corresponding pile. There were 1-2 additional sheets of paper on the table, but I cannot remember exactly what was written on them. Each table also had 3 large manilla envelopes for placing write-in ballots, and two other categories of ballots. I understood that these were the ballots that needed to be presented to the voter review panels.

8. I further observed that the envelopes for write-in candidates had a piece of paper attached and I saw the workers write the name of the write-in candidate(s) on the outside of the envelope and then place the write-in ballot(s) in the envelope.

9. On November 14, I observed the gold sheets with vote tallies being given to election officials for entry into the system. Each time a box of ballots was completed at a table, the gold sheet and any manilla envelopes that contained ballots were given to the election official with the sealed box of ballots. The workers were not allowed to leave their table until the box, gold sheet, and manilla envelopes were picked up and taken away.

10. On November 14, I heard the election official on the PA asking monitors to maintain social distance and to refrain from moving into the personal

space of the workers counting the votes. I was able to easily observe, hear, and monitor the tables while keeping a respectable distance from the workers. I did notice some credentialed Republican observers being intrusive and speaking to the workers counting the vote.

11. I left on November 14 at approximately 1:15 p.m. as it was the end of my volunteer shift.

12. On November 15, 2020, when I arrived at approximately 8:20 a.m., the tables were full of counters and I noticed that additional tables had been added from the day before. At approximately 9:00 many of the workers were permitted to leave, but there continued to be approximately 30 teams counting votes. I did not hear anyone claiming that the Recount had “just finished” or was otherwise complete. To the contrary, the Recount was ongoing and continued until I left around 12:30.

13. On November 15, 2020, a Fulton County election official announced that all Republican and Democratic monitors should gather in two distinct locations. The official stated that only one monitor should be present for every ten tables. She asked each party to reduce their monitors down to 17. I was one of the 17 credentialed monitors to stay and observe for the Democratic Party. Because there were too many Democratic monitors, some of those that were not needed left. The Republican Party was also allowed to have 17 credentialed monitors. Officials

did announce that any additional monitors who did not want to leave were welcomed to stay in the public viewing area.

14. On both November 14 and 15 there were members of the media and the public observing the Recount from a designated area. There were more people present in the public area on Saturday.

15. On Sunday, November 15, there was a press conference wherein it was announced that the County was getting close to finishing the Recount and it was going well. The County expected to be finished with the Recount by the afternoon.

16. On Sunday, November 15, I observed members of two separate voter review panels, which were adjudicating ballots containing Presidential votes. I understood that there were two Republican review panel members who had not shown up. Two credentialed Republican floor monitors were allowed to serve on the review panels. When two Republican gentlemen did show up for the review panels, the floor monitors did not want to relinquish their roles and Fulton county officials agreed to let them stay.


17. At no time did I see or hear of any counting errors. The process appeared to be running smoothly.

18. On Sunday, November 15, I left around 12:30 p.m., after approximately 4 hours of observation. I left the Recount because the review panels I had been watching were essentially done.

19. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.

 (signed)
Robin Lourie

Sworn to and subscribed to
before me this 18th day of
November 2020.


Notary Public

My commission expires:
10/24/2023



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

AFFIDAVIT OF OLIVIA ALSTON

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Olivia Alston, who being duly sworn, deposed and stated as follows:

1. My name is Olivia Alston. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia.

3. On November 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia (“DPG”) to observe the statewide hand recount of

ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the “Recount”). As part of becoming credentialed, I received training in what the Recount would entail and what I would expect to observe.

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 8:00 a.m.

5. On arrival, I had no problems accessing the Center where the Recount was happening, though I was unable at first to connect with fellow credentialed observers. By 8:30 a.m., I had connected with fellow observers and learned that there were more DPG-credentialed observers than were permitted to access the floor at that time.

6. I volunteered to stand by for the moment and observed the Recount at a distance where others viewing as well.

7. Both parties had credentialed observers in the space where the audit teams were conducting the Recount.

8. At no time did I see or hear of a credentialed observer being denied access to the Recount, other than for the reason that the observer’s political party already had the maximum permitted number of credentialed observers in the space.

9. Based on my training nothing seemed out of the ordinary.

10. I did not observe anyone claiming that the Recount had “just finished” or was otherwise complete. To the contrary, the Recount was ongoing when I arrived. When I arrived my understanding was that the recount was almost complete.

11. While observing, I spoke with a Fulton County elections employee, who explained that many of the votes had been counted, which was why the number of audit team were fewer in number than expected.

12. Around 9:40 a.m., I left the Recount because there were sufficient numbers of DPG-credentialed observers on site and I had other commitments that day.

13. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 17th day of November 2020.

Olivia B. Alston

OLIVIA ALSTON

Sworn to and subscribed to
before me this 17th day of
November 2020.

Laura Tucker
Notary Public



My commission expires: March 28, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

DECLARATION (AND AFFIDAVIT) OF RUSSELL CASON

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, RUSSELL CASON, who being duly sworn, deposed and stated as follows:

1. My name is RUSSELL CASON. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of Fulton County and registered elector in Fulton County, Georgia.

3. On November 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the “Recount”).

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 8:00 a.m.

5. On arrival, there was no exterior signage to indicate the entrance and a group of 15 to 20 people near me were milling around trying to figure out how to access the facility. Ultimately, we gained access to the building, though the absence of signage required some exploration before we found the table where we could sign in and then be sworn in between 8:30 am and 9:00 am.

6. As a Democratic representative, during our virtual training session, it was suggested that we wear blue clothing and judging from the numbers of observers dressed in red, it is likely someone told the Republicans representatives to wear that color. As was the case on the exterior of the building, inside there was no indication where Democrats or Republicans could or should congregate. As we entered the large room where the recount was being conducted, several tables were set up and individuals were checking people in. On the sign-up sheet, we were instructed to write our names and the political party we were representing. Immediately before my name on the sign-up sheet were at least five people with

GOP written beside their names. After being sworn in, at one point a woman approached me and asked where the Republican table was located. I was not able to help her, but a short while later I saw the woman gathered with a group of 20-25, so I took them to be Republican observers. Eventually, I was able to locate the table where the Democratic observers were gathered and checked in there as well.

7. At this juncture, announcements were being broadcast over the public address system. Due to an echo caused by the size of the room, I had difficulty making much sense of what was being said. The Democratic table was adjacent to the news media bullpen in the back of the room. We were told to “hang tight.”

8. At approximately 10 am, the election officials declared they had too many people on the floor and that they wanted each party to thin its ranks of observers to 17 people each. This was accomplished, and I held my station for the moment at the Democratic table.

9. At approximately 10:15 am, a cheer rang through the hall as it was announced that the inventory of ballots was complete. The election officials now instructed that the number of observers be reduced to 5 observers for each political party. Anyone who wanted to go was released.

10. In the absence of any further need for my services, I was happy to depart, which I did.

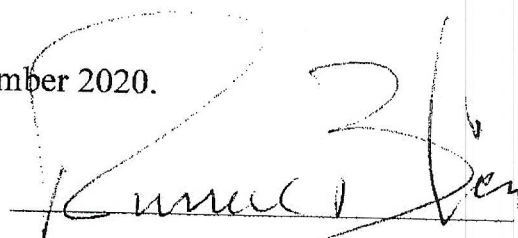
11. In conclusion, while appearing for service, I didn't ever get assigned to monitor the space where the counting of paper ballots was on-going. My experience was shared by many people of both political parties in my vicinity who appeared that day. I, like they, observed no inaccuracies, improprieties, inconsistencies, or other problems during my limited exposure to the Recount.

12. At no time did I see or hear of a credentialed observer being denied access to the Recount.

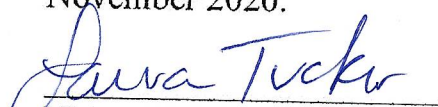
13. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.


RUSSELL CASON (signed)

Sworn to and subscribed to
before me this 18 day of
November 2020.


Notary Public



My commission expires: March 28, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT / DECLARATION OF STEVE YOUNG

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, STEVE YOUNG, who being duly sworn, deposed and stated as follows:

1. My name is STEVE YOUNG. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia.

3. On November 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in DeKalb County, Georgia (the “Recount”).

4. I arrived at 2994 Turner Hill Road, Stonecrest, GA 30038, where the Recount was held, at approximately 7:30 a.m.

5. On arrival, I had no problems accessing the space where the Recount was happening.

6. While I was observing the Recount, there were approximately 18-20 other credentialed observers present, with 10-12 representing the Democratic Party of Georgia and about 8 representing the Georgia Republican Party.

7. At no time did I see or hear of a credentialed observer being denied access to the Recount.

8. I also saw members of the public and/or the media observing the Recount from a designated area.

9. While I observed the Recount, I only saw auditing teams counting ballots cast during advance voting and marked by ballot-marking devices. I understood from speaking with other observers and with county elections workers that by Sunday morning, when I was observing, DeKalb had already counted all of the hand-marked absentee ballots cast in the election. Some auditing teams on duty

while I was observing didn't even receive a batch of ballots to count, because DeKalb had gotten quite far in the process.

10. I saw a GOP-credentialed observer getting very close to the auditing team tables and looking right over peoples' shoulders. A gentleman in an orange vest approached her and asked her to step back. She resisted, claiming that she was more than six feet away. She was not. The gentleman in the orange vest informed her that she was closer than six feet from the auditing team and advised her again to step back. Once she complied, he returned to his station.

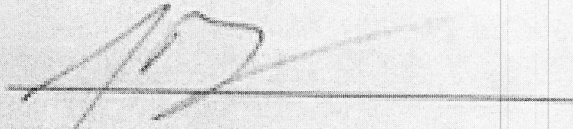
11. The Recount was very organized and efficiently run. The Recount workers and volunteers with whom I interacted were friendly and did not treat any observer or group of observers in a hostile way.

12. In short, there were few problems and no major problems while I observed the Recount. I left the Recount around 12:30 p.m.

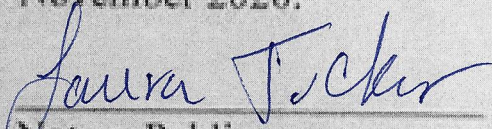
13. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18 day of November 2020.


STEVE YOUNG

Sworn to and subscribed to
before me this 18 day of
November 2020.


Notary Public



My commission expires: March 18, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF BETH GRAHAM

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, BETH GRAHAM, who being duly sworn, deposed and stated as follows:

1. My name is BETH GRAHAM. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia.

3. On November 15, 2020, I was present as a monitor credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the “Recount”).

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 8:30 a.m. I had no problems accessing the space where the Recount was happening.

5. Around 9:00 a.m., the election officials indicated that they did not need as many auditors as were present at that time. As auditors were released, each party gathered to count their number of monitors. Because the officials stated that they wanted only one monitor per party, per ten tables, the number of monitors was quickly reduced to about seventeen (17) per party, with only 5 per party allowed on the audit floor, and further reduced as the day went on. Additional monitors were told they could stay in the public viewing area.

6. When the day began, there were approximately 50 credentialed monitors present observing the Recount. Over the course of the day, that number decreased because there were fewer tables counting.

7. I did not observe anyone claiming that the Recount had “just finished” or was otherwise complete prior to 1 p.m., although new arrivals were told during the day that additional volunteers would not be needed.

8. I also saw approximately five (5) news cameras in the public viewing area and approximately six (6) observers from the Carter Center, who were circulating on the audit floor.

9. I never saw a credentialed observer being denied access to the Recount, however I did see a monitor who had to be corrected by election officials for improperly approaching the audit tables, attempting to talk to auditors, and attempting to touch ballot containers. This individual did not leave the facility after being corrected, but congregated with the Republican monitors and continued to walk the audit floor.

10. While observing, I had access to view each of the two-person audit teams from about six feet away. From this distance, I could hear the auditors announce and discuss the votes they counted on each ballot. I could also see the selections voters had made on the ballots that the audit teams were recounting if I chose to get that close. I could also see into what designated stack a given audit team placed each ballot.

11. During my time observing, I did not hear anyone call out a ballot and then place it into the wrong stack, or hear anyone complain to an elections official that ballots were being placed in the wrong stack.

12. Based on my observation, the audit teams I observed seemed to count correctly. I did see two tables who independently counted for a few minutes at the beginning of the process, but they self-corrected upon being observed and each counted as a team after that.

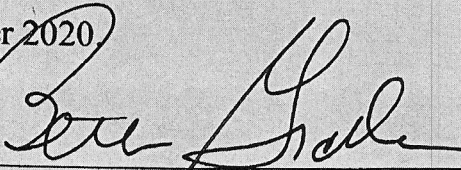
13. Around 12 p.m., when we were asked to reduce our numbers to two (2) per party, there were still four (4) Republican monitors walking around the audit floor looking for pieces of paper or documents lying on tables. I saw them approach an auditor and ask questions. The auditor told them she could not speak to them. They later approached another auditor, and one of the Democratic observers intervened to tell them they could not question auditors. He then escorted the Republican observers to an elections official whom I understood to be an attorney, who confirmed that observers should not speak to the auditors.

14. I continued as a monitor on the floor until around 1 p.m., and left shortly thereafter. By that time only 3-4 tables were still counting ballots, and I was no longer needed.

15. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

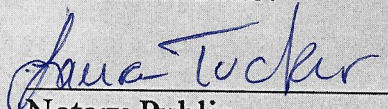
16. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.



(signed)
BETH GRAHAM

Sworn to and subscribed to
before me this 18TH day of
November 2020.



Notary Public



My commission expires: March 28, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
1:20-cv-04651-SDG

AFFIDAVIT OF REBECCA SHORT

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Rebecca Short, who being duly sworn, deposed and stated as follows:

1. My name is Rebecca Short. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia. I am also an attorney and member of the State Bar of Georgia.

3. On November 15, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Fulton County, Georgia (the “Recount”).

4. I arrived at the Georgia World Congress Center, where the Recount was held, at approximately 8:20/8:30 a.m.

5. On arrival, I had no problems accessing the space where the Recount was happening.

6. I did not observe anyone claiming that the Recount had “just finished” or was otherwise complete. To the contrary, the Recount was ongoing when I arrived and was continuing when I left at about 12:10 p.m.

7. While I was observing the Recount, there were numerous other credentialed observers present. At one point, Fulton County elections officials asked us to gather by party and asked both the Democratic Party of Georgia and the Republican Party of Georgia to cull themselves down to 17 credentialed observers. I would estimate the Democratic Party had approximately 30 credentialed observers there so some 13 Democratic Party observers were asked to leave. I do not know how many credentialed observers the Republican party had present, but they were also asked to limit their number to 17.

8. Fulton County officials then came back and asked both the Democratic and Republican parties to limit the number on the floor at any given time to five credentialed observers. Officials noted that county employees had made progress in counting ballots and officials had dismissed approximately two-thirds of the counters, thus less observers were needed on the floor. The same instructions were given to both the Democratic and Republican parties.

9. I was one of the five credentialed observers to remain behind. I was able to walk on the floor where the counting was taking place and observe the two-person teams hand counting ballots. There was nothing extraordinary to note as the county employees looked at ballots, moved the ballots to one of 4 piles and then tallied the votes in each pile. I observed the piles to contain Trump votes, Biden votes and Jorgensen votes. The 4th pile was for questionable or undetermined ballots which were placed in an envelope and then someone from the County would retrieve the envelope and take it to the voter review panel. The process was very orderly.

10. I also was able to observe the voter review panels, which were adjudicating ballots containing Presidential votes which the two-person county team could not conclusively determine were meant for a given candidate. At one point, a County official stated that they need additional Republican reviewers for

the voter review panels but could not find any credentialed for that task. Instead the County official allowed two of the credentialed floor observers, both women, to serve on the panel. I observed one of the women chosen for the voter review panel to be taking her own notes during this process. I had also observed this same woman taking photos earlier when she was walking on the floor as an observer and heard a county official ask her to delete the photos and to delete them from the deleted file. This woman was eating, drinking and coughing while reviewing undetermined ballots.

11. I observed two gentlemen arrive who were credentialed for the voter review panel. At that point all parties, Republican observers, Democratic observers, and county officials, agreed to allow the two women to complete the review of ballots as they were almost done.

12. I also at one point observed a press conference with Fulton County officials and saw approximately 10-15 members of the news media in attendance. I also observed individuals and media in the designated general-public observation area.

13. Except for the number limitations imposed equally on both teams of credentialed observers, I did not see or hear of a credentialed observer being denied access to the Recount.

14. While observing, I had access to view each of the two-person audit teams from about six feet away. Some of the two-person teams were discussing audibly the votes and some were simply moving each ballot to a stack of ballots. After the team was finished separating the votes, they would count the number of ballots in each stack and then provide the numbers to be entered into a computer.


15. I was in the credentialed, ballot-counting area for approximately 4 hours and observed no inaccuracies, improprieties, inconsistencies, or other problems during the Recount. The process ran smoothly.

16. Around 12:10 p.m., after approximately 4 hours of observation, I left the Recount because the voter review panels had essentially wrapped up the work and that had been the focus of my observations.

17. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

18. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 17th day of November 2020.

 (signed)

Rebecca Hoelting Short

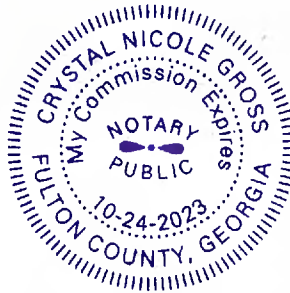
Sworn to and subscribed to
before me this 17th day of
November 2020.



Notary Public

My commission expires:

10/24/2023



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF SARA GHAZAL

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Sara Tindall Ghazal, who being duly sworn, deposed and stated as follows:

1. My name is Sara Tindall Ghazal.
2. I am over the age of 18, and I am a licensed attorney in the state of Georgia, and a resident and registered voter of Cobb County, Georgia.
3. From February 2018 until December 2019, I served as the voter protection director for the Democratic Party of Georgia.
4. In 2017, I served as the Cobb County Democratic Party's representative on the Cobb Elections Vote Review Panel during the Sixth District Special Election.

5. In 2020, I was a candidate for State House in Georgia.

6. Beginning on midday Wednesday, November 4, through Monday, November 9, I observed Cobb County officials undertake the intake, signature verification, separation of ballots from their envelopes, duplication and adjudication as necessary, and tabulation of absentee and provisional ballots, as a member of the public.

7. Beginning Friday, November 13, through Monday, November 16, I observed the audit of the Presidential race in Cobb County on behalf of the Democratic Party of Georgia at Jim Miller Park, which was used as the main site for Cobb County election processing, albeit not as a polling precinct.

8. On Wednesday, November 4, and subsequent days, I observed from the public observation area as Cobb County officials examined incoming absentee ballots that had arrived on Election Day in Room A of the Jim Miller Park facility.

9. I observed poll workers scan the bar codes with a hand-held bar code scanner, which subsequently pulled up the individual voter record. Poll workers at that point compared the voters' signatures on the back of the absentee ballot envelope with the signatures that were held on file.

10. While I could generally see the process of intake and signature comparison, I was not close enough to the poll workers to be able to evaluate any signature personally.

11. Monitors of each party who had been accredited in advance by their political party had access to this room. I observed credentialed monitors from both the Democratic Party of Georgia and the Georgia Republican Party present in the facility.

12. I observed that after absentee ballots had been accepted based on the verification of signatures from the outside of the ballot envelope against the exemplars that were maintained on file, these ballots were then taken to a machine in the back of room C that opened the envelopes in a rapid manner.

13. I understand, but did not personally witness, that after the envelopes were opened, the ballots were separated from the envelopes with signatures in such a manner as to guarantee the secrecy of the ballot, as is guaranteed under the Georgia Constitution, Art. II Sec. 1(1)

14. After these ballots were separated, I witnessed poll workers organizing them according to precinct. This batching process was conducted in room B.

15. In room C I witnessed multiple boxes that contained the ballot envelopes with signatures, stacked in the back of the room. I was told by Cobb County Registrar Beau Gunn that these documents must be retained for two years.

16. I witnessed batches of ballots then run through scanners in room C. In most batches that were run through the scanners, one or more ballots could not be read by the scanner. These ballots that could not be scanned were pulled from the stack of ballots and set aside.

17. I witnessed the ballots that were unable to be scanned by the scanners were subsequently delivered to tables, also in room C, where teams of two individuals supervised by a third staff person duplicated the unreadable ballots onto new, fresh absentee ballots that were not creased and had not been folded.

18. The process by which the rejected ballots were duplicated was as follows: one staff person read out the voter's choice while the other staff person filled in the bubble carefully. The third supervisor would thereafter compare the original ballot as completed by the voter against the duplicated ballot as completed by the staff person. These staff people all used black pens to complete the duplicated ballots.

19. In cases where the voter's intent was unclear, or where the voter had changed their mark, both the original unscannable ballot and the duplicated ballot

were submitted to a vote review panel, make up of representatives of both the county Democratic and the county Republican Party. On at least one occasion I also witnessed a representative of the Libertarian party on a vote review panel.

20. I witnessed the conduct of numerous vote review panels over the course of the five days that I observed the original processing and tabulation of absentee and provisional ballots. I did not observe a single occasion in which party officials disagreed about the voter intent.

21. I also witnessed Uniformed and Overseas Citizen Absentee Voting ACT (UOCAVA) ballots being processed.

22. Based on my knowledge and experience in Georgia election law, I am aware that Georgia law allows for UOCAVA ballots to be emailed to overseas and military voters. Voters then use their personal printers to print out their ballot on normal paper, then complete these ballots by hand.

23. I witnessed UOCAVA ballots that had been printed on a home printer being duplicated onto the normal absentee ballot forms so that they could be read by a scanner.

24. I did not witness any actions or behavior that led me to believe that poll workers were undertaking any activity aside from adhering to normal election procedures in processing and tabulating absentee ballots.

25. Beginning the morning of Friday, November 13, through Monday, November 16, I acted as an accredited monitor for the Democratic Party of Georgia.

26. Based on previous statements from Georgia Secretary of State Brad Raffensperger and conversations with Cobb County Election Supervisor Janine Eveler, I had understood that a statewide race other than the Presidential election would be selected for an audit, as per the requirements of OCGA 21-2-498.

27. I was quite surprised to learn that the race to be selected for an audit was the Presidential race. Given my understanding of Risk Limiting Audits (RLAs,) I knew that this meant a huge number of ballots would have to be pulled in order to ascertain whether the tabulation process had correctly identified the winner of that race.

28. It is my understanding that based on the extreme challenges of pulling more than 1,000,000 randomly selected ballots, the exercise of auditing the Presidential race would instead consist of hand-examining every ballot that was cast in that race.

29. Because Georgia law does not allow for a hand-recount of ballots except for the extremely limited circumstances of a court order or a lack of any functioning scanners, I am not aware of any pre-existing procedures to conduct an audit (or a hand-recount) of all ballots in Georgia.

30. In the absence of any written procedures, I witnessed Cobb officials instructing poll workers who had been brought back in on very short notice to recount the ballots without providing specific instruction as to how that counting should be conducted.

31. I heard a poll manager admonish poll workers to keep talking to a minimum so as not to distract the staff from the task at hand.

32. I witnessed up to 40 teams of individual poll workers hand reviewing and hand counting both machine-marked and absentee ballots.

33. I witnessed occasional mistakes caused by human error and fatigue, such as placing a single ballot in the wrong pile or ballots sticking together and being counted as a single sheet of paper. In every instance of a human error that I personally witnessed, another poll worker was able to correct this mistake.

34. During the process of the audit, I also witnessed additional vote review panels re-adjudicating duplicated ballots against the original ballots as completed by the voter to confirm both that the ballots had been accurately duplicated, and that the duplicated ballots had been accurately tabulated.

35. I witnessed Cobb officials pulling both the original ballots that had been rejected by the scanners, as well as the duplicated ballots that had been adjudicated during the original processing and subsequently tabulated.

36. The vote review panels first were presented with both the original ballot and the duplicated ballot, when they confirmed that the serial number that was provided to each matched, and that the Presidential race was accurately duplicated from the original to the new ballot.

37. After confirming that each duplicated ballot was matched up to its corresponding original ballot, each pile was counted to confirm a match.

38. The vote review panel members then separated the ballots according to the presidential candidate chosen by the voter, and thereafter counted the number of ballots for each candidate and recorded these numbers on their tally sheet.

39. Several of these panels adjudicated UOCAVA ballots as a part of their duties. Based on the comments of the panelists that I heard as observing, I believe that these vote review panel members did not understand how UOCAVA ballots are transmitted to overseas voters, or why they have to be duplicated onto a ballot paper that can be read by a scanner.

40. The same procedures were followed over multiple days and multiple panels.

41. I am aware that several affidavits submitted by the Plaintiff in this case suggest there was something suspicious or irregular about the fact that certain ballots appeared “pristine” or “impeccab[ly]” filled in, and that those same ballots lacked

folds or creases. However, as described above, both damaged ballots and certain UOCAVA ballots must be duplicated by election officials to be read by the vote tabulation scanners. These duplicated ballots are not folded, as they have not been mailed, are neatly filled in by election workers, and are clearly marked and tracked to as to indicate that they are official duplicates.

42. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

43. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.

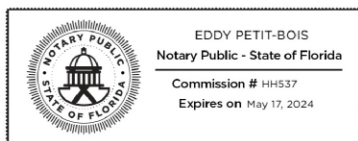
 (signed)

Sara Tindall Ghazal

Sworn to and subscribed to
before me this 18th day of
November 2020.


Notary Public

My commission expires: 05/17/2024



Notarized online using audio-video communication
Electronic Notary Public

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF SHARON ZYDNEY

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, Sharon Zydney, who being duly sworn, deposed and stated as follows:

1. My name is Sharon Zydney. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in Fulton County, Georgia.

3. On November 16, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Henry County, Georgia (the "Recount").

4. I arrived at 526 Industrial Boulevard, McDonough, Georgia where the Recount was held, at approximately 6:50 a.m.

5. On arrival, I was greeted by Ameika Pitts, Henry County Elections Director, who I recognized from the training I attended the previous Friday. I had with me the certified letter from the Democratic party that I was eligible to observe the Recount. I also took an oath before being allowed on the floor to observe.

6. At the training I had been told that observers were not allowed to have cell phones in the Recount area. I also observed signs in the Recount area stating no cell phones.

7. I was one of 2 Democratic observers joined by 2 Republican observers inside the rope where tables were set up for the recount. There were approximately 6 tables with 3 stations per table and 2 counting officials (auditors) at each station. There were approximately 12 teams of auditors during my time on the floor, with another team of auditors coming in around 11:00. The four observers, two from each party, were allowed to move amongst the tables where

the Recount was happening and observe the Recount. There were also 2 additional observers from each party assigned to the vote review panels.

8. After 8:00 a.m., additional observers with credentials from the Democratic party arrived and observed from behind the rope. There were also observers whose party affiliation was not obvious. As the morning went on, some Democrat certified observers did leave, and some individuals remained in the public viewing area behind the rope.

9. At approximately 11:00 a.m., the 2 Republican observers were replaced by 2 other Republican observers. At one point, all 4 were within the rope. The other Democratic observer working with me switched out with a Democratic observer who had been behind the rope.

10. While I was observing the Recount, an individual in the back called Ms. Pitts over claiming there was an urgent issue. I heard that one ballot had been put in the wrong pile and it sounded like it was a Trump ballot put in the Biden pile. Ms. Pitts came over and I watched as the auditors re-did the sorting for this pile of votes. Indeed one ballot was in the wrong pile and they found it and corrected the mistake when they re-counted the batch.

11. I also observed one audit team get out of sync when placing their ballots into piles. One woman was orally calling out the vote and the other person

was then orally calling out the vote and placing them in the appropriate pile. In the middle of the batch she started putting Biden ballots on the Trump pile and Trump ballots on the Biden pile. I called over a county election official who had the two counters redo the entire batch of ballots. I watched them redo and recount and it was corrected. I do not believe the mix up was intentional.

12. To me, the system for counting and observing was working as it was intended; when mistakes were made by human error, then those mistakes were corrected.

13. In my interactions with Ms. Pitts I found her friendly and welcoming. She did become focused and serious if a problem was identified. I would not characterize her behavior as hostile but attentive and matter-of-fact if a problem was brought to her attention.

14. A little after 1:00 p.m., after approximately 6 hours of observation, I left the Recount.

15. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

16. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 19th day of November 2020.

Sharon Zydney (signed)
Sharon Zydney

Sworn to and subscribed to
before me this 19th day of
November 2020.

Laura Tucker
Notary Public



My commission expires: March 28, 2023

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, in his official capacity
as Secretary of the State of Georgia, et al.,

Defendants.

CIVIL ACTION FILE NO.
20-cv-04651-SDG

AFFIDAVIT OF KOMAL PATEL

Personally appeared before me, the undersigned subscribing officer, duly authorized to administer oaths, KOMAL PATEL, who being duly sworn, deposed and stated as follows:

1. My name is KOMAL PATEL. I am over 18 years of age, a citizen of the State of Georgia, suffer from no legal disabilities, and am otherwise competent to testify to the matters contained herein. I have personal knowledge of the facts here, and if called as a witness, can testify completely thereto.

2. I am a resident of and registered elector in DeKalb County, Georgia.

3. On November 16, 2020, I was present as an observer credentialed by the Democratic Party of Georgia to observe the statewide hand recount of ballots cast in the 2020 Presidential Election in Clayton County, Georgia (the “Recount”).

4. I arrived at the Clayton County Police Department, where the Recount was held while I observed it, shortly after 8 a.m.

5. On arrival at the Police Department, I had no problems accessing the room where the Recount was happening.

6. The space was small. But at no point was I concerned about the ability to view what was happening in any part of the room. While waiting in the roped off area (for the public, media, and party volunteers who took turns observing the floor where people were counting), it was easy to see what was happening all around the room. Any observer could easily see what was happening in any part of the room merely by moving around a few steps.

7. While monitoring the counting floor – which involved actually walking around next to the tables with people who were counting – I had access to view each of the two-person audit teams at the tables. I could hear the auditors announce and discuss the votes they counted on each ballot. I could also see the selections voters had made on the ballots that the audit teams were recounting, and

could see into what designated stack a given audit team placed each ballot. Other credentialed observers had the same access as I did.

8. While I was present, I observed at least five individuals who I understand were associated with the Trump Campaign and/or Republican Party. I observed one of these individuals taking pictures and sending them to somebody on his phone. I observed a Trump-Pence logo on those messages.

9. Additionally, I observed at least three of these individuals causing disruptions in the Recount room. For example, one of the individuals began complaining to an election official that the County was not following the rules by permitting only one monitor per party even though there were 12 tables in the room. I understand this is the subject of the Affidavit submitted by Ibrahim Reyes. The individuals I observed were being highly combative and were disruptive. This resulted in an election official ultimately asking a couple of the individuals to temporarily leave the Recount room.

10. While I was observing the Recount, in addition to the 5 Republican observers, there were approximately 6 other credentialed observers present, with about 4 representing the Democratic Party, and 2 from the Carter Center (additional non-credentialed observers remained in the public viewing area).

11. Each party, both Republican and Democratic, as well as the Carter Center, had monitors present and on the floor of the Recount throughout the time I was present. The monitors for each party, and the Carter Center, alternated on the floor. The same rules were applied to all credentialed observers.

12. I also observed a group of individuals I understood to be the members of a vote review panel. I saw at least two of the individuals affiliated with the Republican Party serve on this panel.

13. I also saw two or three members of the news media and other members of the public observing the Recount from a designated area.

14. I observed no inaccuracies, improprieties, inconsistencies, or other problems during the Recount. The audit teams I observed appeared to be counting correctly. The process ran smoothly, minus the above-mentioned disruptions.

15. Around noon, after approximately 3 hours of observation, I left the Recount because the County took a break for lunch.

16. I learned from a notice posted by the County in the room where the morning Recount took place that the Recount was being moved to the Jackson Elementary School gymnasium in the afternoon of November 16, 2020 (beginning at 1:30 p.m.). I did not attend the afternoon session of the Recount on November 16, 2020.

17. I give this Declaration freely, without coercion, and without any expectation of compensation or other reward.

18. I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed this 18th day of November 2020.

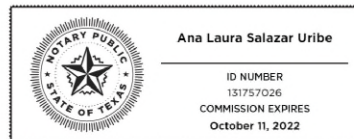
Komal Patel (signed)

KOMAL PATEL

Sworn to and subscribed to
before me this 18th day of
November 2020.

Ana Salazar Uribe

Notary Public



My commission expires: 10/11/2022

Notarized online using audio-video communication

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, et al.,,

Defendants.

Civil Action No. 1:20-cv-04651-SDG

Date: Nov. 19, 2020

Time: 3:00 p.m.

**PROPOSED BRIEF OF PROPOSED INTERVENORS NAACP OF
GEORGIA, ET AL. IN OPPOSITION TO PLAINTIFF'S
EMERGENCY MOTION FOR INJUNCTIVE RELIEF**

TABLE OF CONTENTS

	Pages
I. INTRODUCTION	1
II. PLAINTIFF’S EMERGENCY MOTION SHOULD BE DENIED	2
A. Plaintiff Lacks Standing	2
1. Plaintiff Brings a Generalized Grievance in This Case	2
2. Plaintiff Does Not Have Standing to Bring a Claim Under the Electors and Elections Clauses	4
B. Plaintiff Is Not Likely To Succeed On The Merits Of His Claims	5
1. No Valid Constitutional Claim Arises Out of the Valid DPG Settlement	6
2. Plaintiff’s Monitoring Claim Fails as a Matter of Law	9
3. Plaintiffs’ Requested Relief Defies Well-Established Federal and Georgia Law	12
4. The Prohibition of Certification In Whole Or In Part Is Disproportionate To Plaintiff’s Purported Injury And Would Violate the U.S. Constitution	14
5. Plaintiff’s Requested Declaratory Relief Is Disproportionate and Itself Unconstitutional	17
C. Plaintiff’s Claims With Respect to the November 2020 Election Are Barred by Laches	18
CONCLUSION	22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>AmBrit, Inc. v. Kraft, Inc.</i> , 812 F.2d 1531 (11th Cir. 1986)	18
<i>Amtrak v. Morgan</i> , 536 U.S. 101 (2002).....	19
<i>Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n</i> , 576 U.S. 787 (2015).....	4, 5
<i>Baber v. Dunlap</i> , 349 F. Supp. 3d 68, 76 (D. Me. 2018)	13
<i>Bognet v. Secretary of the Commonwealth of Pennsylvania</i> , — F.3d —, 2020 WL 6686120 (3d Cir. Nov. 13, 2020)	3, 4, 5
<i>Burton v. State of Ga.</i> , 953 F.2d 1266 (11th Cir. 1992)	13
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	16
<i>Carlson v. Ritchie</i> , 830 N.W.2d 887 (Minn. 2013)	21
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983).....	2
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013).....	2
<i>Coleman v. Miller</i> , 307 U.S. 433 (1939).....	5
<i>Corman v. Torres</i> , 287 F. Supp. 3d 558, 568-569 (M.D. Pa. 2018)	4

<i>Costello v. United States</i> , 365 U.S. 265 (1961).....	19
<i>Curry v. Baker</i> , 802 F.2d 1302 (11th Cir. 1986)	12
<i>Democratic Party of Georgia, Inc. v. Raffensperger</i> , No. 1:19-cv-05028-WMR.....	8
<i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 2:20-CV-966, 2020 WL 5997680 (W.D. Pa. Oct. 10, 2020).....	11
<i>Duncan v. Poythress</i> , 657 F.2d 691 (5th Cir. 1981)	13
<i>Foster v. Love</i> , 522 U.S. 67 (1997).....	5
<i>Genter v. Allstate Property and Cas. Ins. Co.</i> , No. 11-cv-0709, 2011 WL 2533075 (W.D. Pa. June 24, 2011).....	15
<i>Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections</i> , 446 F. Supp. 3d 1111, 1126-27 (N.D. Ga. 2020)	20
<i>Hendon v. N.C. State Bd. of Elections</i> , 710 F.2d 177 (4th Cir. 1983)	21
<i>Kowalski v. Tesmer</i> , 543 U.S. 125 (2004).....	2
<i>Lewis v. Cayetano</i> , 823 P.2d 738 (Haw. 1992).....	21
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	2
<i>Maddox v. Stephens</i> , 727 F.3d 1109 (11th Cir. 2013)	12
<i>Malone v. Tison</i> , 282 S.E.2d 84 (Ga. 1981)	14

<i>Martin v. Kemp</i> , 341 F. Supp. 3d 1326 (N.D. Ga. 2018).....	9
<i>McMichael v. Napa County</i> , 709 F.2d 1268 (9th Cir. 1983)	13
<i>Meade v. Williamson</i> , 745 S.E.2d 279 (Ga. 2013)	14
<i>Ne. Ohio Coalition for Homeless v. Husted</i> , 696 F.3d 580 (6th Cir. 2012)	17
<i>Plyman v. Glynn Cty.</i> , 578 S.E.2d 124 (Ga. 2003)	19
<i>Powell v. Power</i> , 436 F.2d 84 (2d Cir. 1970)	13
<i>Rainey v. Byrd</i> , 521 U.S. 811 (1997).....	5
<i>Rees v. PNC Bank, N.A.</i> , 308 F.R.D. 266 (N.D. Cal. 2015).....	15
<i>Reid v. Morris</i> , 309 Ga. 230, 845 S.E.2d 590 (2020)	7
<i>Republican Party of Pa. v. Cortes</i> , 218 F. Supp. 3d 396, 404-05 (E.D. Pa. 2016)	20
<i>Soules v. Kauaians for Nukolii Campaign Comm.</i> , 849 F.2d 1176 (11th Cir. 1988)	21
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016).....	2
<i>Stein v. Cortés</i> , 223 F. Supp. 3d 423 (E.D. Pa. 2016).....	15
<i>Sw. Voter Registration Educ. Project v. Shelley</i> , 344 F.3d 914 (9th Cir. 2003)	20

<i>Toney v. White</i> , 488 F.2d 310 (5th Cir. 1973)	20
<i>U.S. Term Limits, Inc. v. Thornton</i> , 514 U.S. 779 (1995).....	5
<i>United States v. Barfield</i> , 396 F.3d 1144 (11th Cir. 2005)	19
<i>United States v. City of Cambridge, Md.</i> , 799 F.2d 137 (4th Cir. 1986)	21
<i>Williamsburg Commons Condo. Ass’n v. State Farm Fire and Cas.</i> <i>Co.</i> , 907 F. Supp. 2d 673 (E.D. Pa. 2012).....	15

Statutes

3 U.S.C. §§ 5, 7	16
3 U.S.C. § 6.....	16
O.C.G.A. § 1-3-1 (d)(6)	7
O.C.G.A. § 21-2-384(d).....	18
O.C.G.A. § 21-2-406	18
O.C.G.A. § 21-2-11.....	16
O.C.G.A. §§ 21-2-381(b)(3) and 21-2-386(a)(1)(C)	9
O.C.G.A. § 21-2-386 (a) (1) (B)	7
O.C.G.A. § 21-2-386 (a) (1) (B)-(C)	7
O.C.G.A. § 21-2-386 (a) (1) (C)	7
O.C.G.A. § 21-2-408(d).....	18
O.C.G.A. § 21-2-495.....	17
O.C.G.A. § 21-2-495(c)(1)	10
O.C.G.A. § 21-2-495(d).....	10

O.C.G.A. § 21-2-499(b).....	10, 16
Other Authorities	
1990 Ga. Op. Atty. Gen. 60 (Ga. A.G.).....	18
The Atlanta Journal-Constitution (Mar. 7, 2020) (last visited Nov. 19, 2020)	19
Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14.....	19
Notice of Public Hearing (Mar. 5, 2020), https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf	19
Op. Atty. Gen. No. 90-31, 1990 WL 487258	18
<i>Secretary of State Reports Record Breaking Turnout</i> , https://sos.ga.gov/index.php/elections/secretary_of_state_reports_record_breaking_turnout	1
U.S. Constitution.....	5, 12, 14
U.S. Constitution Article II, Section 1, Clause 2	17

I. INTRODUCTION

Plaintiff's Emergency Motion for Injunctive Relief asks this Court to take the genuinely unprecedented step of throwing out the results of a general election in which nearly five million Georgians voted—a record level of election participation.¹ There is no basis whatsoever for the Court to award Plaintiff any relief in this case, much less to grant his request to prohibit certification of the results of the November 3, 2020 Georgia general election. *See* Mot. at 24. To do so would not just disenfranchise Proposed Intervenor James Woodall, Helen Butler, and Melvin Ivey, as well as the members of Proposed Intervenor the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda,² but this would disenfranchise *every Georgia voter*.

Plaintiff's Emergency Motion for Relief is late, legally and factually baseless, and contrary to the bedrock values of our democracy. Proposed Intervenor respectfully urge the Court to reject it.

¹ *See* Mot. at 10; *Secretary of State Reports Record Breaking Turnout*, https://sos.ga.gov/index.php/elections/secretary_of_state_reports_record_breaking_turnout.

² Proposed Intervenor filed their Motion To Intervene And For Leave To File Responsive Papers As Same Time As Defendants on November 18, 2020 as ECF No. 22. As of the time of the filing of this Brief in Opposition, the Motion to Intervene is pending before the Court.

II. PLAINTIFF’S EMERGENCY MOTION SHOULD BE DENIED

A. Plaintiff Lacks Standing

Plaintiff cannot obtain preliminary relief—and indeed cannot maintain suit—because his complaints about Defendants’ processing of absentee ballots and conduct of the recount are, at most, the kind of generalized grievance about government conduct that the Supreme Court has repeatedly found insufficient to confer Article III standing. “The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance.” *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004). To avoid dismissal on standing grounds, a plaintiff must show (1) an injury in fact, meaning “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) a causal connection between the injury and the defendant’s conduct, and (3) a likelihood that the injury will be redressed by a favorable decision from the court. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

1. Plaintiff Brings a Generalized Grievance in This Case

Plaintiff fails to allege that he will suffer an “actual or imminent” injury, as opposed to one that is merely “conjectural” or “hypothetical.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 402, 409 (2013); *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 107 n.8 (1983).

Plaintiff cannot demonstrate that he will suffer any injury absent the requested relief. Plaintiff's alleged injury rests solely on the unsupported assertion that alleged state law violations render (1) Georgia's election results "improper and suspect"; (2) "resulting in Georgia's electoral college votes going to Joseph R. Biden"; which is allegedly (3) "contrary to the votes of the majority of Georgia qualified electors." Mot. at 22. But Plaintiff has not provided any evidence, or even alleged, that his vote was not tabulated appropriately, that another qualified electors' votes were not tabulated appropriately, or that an unqualified elector's vote was incorrectly tabulated. Plaintiff alleges generalized injuries on behalf of the Trump Campaign, which he does not have the right to assert. Plaintiff's disappointment in the election results is not a cognizable injury, much less one that a court may remedy.

For the extraordinary relief of enjoining the certification of statewide results – the challenged votes “would have to be sufficient in number to change the outcome of the election to [Plaintiff]’s detriment.” *Bognet v. Secretary of the Commonwealth of Pennsylvania*, — F.3d —, 2020 WL 6686120, at *8 (3d Cir. Nov. 13, 2020) citing *Sibley v. Alexander*, 916 F. Supp. 2d 58, 62 (D.D.C. 2013) (“[E]ven if the Court granted the requested relief, [plaintiff] would still fail to satisfy the redressability element because enjoining defendants from casting the . . . votes would not change the outcome of the election.”). Plaintiff, of course, has not even attempted to make this showing, let alone proven it successfully.

2. Plaintiff Does Not Have Standing to Bring a Claim Under the Electors and Elections Clauses

As a private citizen, Plaintiff has no standing to assert claims under the Electors and Elections Clauses that Georgia officials have purportedly failed to follow state election law. *See* Compl. ¶ 8 (Plaintiff is a registered elector who “brings this suit in his capacity as a private citizen”). In *Lance v. Coffman*, the Supreme Court squarely rejected the standing of four private citizens to bring an Elections Clause claim. 549 U.S. 437, 442 (2007). The Court held: “The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.” *Id.* The same is true here. *See also Bognet v. Sec’y of Commonwealth*, No. 20-3214, 2020 WL 6686120 at *6 (3d Cir. Nov. 13, 2020) (holding that “private plaintiffs lack standing to sue for alleged injuries attributable to a state government’s violations of the Elections Clause”); *Corman v. Torres*, 287 F. Supp. 3d 558, 568-569 (M.D. Pa. 2018) (three-judge panel) (holding that “two of 253 members of the Pennsylvania General Assembly” lacked standing to sue under the Elections Clause”).³

³ The only cases in which the Supreme Court has found standing to bring an Elections Clause or Electors Clause claim are those brought by or on behalf of a state, a state legislature or a working majority of a state legislature. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 799-804 (2015) (holding that plaintiff Arizona Legislature had standing because a voter initiative to

Moreover, as the Third Circuit recently held, “[b]ecause the Elections Clause and the Electors Clause have considerable similarity’ ... the same logic applies to [Plaintiff’s] alleged injury stemming from the claimed violation of the Electors Clause.” *Bognet*, 2020 WL 6686120 at *7; *see also Foster v. Love*, 522 U.S. 67, 69 (1997) (characterizing Electors Clause as Elections Clause’s “counterpart for the Executive Branch”); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-805 (1995) (noting that state’s “duty” under Elections Clause “parallels the duty” described by Electors Clause).

Because Plaintiff lacks standing, his Emergency Motion must be denied.

B. Plaintiff Is Not Likely To Succeed On The Merits Of His Claims

Plaintiff’s lack of standing independently justifies denial of the Emergency Motion. It also should be rejected because Plaintiff has not shown that any of the alleged conduct by Defendants rises to the level of a violation of the U.S. Constitution.

establish an independent redistricting commission eliminated its ability to implement a redistricting plan, thus causing a “concrete and particularized” institutional injury). In *Ariz. State Legislature*, the Court distinguished *Rainey v. Byrd*, 521 U.S. 811 (1997) (six individual members of Congress lacked standing to challenge the line-item veto), from *Coleman v. Miller*, 307 U.S. 433 (1939) (working majority of Kansas State Legislature had standing to challenge lieutenant-governor’s tie-breaking vote in favor of a federal constitutional amendment).

1. No Valid Constitutional Claim Arises Out of the Valid DPG Settlement

Plaintiff bases his request for emergency injunctive relief under Counts I and II on purported violations of Georgia election law that never occurred. The Settlement Agreement did not re-write any election laws on the handling of absentee ballots. Plaintiff readily concedes the Georgia Legislature has authorized the State Election Board to issue election rules and regulations that are “conducive to the fair, legal, and orderly conduct of . . . elections” and “consistent with law.” Mot. at 5 (quoting O.C.G.A. § 21-2-31(2)). This is exactly what the Settlement Agreement achieved. Accordingly, the Court should reject Plaintiff’s belated arguments that an agreement finalized over eight months before the election upended Georgia law.

Under the Settlement Agreement (Pl’s Ex. A), Secretary Raffensperger agreed to issue an Official Election Bulletin to county officials on the procedures for reviewing signatures on absentee ballot envelopes. If a registrar or clerk were to determine a signature did not match the elector’s signature on file, the Election Bulletin directed that “two other registrars, deputy registrars, or absentee ballot clerks” evaluate the signature. Pl’s Ex. A ¶ 3. If a majority of the reviewers determined the signature did not match the elector’s signature on file, the absentee ballot was to be rejected. *Id.*

This straightforward process is consistent with the signature verification procedures provided under Georgia law. In pertinent part, under O.C.G.A. § 21-2-386 (a) (1) (B), upon receiving an absentee ballot, “The register or clerk shall compare the signature or mark on the oath with the signature or mark” on file, and “shall if the information and signature appear to be valid . . . , so certify by signing or initialing his or her name below the voter's oath.” If, however, “the signature does not appear to be valid . . . , the registrar or clerk shall write across the face of the envelope ‘Rejected,’ giving the reason therefor.” O.C.G.A. § 21-2-386 (a) (1) (C).

Relying on these statutes, Plaintiff argues the Election Bulletin stripped authority from county election officials to determine “individually” the validity of absentee ballot signatures. Under basic rules of statutory construction and a plain reading of the statute, Plaintiff argument fails. That O.C.G.A. § 21-2-386 (a) (1) (B)-(C) refers to “clerk and “register” in the singular does not mean only one “clerk” or one “register” may be involved in evaluating the validity of a signature on an absentee ballot envelope. In interpreting a statute, “the singular or plural number each includes the other, unless the other is expressly excluded.” O.C.G.A. § 1-3-1 (d)(6); *see Reid v. Morris*, 309 Ga. 230, 236 n.3, 845 S.E.2d 590, 596 (2020) (applying O.C.G.A. § 1-3-1 (d)(6) to determine statutory use of the term “defendant” does not mean only one defendant may be liable for punitive damages). In drafting O.C.G.A. § 21-2-386 (a) (1) (B)-(C), the Legislature did not preclude registers,

deputy registers, and clerks from working together to evaluate questionable signatures. Nothing in the Settlement Agreement is contrary to Georgia law, and Defendants guidance on the handling of absentee ballots did what Plaintiff agrees is proper under Georgia law: provided a set of rules “conducive to the fair, legal, and orderly conduct of . . . elections” and “consistent with law.” Pl’s Mot. 5.

Plaintiff also asserts that Defendants violated Georgia law by allowing a single political party to “write rules for reviewing signatures.” Pl’s Mot. 9, 18. Plaintiff’s own exhibits refute this hyperbole. As part of the Settlement Agreement, the State Defendants agreed to “consider” providing county registers and absentee ballot clerks with training materials on evaluating voter signatures prepared by a handwriting expert retained by the plaintiffs in *Democratic Party of Georgia, Inc. v. Raffensperger*, No. 1:19-cv-05028-WMR. See Pl’s Ex. A, ¶ 4. The Settlement Agreement did not identify the materials nor did it impose any requirement on distributing those materials. Further, Plaintiff does not allege what, if any, materials were distributed nor does he explain how they would have constituted “rules for reviewing signatures.” Thus, Plaintiff has not established the Settlement Agreement violated Georgia election law.

Finally, the declaration filed this morning by Plaintiff’s counsel, see Dkt. 30-1, fails to move the needle. First, properly analyzing the Georgia Absentee Voter File and reaching conclusions based on it requires social science expertise beyond

that attested to by Plaintiff's counsel. Second, and relatedly, the declaration fails to acknowledge that a comparison of 2016 and 2018 absentee ballot rejection data related to signature mismatch is inapposite because of the notice-and-cure process was not in effect in Georgia at all until an order issued shortly before the November 2018 general election in *Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018), and was formally adopted by the Georgia Legislature via the enactment of H.B. 316 in 2019, which amended O.C.G.A. §§ 21-2-381(b)(3) and 21-2-386(a)(1)(C) to provide for notice and cure. Expanded numbers of voters utilizing the notice-and-cure process explains why the number of signature mismatch-related rejections might decrease, if that is in fact the case.

2. Plaintiff's Monitoring Claim Fails as a Matter of Law

In addition, Plaintiff cannot succeed on his due process claim. This claim is based on Plaintiff's assertion that Republican monitors "have been denied the opportunity to be present throughout the entire Hand Recount," and when present were unable to observe the recount "in any meaningful way." Mot. at 21. Plaintiff does not claim that *he* made any effort to monitor the recount, much less than he was denied the opportunity to do so. Rather, the only proffered bases for this claim are the assertions that one Trump Campaign monitor arrived at a counting location around the time indicated by the Republican Party only to find that the recount there had been finished (Coleman Decl. ¶¶ 3-5, ECF 6-2), and that another monitor *did*

observe the recount that same day at that same location and *was* able to object to certain ostensible irregularities before being asked to leave *because of the large number of other Republican monitors* (Dietrich Decl. ¶¶ 6-13, ECF 6-3).

a. Plaintiff sat on his rights as afforded by Georgia law

Plaintiff should have availed himself and two other electors of the legislatively approved remedies afforded to him under Georgia law if he thought there was a mistake or error not apparent on the face of the returns. Plaintiff waived the relief requested in this case by failing to do so. In particular, Plaintiff ignores that O.C.G.A. § 21-2-495(d) allows a losing candidate for a federal office or three electors to request a recount or recanvass of votes any time prior to the certification of the results when it appears that a discrepancy or error, although not apparent on the face of the returns, has been made. Moreover, under O.C.G.A. § 21-2-495(c)(1), a losing federal candidate has the right to request that the Secretary of State order a mandatory statewide recount when the margin between the candidates is not greater than 0.5 percentage points within two business days of the certification of the election results. The Governor's certification of the presidential electors' results is on November 21, 2020. Finally, any alleged defects in the failure to provide adequate public access to the recount alleged by the plaintiff in his complaint and motion can be readily remedied by the Trump Campaign asking for a recount within two business days of the certification of the results by the Governor. *See* O.C.G.A. § 21-

2-499(b).

b. Plaintiff does not allege a due process claim

Even if Plaintiff could assert the rights of third-parties—as, of course, he cannot—those facts do not remotely add up to a constitutional violation. Put simply, neither Plaintiff nor anyone else has a *constitutional right* to be an election monitor. *See, e.g., Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *67 (W.D. Pa. Oct. 10, 2020) (“At the outset, ‘there is no individual constitutional right to serve as a poll watcher[.]’”) (quoting *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020)).⁴

Plaintiff does not address the requirements for a due process claim, and instead relies on the notion that Defendants’ alleged failure to conduct the Hand Recount “a manner consistent with the Georgia Election Code” constitutes a free-floating due process violation. Mot. at 20-21; *cf.* Compl. ¶¶ 97-106 (Due Process claim alleging that the Trump Campaign was denied the ability to monitor the Hand Recount). But Plaintiff cannot ignore Supreme Court and Eleventh Circuit law.

Plaintiff fails to acknowledge, much less attempt to satisfy, the requirements of a substantive due process claim. “[P]laintiffs face a high bar when attempting to

⁴ Although Plaintiff also indicates that other non-parties harbor suspicions about irregularities in the recount, this is *not* the monitoring-related Due Process violation alleged in the Complaint (*see* Compl. ¶¶ 97-106) and Plaintiff does not attempt to make a constitutional claim based on them.

establish a substantive due process violation.” *Maddox v. Stephens*, 727 F.3d 1109, 1119 (11th Cir. 2013). A “garden variety election dispute[]” such as an “ordinary dispute over the counting and marking of ballots” falls far short of a substantive due process violation. *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986) (internal quotation omitted).

In any case, nothing in Plaintiff’s Emergency Motion shows, or even suggests, that Plaintiff, Ms. Coleman, or Ms. Dietrich were denied the opportunity to act as monitors. Plaintiff apparently never tried, Ms. Coleman arrived too late, and Ms. Dietrich was in fact able to observe the recount. And the experience of two individuals at a single place on a single day says nothing at all about the broader conduct of the election, the results of which Plaintiff asks this Court to nullify.

3. Plaintiffs’ Requested Relief Defies Well-Established Federal and Georgia Law

Here, Plaintiff’s requested relief is disproportionate to his purported injury and would violate the U.S. Constitution. Plaintiff fails to allege fraud or electoral irregularities in his Motion for a Temporary Restraining Order, and as such, it is difficult to even consider the Plaintiff’s proposed remedies. However, even if all of Plaintiff’s allegations survived, none of the remedies sought by the Plaintiff in the Motion could be granted under federal or Georgia law. No court has ever granted relief of the nature and scope requested by the Plaintiff under any set of facts, let

alone those averred in the Motion. This is a classic case in which “the cure [is] worse than the alleged disease, at least insofar as the professed concern is with the right of voters to cast effective ballots in a fair election.” *Baber v. Dunlap*, 349 F. Supp. 3d 68, 76 (D. Me. 2018).

Even if Plaintiff’s allegations could support a finding of some sort of errors in election administration, tossing out millions of votes in the presidential election is at odds with established of law. Courts have refused to “believe that the framers of our Constitution were so hypersensitive to ordinary human frailties as to lay down an unrealistic requirement that elections be free of any error.” *Powell v. Power*, 436 F.2d 84, 88 (2d Cir. 1970). A finding that “the election process itself reaches the point of patent and fundamental unfairness ... must go well beyond the ordinary dispute over the counting and marking of ballots.” *Duncan v. Poythress*, 657 F.2d 691, 703 (5th Cir. 1981) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)). The Eleventh Circuit has observed that “[i]n most cases, irregularities in state elections are properly addressed at the state level, whether through state courts or review by state election officials.” *Burton v. State of Ga.*, 953 F.2d 1266, 1268 (11th Cir. 1992). Only the most egregious election misconduct could conceivably justify the sort of mass disenfranchisement Plaintiff seeks. See *McMichael v. Napa County*, 709 F.2d 1268, 1273–94 (9th Cir. 1983) (Kennedy, J., concurring) (invalidation of election results “has been reserved for instances of willful or severe violations of

established constitutional norms”). Even if proven likely true—which they have not been—none of Plaintiffs’ allegations meet that standard.

The Georgia Supreme Court has similarly stated that “[i]t is not sufficient to show irregularities which simply erode confidence in the outcome of the election. *Elections cannot be overturned on the basis of mere speculation.*” *Meade v. Williamson*, 745 S.E.2d 279, 285 (Ga. 2013) (emphasis added) (quoting *Middleton v. Smith*, 539 S.E.2d 163 (Ga. 2000)). In this vein, that Court has held in a case where Atlanta voters registered to vote at locations that were not authorized by state law and voted in the 1981 Atlanta mayoral election, “the remedy of disenfranchisement of voters registered in violation of the statute is so severe as to be unpalatable where the good faith of the registrars is not disputed.” *Malone v. Tison*, 282 S.E.2d 84, 89 (Ga. 1981).

As a matter of law, the Motion—which does not demonstrate any concrete or specific instances of fraud, systemic or otherwise—cannot support the extreme relief requested. And far from curing any constitutional violation, the Plaintiff’s requested injunction would *create* grave constitutional violations by invalidating the legal and valid votes of millions of Georgia citizens, or by creating new election procedures.

4. The Prohibition of Certification In Whole Or In Part Is Disproportionate To Plaintiff’s Purported Injury And Would Violate the U.S. Constitution

Plaintiff’s request that the Court prohibit certification of the election results is

a disproportionate and unconstitutional response to the claims in the Motion.

Plaintiff asks the Court to enjoin certification of the 2020 election results on a statewide basis in Georgia, or, in the alternative, to enjoin certification of results that include the tabulation of defective absentee ballots. Mot. at 24. A statewide injunction is improper. It is only in the rarest of circumstances that federal courts have taken such drastic measures to prevent the certification of election results, and only where the evidence establishes that there was a fundamental failure of the election process. *See Stein v. Cortés*, 223 F. Supp. 3d 423 (E.D. Pa. 2016) (collecting cases). The Motion does not show that Plaintiff is likely to succeed on his claims of systemic or election worker error. Because Plaintiff's attempt to circumvent the will of the Georgia electorate "has no essential or important relationship to the claim for relief," his requested relief must be denied. *Rees v. PNC Bank, N.A.*, 308 F.R.D. 266, 271 (N.D. Cal. 2015) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)); *Genter v. Allstate Property and Cas. Ins. Co.*, No. 11-cv-0709, 2011 WL 2533075, at *5 (W.D. Pa. June 24, 2011).⁵

Moreover, a judicial order nullifying Georgia's election results would be grossly inequitable because the Presidential election results must be determined by

⁵ *See also Williamsburg Commons Condo. Ass'n v. State Farm Fire and Cas. Co.*, 907 F. Supp. 2d 673, 680 (E.D. Pa. 2012) (granting motion to dismiss requested relief).

December 8, 2020, to benefit from the safe-harbor provision of the federal election code and in any event by December 14, 2020, to ensure that Georgia’s electoral votes will be counted. 3 U.S.C. §§ 5, 7; O.C.G.A. § 21-2-11 (electors must meet at noon the day directed by Congress); *see Bush v. Gore*, 531 U.S. 98, 110–111 (2000). To meet this task, Georgia law requires the Secretary of State to compute the returns of the election received by the various election superintendents and to provide such results to the Governor by 5:00 PM on November 20—*two days from now*. O.C.G.A. § 21-2-499(b). After that, consistent with federal law, the Governor must the slate of electors by issuing a certificate identifying such electors by 5:00 PM on November 21. *Id.*; 3 U.S.C. § 6. This certification process constitutes an outside limit on the ability of this Court to issue relief. *Bush*, 531 U.S. at 110-111. To prevent state officials from meeting that deadline could throw the results of this election into chaos, and could gravely undermine public confidence in the conduct of the presidential election and in the rightful winner.

The requested relief would also violate the constitutional rights of Georgia voters. Even if Plaintiff’s allegations were proven (they are not) and there were isolated and sporadic incidents in which the election laws were violated, not by voters but by election workers or other officials, this occurrence could not possibly justify wide-scale disenfranchisement of Georgians. Such a remedy—unlike the election irregularities Plaintiff alleges—would place an undue burden on the right to

vote. *See Ne. Ohio Coalition for Homeless v. Husted*, 696 F.3d 580, 595, 597-98 (6th Cir. 2012) (holding rejecting ballots invalidly cast due to poll worker error likely violates due process). Plaintiff's unconstitutional prayer for relief must be rejected.

5. Plaintiff's Requested Declaratory Relief Is Disproportionate and Itself Unconstitutional.

Plaintiff's request for declaratory relief requiring a third counting of nearly five million ballots and one-sided Republican only monitoring in both that process and in the high-stakes January 5, 2021 run-off election is disproportionate (see Mot. at 24), implausible, and wholly unsupported by either Georgia law or federal law.

The Plaintiff offers no legal or factual support to justify any of the forgoing requests for declaratory relief. Georgia law already provides the mechanisms for a recount of votes cast in a presidential election. O.C.G.A. § 21-2-495. The Plaintiff asks that the Court declare an additional "recount" of the already conducted recount. Georgia law does not provide for any additional subsequent recounts following the initial requested recount of general election results—and Plaintiff's Equal Protection and Due Process claims are premised on the notion that going beyond the express provision of the statute would violate the Georgia General Assembly's constitutional right to control the manner of the election under Article II, Section 1, Clause 2 of the U.S. Constitution. Plaintiff cannot have it both ways.

Moreover, Plaintiff is essentially demanding that the Court grant the

Republican Party an opportunity to conduct a wholly partisan, single-party recount that has absolutely no basis in the law, is unprecedented, and would wrongfully undermine public confidence in the legitimacy of the election results. This too is contrary to Georgia law. For example, the Plaintiff requests that the Court allow the Republican Party to have monitors observe signature match analysis in the January 5, 2021 runoff election in Georgia. Georgia law does not permit this. Georgia law provides that poll watchers are permitted “for the purpose of observing the conduct of the election and the counting and recording of votes.” O.C.G.A. § 21-2-408(d). However, a 1990 opinion by the Attorney General of Georgia, in connection with O.C.G.A. § 21-2-406 and O.C.G.A. § 21-2-384(d) stated that Georgia law stated that no inspection of returned absentee ballots is allowed under Georgia law. 1990 Ga. Op. Atty. Gen. 60 (Ga. A.G.), Ga. Op. Atty. Gen. No. 90-31, 1990 WL 487258. Even if Plaintiff’s claims were supported, this requested remedy is incongruous to anything allowed or provided for by Georgia or federal law.

C. Plaintiff’s Claims With Respect to the November 2020 Election Are Barred by Laches

The doctrine of laches applies forcefully in the elections context to avoid gamesmanship and precisely the kind of mass-disenfranchisement that Plaintiff seeks. Plaintiff has plainly (1) “delay[ed] in asserting a right or a claim,” (2) without excuse, (3) that delay would result in undue prejudice. *AmBrit, Inc. v. Kraft, Inc.*,

812 F.2d 1531, 1545 (11th Cir. 1986) (setting out the laches factors); *see also Amtrak v. Morgan*, 536 U.S. 101, 121-22 (2002) (laches “bars a plaintiff from maintaining a suit if he unreasonably delays in filing a suit and as a result harms the defendant”); *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005); *Costello v. United States*, 365 U.S. 265, 282 (1961); *Plyman v. Glynn Cty.*, 578 S.E.2d 124, 126 (Ga. 2003) (Georgia law).

The settlement agreement to which Plaintiff objects was entered into and made public in March 2020, eight full months before the November 3, 2020 general election. *See* Mot. at 6 n.2 (citing March 6, 2020 public filing of the settlement agreement). It was the subject of extensive publicity,⁶ and the relevant regulations contemplated by the settlement agreement were adopted after a public notice and comment period.⁷ And yet Plaintiff did nothing. Instead of bringing a timely challenge, Plaintiff waited until after the procedures he objects to had been used to

⁶ *See, e.g.*, Mark Niesse, Lawsuit settled, giving Georgia voters time to fix rejected ballots, *The Atlanta Journal-Constitution* (Mar. 7, 2020), <https://www.ajc.com/news/state--regional-govt--politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/> (last visited Nov. 19, 2020).

⁷ Georgia State Elections Board, Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing (Mar. 5, 2020), <https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf> (scheduling public hearing for April 15, 2020).

process the ballots of more than a million Georgians, and the outcome of the election—which he disliked—was made known.

It is a bedrock rule of election law that challenges to election procedures to be raised *before* the election is conducted. *See Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973) (“[T]he law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication.”). This common-sense rule protects voters and the integrity of our system of government: pre-election challenges allow problems to be fixed *before* the election is held, without disrupting votes *after* they have been cast. *See, e.g., Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (“Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented.”).

Since overturning the results of an election is an extraordinary intervention by the judiciary into democratic processes, a challenge to election procedures should be brought *when there is still time to correct those procedures*. *See Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections*, 446 F. Supp. 3d 1111, 1126-27 (N.D. Ga. 2020) (“Plaintiffs were not faced with a binary choice and should have sought court intervention sooner.”); *see also Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 404-05 (E.D. Pa. 2016) (declining to enjoin aspects of Pennsylvania’s poll-watcher statute in case filed “eighteen days before the election,”

observing that “Plaintiffs unreasonably delayed filing their Complaint and Motion, something which weighs decidedly against granting the extraordinary relief they seek”).

Were the law otherwise, parties could “lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (quoting *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973)); *see also*, e.g., *Carlson v. Ritchie*, 830 N.W.2d 887, 892 (Minn. 2013) (“[P]etitioners cannot wait until after elections are over to raise challenges that could have been addressed before the election.”); *Lewis v. Cayetano*, 823 P.2d 738, 741 (Haw. 1992) (laches barred post-election challenge to form of ballot, where voters had at least constructive notice of the form for a month prior to the election). “Courts have been wary lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs.” *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (11th Cir. 1988); *see also*, e.g., *United States v. City of Cambridge, Md.*, 799 F.2d 137, 141 (4th Cir. 1986) (“[A] candidate or other election participants should not be allowed to ambush an adversary or subvert the election process by intentionally delaying a request for remedial action to see first whether they will be successful at the polls.”). That is precisely what Plaintiff has done here. Plaintiffs’

displeasure with the election *results* is no excuse for his delay in bringing his objection to the *procedures* by which that election was conducted.

By waiting until after the end of vote counting, Plaintiff now tries to cast a cloud over ballots cast in good faith by millions of Georgia voters, including those of Proposed Intervenor President Woodall, Ms. Butler, and Rev. Ivey, who took all necessary steps to ensure that their voices count in this election. Even assuming *arguendo* that there were problems with the conduct of the election and that any such conduct gave rise to constitutional concerns, if Plaintiff had timely asserted these claims, Defendants would have had the opportunity to address the concern. But having sat on his objections for eight months, laches now bars Plaintiff's claims.

CONCLUSION

For all of these reasons, Proposed Intervenor respectfully urge the Court to deny Plaintiff's Emergency Motion for Injunctive Relief.

Dated: November 19, 2020

Respectfully submitted,

Susan Baker Manning^
Jeremy P. Blumenfeld^
Catherine North Hounfodji^
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: +1.202.739.3000
Facsimile: +1.202.739.3001
susan.manning@morganlewis.com
jeremy.blumenfeld@morganlewis.com
catherine.hounfodji@morganlewis.com
william.childress@morganlewis.com
chris.miller@morganlewis.com
benjamin.hand@morganlewis.com

By: /s/ Bryan L. Sells

Bryan L. Sells (Bar No. 635562)
Law Office of Bryan L. Sells, LLC
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com

/s/ John Powers

Kristen Clarke^
kclarke@lawyerscommittee.org
Jon M. Greenbaum*
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg*
erosenberg@lawyerscommittee.org
Julie M. Houk*
jhouk@lawyerscommittee.org
John Powers*
jpowers@lawyerscommittee.org
**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW**
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: (202) 662-8300

* admitted *pro hac vice*

^ *Pro hac vice* motion forthcoming

Attorneys for Proposed Defendant-
Intervenors Georgia State
Conference of the NAACP, et al.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: November 19, 2020.

/s/ John Powers

John Powers

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia; REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia State Election Board; DAVID J. WORLEY, in his official capacity as a Member of the Georgia State Election Board; MATTHEW MASHBURN, in his official capacity as a Member of the Georgia State Election Board; and ANH LE, in her official capacity as a Member of the Georgia State Election Board,
Defendants.

Civil Action No.
1:20-cv-04651-SDG

OPINION AND ORDER

This matter is before the Court on a motion for temporary restraining order filed by Plaintiff L. Lin Wood, Jr. [ECF 6]. For the following reasons, and with the benefit of oral argument, Wood's motion is **DENIED**.

I. BACKGROUND

On November 3, 2020, the United States conducted a general election for various federal, state, and local political offices (the General Election).¹ However, the voting process in Georgia began in earnest before that date. On September 15, 2020, local election officials began mailing absentee ballots for the General Election to eligible voters.² On October 12, 2020, Georgia's in-person, early voting period started.³ This entire process played out amidst the throes of a global health pandemic caused by the novel coronavirus SARS-CoV-2—colloquially known as COVID-19. Due in large part to the threat posed by COVID-19, an overwhelming number of Georgia voters—over 1 million of the 5 million votes cast by November 3—participated in the General Election through the use of absentee ballots.⁴

Wood, a registered voter in Fulton County, Georgia, believes Defendants—the elected officials tasked with conducting elections in the state—performed their roles in an unconstitutional manner. As such, Wood initiated this action on

¹ *Elections and Voter Registration Calendars*, https://sos.ga.gov/index.php/elections/elections_and_voter_registration_calendars (last accessed Nov. 19, 2020).

² *Id.*

³ *Id.*

⁴ ECF 33-2; ECF 33-6; ECF 33-8.

November 13, 2020, ten days after the conclusion of the General Election.⁵

On November 16, Wood filed an Amended Complaint, asserting three claims against Defendants—all in their official capacities—for violation of: the First Amendment and the Equal Protection Clause of the Fourteenth Amendment (Count I); the Electors and Elections Clause of the Constitution (Count II); and the Due Process Clause of the Fourteenth Amendment (Count III).⁶

Counts I and II seek extraordinary relief:

As a result of Defendants' unauthorized actions and disparate treatment of defective absentee ballots, this Court should enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the 2020 general election in Georgia on a statewide basis.

Alternatively, this Court should enter an order, declaration, and/or injunction prohibiting Defendants from certifying the results of the General Election which include the tabulation of defective absentee ballots, regardless of whether said ballots were cured.

Alternatively, this Court should enter an order, declaration, and/or injunction that the results of the 2020 general election in Georgia are defective as a result of the above-described constitutional violations, and that Defendants are required to cure said deficiencies in a manner consistent with federal and Georgia law, and

⁵ ECF 1.

⁶ ECF 5.

without the taint of the procedures described in the Litigation Settlement.⁷

For Count III, Wood requests an order, declaration, and/or injunction requiring Defendants to perform a myriad of activities, including ordering a second recount prior to the certification of the election results and permitting monitors designated by the Republican Party to have special access to observe all election activity.⁸

On November 17, 2020, Wood filed an emergency motion for a temporary restraining order.⁹ Two sets of parties subsequently sought permission to intervene as defendants (collectively, the Intervenor): (1) the Democratic Party of Georgia, Inc. (DPG), DSCC, and DCCC; and (2) the Georgia State Conference of the NAACP (Georgia NAACP) and Georgia Coalition for the People's Agenda (GCPA).¹⁰ On November 19, Defendants and Intervenor filed separate responses in opposition to Wood's motion for a temporary restraining order.¹¹ The Court held oral argument on Wood's motion the same day. At the conclusion of the oral

⁷ E.g., ECF 5, ¶¶ 81–83, 93–95. The Litigation Settlement – also referred to as the Settlement Agreement – is discussed *infra* in Section I.b.

⁸ ECF 5, ¶ 106.

⁹ ECF 6.

¹⁰ ECF 8; ECF 22.

¹¹ ECF 31; ECF 34; ECF 39.

argument, the Court denied Wood's request for a temporary restraining order. This Order follows and supplements this Court's oral ruling.

a. Georgia Statutory Law Regarding Absentee Ballots.

Georgia law authorizes any eligible voter to cast his or her absentee ballot by mail without providing a reason. O.C.G.A. § 21-2-380(b). To initiate the absentee-voting process, a prospective voter must submit an application to the applicable registrar's or absentee ballot clerk's office. O.C.G.A. § 21-2-381(a)(1)(A). Upon receipt of a timely absentee ballot request, a registrar or absentee ballot clerk must enter the date the office received the application and compare the prospective voter's information and signature on the application with the information and signature on file in the registrar's or clerk's office. O.C.G.A. § 21-2-381(b)(1). If the prospective voter's eligibility is confirmed, the registrar or clerk must mail the voter an absentee ballot. O.C.G.A. § 21-2-381(b)(2)(A).

An absentee voter receives two envelopes along with the absentee ballot; the completed ballot is placed in the smaller envelope, which is then placed in the larger envelope, which contains the oath of the elector and a signature line. O.C.G.A. § 21-2-384(b). Upon receipt of a timely absentee ballot, a registrar or clerk is required to compare the identifying information and signature provided in the oath with the information and signature on file in the respective office.

O.C.G.A. § 21-2-386(a)(1)(B). If the information and signature appear to match, the registrar or clerk signs his or her name below the voter's oath. *Id.* If the information or signature is missing or does not appear to match, the registrar or clerk is required to write "Rejected" across the envelope and provide the reason for the rejection. O.C.G.A. § 21-2-386(a)(1)(C). The board of registrars or absentee ballot clerk is required to "promptly notify" the elector of the rejection, who then has until the end of the period for verifying provisional ballots to cure the issue that resulted in the rejection. *Id.*

Secretary of State Raffensperger is "the state's chief election official." O.C.G.A. § 21-2-50(b). *See also* Ga. Op. Att'y Gen. No. 2005-3 (Apr. 15, 2005) ("Just as a matter of sheer volume and scope, it is clear that under both the Constitution and the laws of the State the Secretary is the state official with the power, duty, and authority to manage the state's electoral system. No other state official or entity is assigned the range of responsibilities given to the Secretary of State in the area of elections."). In this role, Raffensperger is required to, among other things, "promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials" and "formulate, adopt, and promulgate such rules and

regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-3-31(1)-(2).

b. The Settlement Agreement

Wood does not challenge the underlying constitutionality of the absentee ballot framework enacted by the Georgia General Assembly. The genesis of his claims instead derive from a lawsuit filed over one year ago by the DPG against Raffensperger, the then-Members of the Georgia State Election Board, and the then-Members of the Gwinnett County Board of Registration and Elections.¹² In that action, the DPG, DSCC, and DCCC challenged several aspects of the process for rejecting absentee ballots based on a missing or mismatched signature.¹³

On March 6, 2020, the DPG, DSCC, DCCC, Raffensperger, and the Members of the Georgia State Election Board executed – and filed on the public docket – a “Compromise Settlement Agreement and Release” (Settlement Agreement).¹⁴ As part of the Settlement Agreement, Raffensperger agreed to issue an Official Election Bulletin containing certain procedures for the review of signatures on

¹² *Democratic Party of Ga., Inc. v. Raffensperger*, 1:19-cv-05028-WMR (ECF 1) (Compl.).

¹³ *Id.*

¹⁴ *Id.* at ECF 56 (Settlement Agreement).

absentee ballot envelopes by county election officials for the March 24, 2020 Presidential Primary Election and subsequent General Election. In relevant part, the procedures stated:

When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. **If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application.** If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under OCGA 21-2-386(a)(1)(C).¹⁵

¹⁵ *Id.* (emphasis added).

No entity or individual sought permission to intervene and challenge the Settlement Agreement. United States District Judge William M. Ray closed the case on March 9.¹⁶

c. The Risk-Limiting Audit

Georgia law provides procedures for conducting a “risk-limiting audit” prior to the final certification of an election. O.C.G.A. § 21-2-498. Such an audit must be “[c]omplete[d] . . . in public view.” O.C.G.A. § 21-2-498(c)(4). And the State Election Board is “authorized to promulgate rules, regulations, and procedures to implement and administer” an audit, including “security procedures to ensure that [the] collection of validly cast ballots is complete, accurate, and trustworthy throughout the audit.” O.C.G.A. § 21-2-498(d). *See also* Ga. Comp. R. & Regs. 183-1-15-.04 (2020).

On November 11, 2020, Raffensperger announced a statewide risk-limiting audit (the Audit) — also referred to as a “full hand recount” — of all votes cast in the contest for President of the United States.¹⁷ Every county in Georgia was required to begin the Audit at 9:00 am on November 13 and finish by 11:59 pm on

¹⁶ *Id.* at ECF 57.

¹⁷ ECF 33-1; ECF 33-2; ECF 33-3.

November 18.¹⁸ The statewide election results are set to be certified on November 20.¹⁹ Raffensperger required the Audit to “be open to the public and the press” and required local election officials to “designate a viewing area from which members of the public and press may observe the audit for the purpose of good order and maintaining the integrity of the audit.”²⁰ The two major political parties—Democratic and Republican—were permitted “the right to have one properly designated person as a monitor of the audit for each ten audit teams that are conducting the audit, with a minimum of two designated monitors in each county per party per room where the audit is being conducted.”²¹ The designated monitors were not required to remain in the public viewing areas, but were required to comply with the rules promulgated by Raffensperger and the local election officials.²² The Audit process differs from that required by Georgia law for a recount requested by a unsuccessful candidate following the official certification of votes. *See* O.C.G.A. § 21-2-524.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ ECF 33-4.

²¹ *Id.*

²² *Id.*

II. LEGAL STANDARD

The standard for the issuance of a temporary restraining order and a preliminary injunction are identical. *Windsor v. United States*, 379 F. App'x 912, 916–17 (11th Cir. 2010). A preliminary injunction is “an extraordinary remedy.” *Bloedorn v. Grube*, 631 F.3d 1218, 1229 (11th Cir. 2011). To obtain the relief he seeks, Wood must affirmatively demonstrate: “(1) substantial likelihood of success on the merits; (2) [that] irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to [him] outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.” *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998). *See also Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (“In this Circuit, a preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion as to each of the four prerequisites.”).

III. DISCUSSION

Wood's motion essentially boils down to two overarching claims: that Defendants violated the Constitution by (1) executing and enforcing the Settlement Agreement to the extent it requires different procedures than the Georgia Election Code, and (2) not permitting designated monitors to have certain

live viewing privileges of the Audit at the county locations. Defendants and Intervenor posit a number of challenges to Wood's claims.

a. Standing

As a threshold matter, the Court finds Wood lacks standing to assert these claims. Article III limits federal courts to the consideration of "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. The doctrine of standing "is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). It is "built on separation-of-powers principles" and "serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). *See also Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) ("[N]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.") (quoting *Raines v. Byrd*, 521 U.S. 811, 818 (1997)). The standing inquiry is threefold: "The litigant must prove (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020) (citing *Lujan*, 504 U.S. at 561). Wood must "demonstrate standing for each claim he seeks to press and for each form of relief

that is sought” — *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017)—and shoulders “the burden of establishing [each] element[].” *Lujan*, 504 U.S. at 561.

Injury in fact is “the first and foremost of standing’s three elements” and requires Wood to show that he suffered “an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Spokeo*, 136 S. Ct. at 1547–48. To be “particularized,” the alleged injury “must affect the plaintiff in a personal and individual way.” *Lujan*, 504 U.S. at 561 n.1. Wood must demonstrate “a personal stake in the outcome of the controversy,” as a federal court “is not a forum for generalized grievances.” *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). This requires more than a mere “keen interest in the issue.” *Trump v. Hawaii*, 138 S. Ct. 2392, 2416 (2018). The alleged injury must be “distinct from a generally available grievance about government.” *Gill*, 138 S. Ct. at 1923. *See also id.* at 1929 (explaining that a person’s “right to vote is individual and personal in nature . . . [t]hus [only] voters who allege facts showing disadvantage to themselves as individuals have standing to sue to remedy that disadvantage”) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964); *Baker v. Carr*, 369 U.S. 186, 206 (1962)). Claims premised on allegations that “the law . . . has not been followed . . . [are] precisely the kind of undifferentiated,

generalized grievance about the conduct of government . . . [and] quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing.” *Dillard v. Chilton Cnty. Comm’n*, 495 F.3d 1324, 1332–33 (11th Cir. 2007) (citing *Baker*, 369 U.S. at 207–08). *See also Lance v. Coffman*, 549 U.S. 437, 440–41 (2007) (“Our refusal to serve as a forum for generalized grievances has a lengthy pedigree. . . . [A] generalized grievance that is plainly undifferentiated and common to all members of the public” is not sufficient for standing).

Wood alleges he has standing because he is “a qualified registered elector residing in Fulton County, Georgia” who has “made donations to various Republican candidates on the ballot for the November 3, 2020 elections, and his interests are aligned with those of the Georgia Republican Party for the purposes of the instant lawsuit.”²³ These allegations fall far short of demonstrating that Wood has standing to assert these claims.

i. The Elections and Electors Clause

Starting with his claim asserted under the Elections and Electors Clause, Wood lacks standing as a matter of law. The law is clear: A generalized grievance regarding a state government’s failure to properly follow the Elections Clause of

²³ ECF 5, ¶ 8.

the Constitution does not confer standing on a private citizen.²⁴ *Lance*, 549 U.S. at 442; *Bognet*, 2020 WL 6686120, at *6 (“[P]rivate plaintiffs lack standing to sue for alleged injuries attributable to a state government’s violations of the Elections Clause. . . . Their relief would have no more directly benefitted them than the public at large.”); *Dillard*, 495 F.3d at 1332–33.

ii. Equal Protection

For his equal protection claim, Wood relies on a theory of vote dilution, *i.e.*, because Defendants allegedly did not follow the correct processes, invalid absentee votes may have been cast and tabulated, thereby diluting Wood’s in-person vote. But the same prohibition against generalized grievances applies to equal protection claims. *United States v. Hays*, 515 U.S. 737, 743 (1995) (“The rule against generalized grievances applies with as much force in the equal protection context as in any other.”) Wood does not differentiate his alleged injury from any

²⁴ Although separate constitutional provisions, the Electors Clause and Elections Clause share “considerably similarity” and may be interpreted in the same manner. *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting). See also *Bognet v. Sec’y Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at *7 (3d Cir. Nov. 13, 2020) (applying same test for standing under both Elections Clause and Electors Clause); *Donald J. Trump for President, Inc. v. Bullock*, No. CV 20-66-H-DLC, 2020 WL 5810556, at *11 (D. Mont. Sept. 30, 2020) (“As an initial matter, the Court finds no need to distinguish between the term ‘Legislature’ as it is used in the Elections Clause as opposed to the Electors Clause.”).

harm felt in precisely the same manner by every Georgia voter. As Wood conceded during oral argument, under his theory any one of Georgia's more than seven million registered voters would have standing to assert these claims. This is a textbook generalized grievance. *Bognet*, 2020 WL 6686120, at *12 ("Voter Plaintiffs' dilution claim is a paradigmatic generalized grievance that cannot support standing. . . . Put another way, a vote cast by fraud or mailed in by the wrong person through mistake, or otherwise counted illegally, has a mathematical impact on the final tally and thus on the proportional effect of every vote, but no single voter is specifically disadvantaged. Such an alleged dilution is suffered equally by all voters and is not particularized for standing purposes.") (internal punctuation omitted) (collecting cases); *Moore v. Circosta*, No. 1:20-cv-911, 2020 WL 6063332, a *14 (M.D.N.C. Oct. 14, 2020) ("[T]he notion that a single person's vote will be less valuable as a result of unlawful or invalid ballots being cast is not a concrete and particularized injury in fact necessary for Article III standing."). *See also Citizens for Fair Representation v. Padilla*, 815 F. App'x 120, 123 (9th Cir. 2020) (dismissing equal protection claim for lack of standing and stating "the Supreme Court has consistently held that a plaintiff raising only a generally available grievance . . . does not state an Article III case or controversy.").

iii. Due Process

For the same reasons, Wood also does not have standing to pursue his due process claim. Wood asserts that various election monitors appointed by the Republican Party “have been denied the opportunity to be present throughout the entire Hand Recount, and when allowed to be present, they were denied the opportunity to observe the Hand Recount in any meaningful way.”²⁵ Yet, Wood does not allege that *he* attempted to participate as a designated monitor. Nor does he allege that, on behalf of the Republican Party, he himself designated monitors who were ultimately denied access. Wood’s broad objection is that Defendants failed to conduct the Audit fairly and consistently under Georgia law. This is a generalized grievance.²⁶ *Lance*, 549 U.S. at 440–41. *See also Nolles v. State Comm. for Reorganization of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (voters lacked standing because substantive due process claim that delay of implementation of new statute

²⁵ ECF 6, at 21.

²⁶ To the extent Wood attempts to rely on a theory of third party standing, the Court disagrees; the doctrine is disfavored and Wood has not alleged or proven any of the required elements—that (1) he “suffered an injury-in-fact that gives [him] a sufficiently concrete interest in the dispute”; (2) he has “a close relationship to the third party”; and (3) there is “a hindrance to the third party’s ability to protect its own interests.” *Aaron Private Clinic Mgmt. LLC v. Berry*, 912 F.3d 1330, 1339 (11th Cir. 2019) (internal quotation marks omitted).

until after referendum election violated their right to fair election did not allege particularized injury).

iv. Alignment with Non-Parties

Wood further points to his status as a donor to the Republican Party whose interests are aligned with that party and its political candidates to support his standing argument. But this does not sufficiently differentiate his alleged injury from that which *any* voter might have suffered—no matter the party affiliation. Ostensibly, Wood believes he suffered a particularized injury because his preferred candidates—to whom he has contributed money—did not prevail in the General Election. This argument has been squarely rejected by the Eleventh Circuit. *Jacobson*, 974 F.3d at 1247 (“A candidate’s electoral loss does not, by itself, injure those who voted for the candidate. Voters have no judicially enforceable interest in the outcome of an election. Instead, they have an interest in their ability to vote and in their vote being given the same weight as any other.”) (internal citation omitted).

v. Lack of Relevant Authorities

Finally, the Court notes the futility of Wood’s standing argument is particularly evident in that his sole relied-on authority—*Meek v. Metropolitan Dade County, Florida*, 985 F.2d 1471 (11th Cir. 1993)—is no longer good law. The Eleventh

Circuit *expressly abrogated* its holding in that case over thirteen years ago. *Dillard*, 495 F.3d at 1331–32 (“We subsequently upheld *Meek’s* reasoning against repeated challenges that it was wrongly decided in light of the Supreme Court’s later decisions . . . [b]ut it is clear that we can no longer do so in light of the Supreme Court’s most recent pronouncement on voter standing in *Lance*.”).

During oral argument, Wood additionally pointed to *Roe v. State of Alabama by & through Evans*, 43 F.3d 574 (11th Cir. 1995), but that case does not support Wood’s standing argument. For example, two plaintiffs in *Roe* were candidates for a political office decided in the challenged election. *Id.* at 579. Wood is a private citizen, not a candidate for any elected office. Moreover, the Eleventh Circuit found particularized harm in the post-election inclusion of absentee ballots that had been deemed invalid. *Id.* at 580. Wood here seeks to do the opposite – remove validly cast absentee ballots after completion of the election.

In sum, Wood lacks standing to pursue these claims in the first instance.

b. The Doctrine of Laches

Even if the Court found Wood possessed standing to pursue his claims regarding the Settlement Agreement (Counts I and II), such claims would nonetheless be barred by the doctrine of laches. To establish laches, Defendants must show “(1) there was a delay in asserting a right or a claim, (2) the delay was

not excusable, and (3) the delay caused [them] undue prejudice.” *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005). *See also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1326 (11th Cir. 2019) (“To succeed on a laches claim, [defendant] must demonstrate that [p]laintiffs inexcusably delayed bringing their claim and that the delay caused it undue prejudice.”). Courts apply laches in election cases. *E.g., Sanders v. Dooly Cnty., Ga.*, 245 F.3d 1289, 1291 (11th Cir. 2001) (“[W]e conclude that the district court did not abuse its discretion in deeming the claims seeking injunctive relief to be laches-barred.”). *See also, e.g., Detroit Unity Fund v. Whitmer*, 819 F. App’x 421, 422 (6th Cir. 2020) (holding district court did not err in finding that plaintiff’s claims regarding deadline for local ballot initiatives “barred by laches, considering the unreasonable delay on the part of [p]laintiffs and the consequent prejudice to [d]efendants”). *Cf. Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (“[A] party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere.”) (internal citation omitted). Defendants have established each element of laches.

i. Delay

First, Wood delayed considerably in asserting these claims. On March 6, 2020, the GDP, DSCC, DCCC, and Defendants executed the Settlement

Agreement, which was entered on the public docket. It has since been in effect for at least three elections. Nearly eight months later—and *after* over one million voters cast their absentee ballots in the General Election—Wood challenges the terms of the Settlement Agreement as unconstitutional. Wood could have, and should have, filed his constitutional challenge much sooner than he did, and certainly not two weeks *after* the General Election.

ii. Excuse

Nor has Wood articulated any reasonable excuse for his prolonged delay. Wood failed to submit any evidence explaining why he waited to bring these claims until the eleventh hour. He instead relies solely on a representation from his legal counsel during oral argument, without evidence, that Wood did not vote in any election between the execution of the Settlement Agreement and the General Election. Even assuming this proffer to be true, it does not provide a reasonable justification for the delay. Wood's claims are constitutional challenges to Defendants' promulgation authority under state law. If valid, these claims should not depend on the outcome of any particular election, to wit, whether Wood's preferred candidates won or lost. Indeed, Wood's claims, even assuming his standing for bringing them could be established, were ripe the moment the parties executed the Settlement Agreement.

iii. Prejudice

Finally, Defendants, Intervenors, and the public at large would be significantly injured if the Court were to excuse Wood's delay. A bedrock principle of election law is that "lower federal courts should ordinarily not alter the election rules on the eve of an election." *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (citing *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006)). This is because a last-minute intervention by a federal court could "result in voter confusion and consequent incentive to remain away from the polls." *Purcell*, 549 U.S. at 4–5. *See also Democratic Nat'l Comm. v. Wisc. State Legislature*, No. 20A66, 2020 WL 6275871, at *4 (U.S. Oct. 26, 2020) (Kavanaugh, J., concurring in denial of application to vacate stay) ("The principle [of judicial restraint] also discourages last-minute litigation and instead encourages litigants to bring any substantial challenges to election rules ahead of time, in the ordinary litigation process. For those reasons, among others, this Court has regularly cautioned that a federal court's last-minute interference with state election laws is ordinarily inappropriate.").

Underscoring the exceptional nature of his requested relief, Wood's claims go much further; rather than changing the rules on the eve of an election, he wants the rules for the already concluded election declared unconstitutional and over

one million absentee ballots called into question. Beyond merely causing confusion, Wood's requested relief could disenfranchise a substantial portion of the electorate and erode the public's confidence in the electoral process. *See Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) ("Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented.") (citation omitted); *Arkansas United v. Thurston*, No. 5:20-cv-5193, 2020 WL 6472651, at *5 (W.D. Ark. Nov. 3, 2020) ("[T]he equities do not favor intervention where the election is already in progress and the requested relief would change the rules of the game mid-play.").

Thus, Wood is not entitled to injunctive relief on Counts I and II for the additional reason that these claims are barred by the doctrine of laches.

c. The Merits of the Request for Injunctive Relief

Even assuming Wood possessed standing, and assuming Counts I and II are not barred by laches, the Court nonetheless finds Wood would not be entitled to the relief he seeks. The Court addresses each required element for a temporary restraining order in turn.

i. Substantial Likelihood of Success on the Merits

1. Equal Protection (Count I)

Wood argues the execution and enforcement of the Settlement Agreement burdens his right to vote in contravention of the Equal Protection Clause because the agreement sets forth additional voting safeguards not found in the Georgia Election Code. States retain the power to regulate their own elections. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (citing U.S. Const. Art. I, § 4, cl. 1). The Supreme Court has held that:

Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.

Burdick, 504 U.S. at 433 (citing *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

Inevitably, most election laws will “impose some burden upon individual voters.” *Burdick*, 504 U.S. at 433. But the Equal Protection Clause only becomes applicable if “a state either classifies voters in disparate ways . . . or places restrictions on the right to vote.” *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012). As recently summarized by one federal district court:

The Supreme Court has identified two theories of voting harms prohibited by the Fourteenth Amendment. First, the Court has identified a harm caused by debasement or

dilution of the weight of a citizen's vote, also referred to [as] vote dilution. . . . Second, the Court has found that the Equal Protection Clause is violated where the state, having once granted the right to vote on equal terms, through later arbitrary and disparate treatment, values one person's vote over that of another.

Moore, 2020 WL 6063332, at *12 (citing *Bush v. Gore*, 531 U.S. 98, 104-05 (2000); *Reynolds*, 377 U.S. at 554). A rationale basis standard of review applies if the plaintiff alleges "that a state treated him or her differently than similarly situated voters, without a corresponding burden on the fundamental right to vote." *Obama for Am.*, 697 F.3d at 429 (citing *McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802, 807-09 (1969)). If a fundamental right is implicated, the claim is governed by the flexible *Anderson/Burdick* balancing test. *Burdick*, 504 U.S. at 433-35; *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Wood's equal protection claim does not fit within this framework.²⁷ Wood does not articulate a cognizable harm that invokes the Equal Protection Clause.

²⁷ The Court notes that, in the Amended Complaint, Wood alludes to issues caused by Raffensperger's adoption of Ballot Trax – an electronic interface that permits an elector to track his or her ballot as it is being processed [ECF 5, ¶¶ 44-46]. Wood also alleges harm in that the Settlement Agreement permitted the DPG to submit "additional guidance and training materials" for identifying a signature mismatch, which Defendants "agree[d] to consider in good faith" [*id.* ¶ 47; see also ECF 5-1, ¶ 4]. Wood did not address how these items violated his constitutional rights—equal protection or otherwise—in either his motion or during oral argument. Therefore, the Court need not

For example, to the extent Wood relies on a theory of disparate treatment, *Bush v. Gore* is inapplicable. Defendants applied the Settlement Agreement in a wholly uniform manner across the entire state.²⁸ In other words, no voter—including Wood—was treated any differently than any other voter. *E.g.*, *Wise v. Circosta*, 978 F.3d 93, 100 (4th Cir. 2020); *Deutsch v. New York State Bd. of Elections*, No. 20 CIV. 8929 (LGS), 2020 WL 6384064, at *6 (S.D.N.Y. Oct. 30, 2020).

Wood fares no better with a vote dilution argument. According to Wood, his fundamental right to vote was burdened because the “rules and regulations set forth in the [Settlement Agreement] created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots, and for determining which of such ballots should be ‘rejected,’ contrary to Georgia law.”²⁹ At the starting gate, the additional safeguards on signature and identification match enacted by Defendants did not burden Wood’s ability to cast his ballot at all. Wood, according to his legal counsel during oral argument, did not vote absentee during the

address them at this stage.

²⁸ Wood concedes as much in the Amended Complaint. See ECF 5, ¶ 25 (alleging the Settlement Agreement “set[] forth different standards to be followed by the clerks and registrars in processing absentee ballots *in the State of Georgia.*”) (emphasis added).

²⁹ ECF 6, at 18.

General Election. And the “burden that [a state’s] signature-match scheme imposes on the right to vote . . . falls on vote-by-mail and provisional voters’ fundamental right to vote.” *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019).

This leaves Wood to speculate that, because the Settlement Agreement required three ballot clerks – as opposed to just one – to review an absentee ballot before it could be rejected, fewer ballots were ultimately rejected, invalid ballots were tabulated, and his in-person vote was diluted. In support of this argument, Wood relies on *Baker v. Carr*, where the Supreme Court found vote dilution in the context of apportionment of elected representatives. 369 U.S. at 204–208. But Wood cannot transmute allegations that state officials violated state law into a claim that his vote was somehow weighted differently than others. This theory has been squarely rejected. *Bognet*, 2020 WL 6686120, at *11 (“[T]he Voter Plaintiffs cannot analogize their Equal Protection claim to gerrymandering cases in which votes were weighted differently. Instead, Plaintiffs advance an Equal Protection Clause argument based solely on state officials’ alleged violation of state law that does not cause unequal treatment. And if dilution of lawfully cast ballots by the ‘unlawful’ counting of invalidly cast ballots were a true equal-protection problem, then it would transform every violation of state election law (and, actually, every

violation of every law) into a potential federal equal-protection claim requiring scrutiny of the government's 'interest' in failing to do more to stop the illegal activity. That is not how the Equal Protection Clause works.").

Even if Wood's claim were cognizable in the equal protection framework, it is not supported by the evidence at this stage. Wood's argument is that the procedures in the Settlement Agreement regarding information and signature match so overwhelmed ballot clerks that the rate of rejection plummeted and, ergo, invalid ballots were passed over and counted. This argument is belied by the record; the percentage of absentee ballots rejected for missing or mismatched information and signature is the exact same for the 2018 election and the General Election (.15%).³⁰ This is despite a substantial increase in the total number of absentee ballots submitted by voters during the General Election as compared to the 2018 election.³¹

In sum, there is insubstantial evidence supporting Wood's equal protection theory and he has not established a substantial likelihood of success on the merits as to Count I.

³⁰ ECF 33-6.

³¹ *Id.*

2. Electors and Elections Clauses (Count II)

In relevant part, the Constitution states: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. This provision—colloquially known as the Elections Clause—vests authority in the states to regulate the mechanics of federal elections. *Foster v. Love*, 522 U.S. 67, 69 (1997). The “Electors Clause” of the Constitution similarly states that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of [Presidential] Electors.” U.S. Const. art. II, § 1, cl. 2.

Wood argues Defendants violated the Elections and Electors Clauses because the “procedures set forth in the [Settlement Agreement] for the handling of defective absentee ballots is not consistent with the laws of the State of Georgia, and thus, Defendants’ actions . . . exceed their authority.”³² Put another way, Wood argues Defendants usurped the role of the Georgia General Assembly—and thereby violated the United States Constitution—by enacting additional safeguards regarding absentee ballots not found in the Georgia Election Code. In support, Wood points to Chief Justice Rehnquist’s concurrence in *Bush v. Gore*,

³² ECF 5, ¶ 90.

which states that “in a Presidential election the clearly expressed intent of the legislature must prevail.” 531 U.S. at 120 (Rehnquist, C.J., concurring).

State legislatures—such as the Georgia General Assembly—possess the authority to delegate their authority over elections to state officials in conformity with the Elections and Electors Clauses. *Ariz. State Legislature*, 576 U.S. at 816 (“The Elections Clause [] is not reasonably read to disarm States from adopting modes of legislation that place the lead rein in the people’s hands . . . it is characteristic of our federal system that States retain autonomy to establish their own governmental processes.”). *See also Corman v. Torres*, 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018) (“The Elections Clause, therefore, affirmatively grants rights to state legislatures, and under Supreme Court precedent, to other entities to which a state may, consistent with the Constitution, delegate lawmaking authority.”). *Cf. Bullock*, 2020 WL 5810556, at *11 (“A survey of the relevant case law makes clear that the term ‘Legislature’ as used in the Elections Clause is not confined to a state’s legislative body.”).

Recognizing that Secretary Raffensperger is “the state’s chief election official,”³³ the General Assembly enacted legislation permitting him (in his official

³³ O.C.G.A. § 21-2-50(b).

capacity) to “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2). The Settlement Agreement is a manifestation of Secretary Raffensperger’s statutorily granted authority. It does not override or rewrite state law. It simply adds an additional safeguard to ensure election security by having more than one individual review an absentee ballot’s information and signature for accuracy before the ballot is rejected. Wood does not articulate how the Settlement Agreement is not “consistent with law” other than it not being a verbatim recitation of the statutory code. Taking Wood’s argument at face value renders O.C.G.A. § 21-2-31(2) superfluous. A state official – such as Secretary Raffensperger – could never wield his or her authority to make rules for conducting elections that had not otherwise already been adopted by the Georgia General Assembly. The record in this case demonstrates that, if anything, Defendants’ actions in entering into the Settlement Agreement sought to achieve consistency among the county election officials in Georgia, which *further*s Wood’s stated goals of conducting “[f]ree, fair, and transparent public elections.”³⁴

³⁴ ECF 5, ¶ 11.

Wood has not demonstrated a substantial likelihood of success as to Count II.

3. Due Process (Count III)

Under the Fourteenth Amendment, “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. The Due Process Clause has two components: procedural and substantive. *DeKalb Stone, Inc. v. Cnty. of DeKalb, Ga.*, 106 F.3d 956, 959 (11th Cir. 1997). Wood alleges that Defendants have “fail[ed] . . . to ensure that the Hand Recount is conducted fairly and in compliance with the Georgia Election Code” by denying monitors “the opportunity to be present throughout the entire Hand Recount, and when allowed to be present, they were denied the opportunity to observe the Hand Recount in any meaningful way.”³⁵ Although not articulated in his Amended Complaint or motion for temporary restraining order, Wood clarified during oral argument that he is pursuing both a procedural and substantive due process claim. Each will be addressed in turn.

a) Procedural Due Process

A procedural due process claim raises two inquiries: “(1) whether there exists a liberty or property interest which has been interfered with by the State and

³⁵ ECF 6, at 20–21.

(2) whether the procedures attendant upon that deprivation were constitutionally sufficient.” *Richardson v. Texas Sec’y of State*, 978 F.3d 220, 229 (5th Cir. 2020) (citing *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989)). The party invoking the Due Process Clause’s procedural protections bears the “burden . . . of establishing a cognizable liberty or property interest.” *Richardson*, 978 F.3d at 229 (citing *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005)). Wood bases his procedural due process claim on “a vested interest in being present and having meaningful access to observe and monitor the electoral process.”³⁶ But Wood does not articulate how this “vested interest” fits within a recognized, cognizable interest protected by procedural due process. The Court is not persuaded that the right to monitor an audit or vote recount is a liberty or property right secured by the Constitution. For example, the Eleventh Circuit does “assume that the right to vote is a liberty interest protected by the Due Process Clause.” *Jones v. Governor of Fla.*, 975 F.3d 1016, 1048 (11th Cir. 2020). But the circuit court has expressly declined to extend the strictures of procedural due process to “a State’s election procedures.” *New Ga. Project v. Raffensperger*, 976 F.3d 1278, 1282 (11th Cir. 2020) (“The generalized due process argument that the plaintiffs argued for and the

³⁶ ECF 5, ¶ 101.

district court applied would stretch concepts of due process to their breaking point.”).

More specifically, federal courts have rejected the very interest Wood claims has been violated, *i.e.*, the right to observe the electoral process. *See, e.g., Republican Party of Penn. v. Cortes*, 218 F. Supp. 3d 396, 408 (E.D. Pa. 2016) (“[T]here is no individual constitutional right to serve as a poll watcher . . . but rather the right is conferred by statute.”); *Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, 2020 WL 5997680, at *67 (W.D. Pa. Oct. 10, 2020) (same); *Dailey v. Hands*, No. 14-423, 2015 WL 1293188, at *5 (S.D. Ala. Mar. 23, 2015) (“[P]oll watching is not a fundamental right.”); *Turner v. Cooper*, 583 F. Supp. 1160, 1162 (N.D. Ill. 1983) (finding no authority “that supports the proposition that [plaintiff] had a first amendment right to act as a pollwatcher. Indeed, we would suggest that the state is not constitutionally required to permit pollwatchers for political parties and candidates to observe the conduct of elections.”). Without such an interest, Wood cannot establish a substantial likelihood of success on the merits as to his procedural due process claim.

b) Substantive Due Process

Wood’s substantive due process claim fares no better. The types of voting rights covered by the substantive due process clause are considered narrow.

Curry v. Baker, 802 F.2d 1302, 1314 (11th Cir. 1986). Pursuant to the “functional structure embodied in the Constitution,” a federal court must not “intervene to examine the validity of individual ballots or supervise the administrative details of a local election.” *Id.* In only “extraordinary circumstances will a challenge to a state election rise to the level of a constitutional deprivation.” *Id.* See also *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998) (“We have drawn a distinction between garden variety election irregularities and a pervasive error that undermines the integrity of the vote. In general, garden variety election irregularities do not violate the Due Process Clause, even if they control the outcome of the vote or election.”) (citation and punctuation omitted) (collecting cases); *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. 1981) (“[T]he due process clause of the fourteenth amendment prohibits action by state officials which seriously undermine the fundamental fairness of the electoral process.”). It is well understood that “garden variety” election disputes, including “the ordinary dispute over the counting and marking of ballots” do not rise to the level of a constitutional deprivation.³⁷ *Curry*, 802 F.2d

³⁷ In contrast, as Defendants note, it would be a violation of the constitutional rights of the millions of absentee voters who relied on the absentee ballot procedures in exercising their right to vote. See e.g. *Griffin v. Burns*, 570 F.2d 1065, 1079 (1st Cir. 1978) (finding disenfranchisement of electorate who voted by absentee ballot a violation of substantive due process).

at 1314–15. *See also* *Serpentfoot v. Rome City Comm’n*, 426 F. App’x 884, 887 (11th Cir. 2011) (“[Plaintiff’s] allegations show, at most, a single instance of vote dilution and not an election process that has reached the point of patent and fundamental unfairness indicative of a due process violation.”).

Although Wood generally claims fundamental unfairness, and the declarations and testimony submitted in support of his motion speculate as to wide-spread impropriety, the actual harm alleged by Wood concerns merely a “garden variety” election dispute. Wood does not allege unfairness in counting the ballots; instead, he alleges that select non-party, partisan monitors were not permitted to observe the Audit in an ideal manner. Wood presents no authority, and the Court finds none, providing for a right to unrestrained observation or monitoring of vote counting, recounting, or auditing. Precedent militates against a finding of a due process violation regarding such an “ordinary dispute over the counting and marking of ballots.” *Gamza v. Aguirre*, 619 F.2d 449, 453 (5th Cir. 1980) (“If every state election irregularity were considered a federal constitutional deprivation, federal courts would adjudicate every state election dispute.”). Wood has not satisfied his burden of establishing a substantial likelihood of success on the merits as to his substantive due process claim.

ii. Irreparable Harm

Because Wood cannot show a likelihood of success on the merits, an extensive discussion of the remaining factors for the issuance of a temporary restraining order is unnecessary. *Obama for Am.*, 697 F.3d at 436 (“When a party seeks a preliminary injunction on the basis of a potential constitutional violation, the likelihood of success on the merits often will be the determinative factor.”). *See also Bloedorn*, 631 F.3d at 1229 (“If [plaintiff] is unable to show a substantial likelihood of success on the merits, we need not consider the other requirements.”). Nonetheless, for the second factor, Plaintiffs must show that “irreparable injury would result if no injunction were issued.” *Siegel*, 234 F.3d at 1175–76 (“A showing of irreparable injury is the *sine qua non* of injunctive relief.”). This factor also weighs in Defendants’ favor. As discussed above, Wood’s allegations are the quintessential generalized grievance. He has not presented any evidence demonstrating how he will suffer any particularized harm as a voter or donor by the denial of this motion. The fact that Wood’s preferred candidates did not prevail in the General Election—for whom he may have voted or to whom he may have contributed financially—does not create a legally cognizable harm, much less an irreparable one. *Jacobson*, 974 F.3d at 1247.


iii. Balance of the Equities and Public Interest

The Court finds that the threatened injury to Defendants as state officials and the public at large far outweigh any minimal burden on Wood. To reiterate, Wood seeks an extraordinary remedy: to prevent Georgia's certification of the votes cast in the General Election, after millions of people had lawfully cast their ballots. To interfere with the result of an election that has already concluded would be unprecedented and harm the public in countless ways. *See Sw. Voter Registration Educ. Project*, 344 F.3d at 919; *Arkansas United*, 2020 WL 6472651, at *5. Granting injunctive relief here would breed confusion, undermine the public's trust in the election, and potentially disenfranchise of over one million Georgia voters. Viewed in comparison to the lack of any demonstrable harm to Wood, this Court finds no basis in fact or in law to grant him the relief he seeks.

IV. CONCLUSION

Wood's motion for temporary restraining order [ECF 6] is **DENIED**.

SO ORDERED this the 20th day of November 2020.



Steven D. Grimberg
United States District Court Judge

TRANSCRIPT OF PLAINTIFF'S EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
BEFORE THE HONORABLE STEVEN D. GRIMBERG
UNITED STATES DISTRICT JUDGE

1 APPEARANCES OF COUNSEL:

2 FOR PLAINTIFF:

3 MR. RAY STALLINGS SMITH, III
4 MS. EMILIE O. DENMARK
5 SMITH & LISS
6 Suite 2600
7 Five Concourse Parkway
8 Atlanta, Georgia 30328

9 FOR STATE DEFENDANTS:

10 MS. CHARLENE S. MCGOWAN
11 MR. RUSSELL D. WILLARD
12 GEORGIA ATTORNEY GENERAL'S OFFICE
13 40 Capitol Square Southwest
14 Atlanta, Georgia 30334

15 FOR INTERVENOR DEMOCRATIC
16 PARTY OF GEORGIA:

17 MS. SUSAN P. COPPEDGE
18 MS. JOYCE GIST LEWIS
19 MR. ADAM M. SPARKS
20 MR. HALSEY G. KNAPP, JR.
21 KREVOLIN & HORST
22 One Atlantic Center
23 1201 West Peachtree Street, NW
24 Suite 3250
25 Atlanta, Georgia 30309

MR. KEVIN J. HAMILTON
PERKINS COIE, LLP
1201 Third Avenue
Suite 4900
Seattle, Washington 98101-3099

MS. AMANDA R. CALLAIS
PERKINS COIE - DC
Suite 600
700 Thirteenth Street, NW
Washington, DC 20005-2011

1
2
3 FOR INTERVENOR GEORGIA
4 STATE CONFERENCE OF THE
5 NAACP; GEORGIA COALITION
6 FOR THE PEOPLES' AGENDA,
7 INC.; HELEN BUTLER; JAMES
8 WOODALL; MELVIN IVEY:

MR. BRYAN L. SELLS
THE LAW OFFICE OF BRYAN L. SELLS
P.O. Box 5493
1226 Springdale Road, NE
Atlanta, Georgia 31107-0493

MR. JON M. GREENBAUM
MS. JULIE M. HOUCK
MR. JOHN M. POWERS
MS. SUSAN BAKER MANNING
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
Suite 900
1500 K Street, NW
Washington, DC 20005

MS. SUSAN BAKER MANNING
MORGAN, LEWIS & BROCKIUS
1111 Pennsylvania Avenue, SW
Washington, DC 20004

13
14 OFFICIAL COURT REPORTER: ALICIA B. BAGLEY, RMR, CRR

15
16 Proceedings recorded by mechanical stenography, transcript
17 produced by computer
18
19
20
21
22
23
24
25

I N D E XFOR THE PLAINTIFF:SUSAN VOYLES

Direct Examination by Mr. Smith	26
Cross-Examination by Ms. McGowan	36
Cross-Examination by Mr. Hamilton	42
Redirect Examination by Mr. Smith	45

P R O C E E D I N G S

(in Atlanta, Fulton County, Georgia; November 19, 2020;
all parties appearing by Zoom)

THE COURT: Let me call the case. This is Lin Wood
v. Raffensperger. Case Number 20-CV-4651. If we can have
appearances of counsel beginning with the plaintiff.

MR. SMITH: Yes, Your Honor. Good afternoon. Ray
Smith for plaintiff, Your Honor, along with Emilie Denmark, my
associate.

THE COURT: Good afternoon.

And for Defendant Raffensperger.

MR. WILLARD: Yes, Your Honor. This is Russ Willard
from the Attorney General's Office. I also have Charlene McGowan
from the Attorney General's Office on the call.

THE COURT: All right.

MS. MCGOWAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

I understand we also have counsel for Intervenor
Democratic Party of Georgia?

MS. COPPEDGE: Yes, Judge. Good afternoon. This is
Susan Coppedge with Krevolin & Horst. I have from my team Joyce
Gist Lewis, Adam Sparks, Halsey Knapp, and we also have with us
counsel from Perkins Coie, Kevin J. Hamilton and Amanda Callais.

THE COURT: Good afternoon everyone.

MS. COPPEDGE: Good afternoon, Judge.

1 THE COURT: And finally we have, I believe, NAACP; is
2 that right?

3 MR. SELLS: Yes, Your Honor. This is Bryan Sells for
4 the NAACP defendant intervenors. With me at counsel table are
5 Jon Greenbaum, Julie Houck, and John Powers from the Lawyers'
6 Committee for Civil Rights in the Law and Susan Baker Manning
7 from Morgan, Lewis.

8 THE COURT: All right. Good afternoon everyone.

9 We are here on plaintiff's emergency motion for a
10 temporary restraining order. I have reviewed the motion and the
11 briefing on it, as well as the response from the Secretary of
12 State as well as the intervenors.

13 Mr. Smith, I will start with you. How do you propose
14 to proceed?

15 MR. SMITH: Your Honor, I have an opening argument
16 and I have one live witness and then a closing argument, Your
17 Honor.

18 THE COURT: All right. Okay. Go ahead.

19 MR. SMITH: Okay. Good afternoon, Your Honor. May
20 it please the Court. My name is Ray Smith. I represent the
21 plaintiff, L. Lin Wood, Junior, who is before this Court, as you
22 know, seeking a temporary restraining order to prohibit the
23 Georgia Secretary of State from certifying Georgia's November 3rd
24 election results. The defendants include the Georgia Secretary
25 of State Brad Raffensperger and members of the Georgia State

1 Election Board in their official capacity.

2 My client alleges a violation of the equal protection
3 and due process clauses in the election of the presidency and
4 then the subsequent full hand recount. As a result of these
5 constitutional violations, the results of the election are
6 tainted with impropriety, unfairness, and fraud. This Court
7 should prohibit the defendants from certifying the election
8 results and should require a full hand recount of the ballots
9 where monitors have full and complete and meaningful access to
10 observe the entire process, including signature-match checking of
11 absentee ballots. This will ensure that Georgia's reported and
12 certified election results are actually consistent with how the
13 citizen voters of the state voted so that the Georgia electoral
14 college votes are cast for the proper candidate, whether it be
15 President Donald J. Trump or Vice President Joe Biden.

16 We're seeking, Your Honor, a transparent, fair, and
17 open process. We do not believe, from the evidence that we've
18 presented to the Court and will present today, that that process
19 has been fair and open. As Your Honor's probably aware, there
20 were, in fact, four counties that we believe that did do the
21 right process - Walton, Douglas, Floyd, and Fayette County - but
22 there were a number of counties that did not do it the correct
23 way.

24 Very briefly let me summarize where the case
25 currently stands. We filed this complaint on the 13th of this

1 month and it was amended on the 16th. The complaint alleges
2 violations of the equal protection and due process clauses of the
3 Constitution of the United States, as well as violations of the
4 elector and election clauses of the United States Constitution.

5 As I mentioned, the plaintiff seeks declaratory
6 injunctive relief to ensure that Georgia's general election is
7 fair and unbiased. We filed this emergency motion on Tuesday
8 which was amended twice to correct the exhibits to the motion.
9 Thus far three motions to intervene have been filed by the
10 Democratic Party of Georgia, its affiliated entities, the Georgia
11 NAACP and the Georgia Coalition for Peoples' Agenda.

12 The Georgia Election Code establishes a clear and
13 efficient process for counties to use in the handling of absentee
14 ballots in this state. O.C.G.A. Section 21-2-386, Subsection
15 (a) (1) (B), as in boy, requires county officials to write on the
16 envelope of an absentee ballot when that ballot was received,
17 compare the identifying information on the ballot with the
18 voter's information on file, compare the voter's signature on the
19 ballot envelope with the signature on file, and if the signature
20 appears to match and the identifying information appears correct,
21 certify that absentee ballot.

22 Further, O.C.G.A. 21-2-386, Subsection (a) (1) (C), as
23 in cat, establishes how defective absentee ballots must be
24 handled. If, one, the voter's oath on the ballot envelope wasn't
25 signed or, two, the signature on the ballot doesn't appear to be

1 valid or if there's a problem with the voter's identifying
2 information the election worker is required to write "rejected"
3 on the ballot envelope and the reason for the rejection. Then
4 the county official has to notify the voter of that rejection.
5 These are statutory mandates, Your Honor, required by the Georgia
6 General Assembly to be followed in processing defective absentee
7 ballots.

8 In 2019, the democratic party in the state sued the
9 Secretary of State in this court and as a result of that suit the
10 democratic party and Secretary Raffensperger, who's a defendant
11 here, and the State Election Board entered a compromised
12 settlement agreement and relief which I'll refer to as the
13 litigation settlement. The litigation settlement is short, it's
14 only six pages, Your Honor, and a copy is attached to our
15 complaint, amended complaint and TRO motion as Exhibit A.

16 The implications of the litigation settlement are
17 really what is at issue in this case. Under Paragraph 3
18 Secretary Raffensperger changed the statutory procedure for
19 handling defective absentee ballots set out in 21-2-386(a)(1)(C).
20 Under that settlement in processing absentee ballots if a county
21 official or election worker determines that the voter's signature
22 on the ballot envelope doesn't match the voter's signature on
23 file the election worker then must form a three-person committee
24 to do a triple check of the ballot prior to rejecting. If two of
25 the three election workers agree that the signature on the ballot

1 envelope doesn't match the signature on file, only then can the
2 ballot be rejected. That procedure is obviously inconsistent
3 with the procedure prescribed by the Georgia General Assembly in
4 21-2-386.

5 Under Paragraph 4 of the litigation settlement
6 Secretary Raffensperger and the State Election Board agreed to,
7 quote, "Consider in good faith providing county registrars and
8 absentee-ballot clerks with additional guidance and training
9 materials to follow when comparing voters' signatures that will
10 be drafted by the Political Party Committees' handwriting and
11 signature review expert." Well, Your Honor, that's a problem
12 because allowing a single political party to write the rules and
13 guidance of signature reviews isn't conducive to a fair election
14 and violates the Constitution of the United States.

15 The Constitution requires each state legislature
16 prescribe a manner of holding elections for federal office in
17 Article I, Section 4, Clause 1. So regulations of presidential
18 elections, quote, "Must be in accordance with the method which
19 the State's prescribed for legislative enactments," and that's
20 the *Smiley vs. Holm* case, it's a U.S. Supreme Court case, 285 US
21 355, which is cited in our brief.

22 Although the defendants are authorized to promulgate
23 rules and regulations that are, quote, "conducive to the fair,
24 legal, and orderly conduct of primaries and elections," all of
25 those rules and regulations must be, quote, "consistent with

1 law," end of quote under 21-2-31, Subsection 2 of the Georgia
2 Code.

3 By entering into this litigation settlement, Your
4 Honor, defendants agreed to change the statutorily prescribed
5 manner of handling defective absentee ballots in a way that's
6 inconsistent with and contrary to the Georgia Election Code
7 enacted by the Georgia General Assembly, Your Honor. The
8 defendants acted outside of their authority and contrary to
9 Georgia law and the United States Constitution by entering into
10 the litigation settlement and requiring county officials to
11 comply with its terms. The implications of the litigation
12 settlement and the change in handling defective absentee ballots
13 have become very evident with the November 3rd general election
14 votes.

15 Georgia, like every state in this country, had an
16 unprecedented number of mail-in absentee ballots as a result of
17 the Covid-19 pandemic. The Secretary of State launched a
18 BallotTrax program to allow electors to track the progress of the
19 processing of these ballots. On top of having to process a
20 massive number of absentee ballots, county officials were under
21 further pressure to process these absentee ballots quickly so
22 they wouldn't be perceived as, quote, "falling behind as the
23 public views BallotTrax." So the county officials were under
24 tremendous pressure in processing these absentee ballots.

25 Then with the requirements of this litigation

1 settlement the county officials were to form a three-person
2 committee to review every defective absentee ballot before it
3 could be rejected. But there was no incentive for election
4 workers to spend additional time to conduct this triple check
5 that they had come up with for each defective ballot which
6 lengthened the time spent to review each defective ballot and
7 make the review more complex. The result, Your Honor, was that
8 signature matching for absentee ballots simply wasn't done or
9 done improperly creating the opportunity for improper absentee
10 ballots to be passed in the presidential election.

11 It's no secret, Your Honor, that the possibility of
12 voter fraud increases with the rise in use of absentee-ballot
13 voting. Back in October of 2012, Your Honor, the *New York Times*
14 published an article by Adam Liptak reporting the problems with
15 absentee-ballot voting, including the increase risk of fraud.
16 Quote, "There is a bipartisan consensus that voting by mail,
17 whatever its impact, is more easily abused than other forms," end
18 of quote.

19 In 2005, Your Honor, a report issued by the
20 Commission on Federal Election Reforms and signed by President
21 Jimmy Carter of this state, Your Honor, and James A. Baker, a
22 distinguished statesman, Your Honor, concluded, quote, "Absentee
23 ballots remain the largest source of potential voter fraud," end
24 of quote.

25 As Justin Levitt, a professor at Loyola Law School,

1 told the Senate Judiciary Committee of the United States,
2 "Efforts to prevent fraud at polling places ironically," quote,
3 "drive more voters into the absentee system, where fraud and
4 coercion have been documented to be a real and legitimate
5 concern," end of quote. "That is, a law ostensibly designed to
6 reduce the incidence of fraud is likely to increase the rate at
7 which voters utilizing a system known to succumb to fraud more
8 frequently." That quote is precisely, Your Honor, the concern at
9 issue here.

10 The litigation settlement entered by the defendants -
11 without authority, Your Honor - create a more cumbersome and
12 complex system for defective absentee ballots making it less
13 likely that county officials properly conduct signature matching
14 and making it easier for fraudulent or improper absentee ballots
15 to be included in the election results.

16 Even the democratic party of the state, Your Honor,
17 acknowledged that absentee ballot voting by mail is a, quote,
18 "area in which fraud is known to exist," and they quoted that in
19 the *Democratic Party of Georgia, Inc. v. Perdue* case back in
20 2009.

21 I'll get into the proof that supports the conclusion
22 that Georgia's also defective absentee-ballot procedure is
23 impacting Georgia's presidential election results later as
24 there's another major issue essential to my client's claim for
25 redress. The so-called hand recount, Your Honor.

1 THE COURT: Mr. Smith, before we turn to the recount
2 issue, let's tackle a few obstacles with regard to your challenge
3 to the settlement agreement. First, what is your client's
4 standing to bring this claim?

5 MR. SMITH: Your Honor, courts have recognized
6 standing to ensure an accurate count and only lawful ballots are
7 counted. In the *Roe vs. Alabama* case, Your Honor, which is an
8 Eleventh Circuit case, 43 F.3d 574, at issue was a TRO entered by
9 a state trial court that altered -- that changed the practice for
10 when absentee ballots were to be rejected. Under the Alabama
11 code absentee ballots were rejected if they weren't notarized or
12 signed by two witnesses. The trial court's TRO stated the
13 ballots could not be excluded from the count because of the lack
14 of notarization and lack of witnesses.

15 The plaintiffs were individual voters like my client
16 and the State argued that these individuals failed to allege the
17 violation of the rights secured by the Constitution as required
18 by 42 USC 1983. The Eleventh Circuit stated, quote, "If the
19 election process itself reaches the point of patent and
20 fundamental unfairness, a violation of the due process clause may
21 be indicated and relief under 1983." Therefore, to address,
22 then, whether the plaintiffs have demonstrated fundamental
23 unfairness in the November 8th election, we conclude that they
24 have.

25 The test for Article II standing, Your Honor, is

1 whether the plaintiff has shown an injury-in-fact causation to
2 redressability. Here my client is directly impacted as a
3 qualified elector in the state of Georgia by the manner in which
4 the votes count and how the count was conducted. Failing to
5 conduct identification checks throughout signature matches on the
6 absentee ballots, or votes, dilutes Mr. Wood's vote that he cast
7 in person, just as failing to properly count the vote correctly
8 in a monitored hand count dilutes Mr. Wood's vote cast in this
9 election.

10 Further, Your Honor, in *Arcia, A-R-C-I-A, vs. Florida*
11 *Secretary of State*, that's another Eleventh Circuit case in 2014,
12 Your Honor, that's 772 F.3d 1334. The Court noted that anyone
13 directly injured by the administration of the election has
14 standing.

15 Also, Your Honor, Secretary Raffensperger and the
16 State Election Board responsible for uniform election practice in
17 Georgia under 21-2-31 under the Georgia Code the defendants have
18 significant authority to train election officials and set
19 election standards. Under 21-2-50, Subsection D, thus, the
20 defendants have the ability to fully redress plaintiff's injuries
21 statewide. Accordingly, Your Honor, the individual voter
22 plaintiffs have standing. And that was in the *New Georgia*
23 *Project vs. Raffensperger* case which was in this court, a 2020 US
24 District Lexis case, Northern District of Georgia, which was
25 plead August 31st of this year.

1 THE COURT: So your position is that any individual
2 voter could bring this claim?

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: Under a voter-dilution theory?

5 MR. SMITH: That's correct.

6 THE COURT: All right. And what is the emergency
7 nature of this challenge to the settlement agreement?

8 MR. SMITH: The emergency nature, Your Honor, is
9 because the count is about to be certified and we have a -- you
10 know, we have a deadline coming up of a -- they need to redo the
11 count the right way, Your Honor, the hand count the right way and
12 so that at the minimum they can get it to the safe harbor on
13 December 8th for the electoral college.

14 THE COURT: If this settlement agreement was entered
15 over eight months ago there's been, I believe, at least three
16 elections that have occurred pursuant to the terms of this
17 settlement agreement. What caused this emergency on behalf of
18 your client to bring this motion this week?

19 MR. SMITH: Well, Your Honor, because we've got the--
20 again, the hand -- we amended our complaint to add the hand
21 recount which was done improperly on top of the --

22 THE COURT: I understand, Mr. Smith. That's a
23 different issue, we'll get to that. I'm asking with regard to
24 the challenge to the settlement agreement, why wasn't this claim
25 brought -- excuse me. Why wasn't this claim brought sooner?

1 MR. SMITH: It wasn't ripe until after the election.
2 We didn't see the full effect of what happened. It was not ripe
3 until after the election, Your Honor, after we saw the direct
4 effect of it and the direct impact of this.

5 THE COURT: Maybe I misunderstand the nature of the
6 challenge. I thought the challenge was to the authority of the
7 Secretary of State to promulgate a rule that in your view is one
8 that can only be passed by the legislature which seems to be a
9 procedural challenge that has nothing to do with the actual
10 impact or effect it has on a particular election. It seems to be
11 one of whether the Secretary of State had the authority. So it
12 seems to me that that challenge could have been brought the day
13 after the settlement agreement was entered over eight months ago.

14 MR. SMITH: Well, Your Honor, again, I think that the
15 impact of -- I don't think anybody could see the full impact of
16 it because we're in a situation with Covid of seeing the direct
17 impact of these, you know, 1.3 million absentee ballots. No one
18 foresaw what sort of an impact that would have on it.

19 THE COURT: What evidence do you have that this
20 settlement agreement has had an impact on the election?

21 MR. SMITH: Well, Your Honor, it was -- it has
22 impacted the fact that they have not been able to properly - they
23 have not been able to properly and timely review the absentee
24 ballots. We had a - we had a real procedure prior to this that
25 seemed to work and then the democrats challenged it, they came up

1 with this consent order, but I don't think anybody foresaw the
2 number -- the total number of ballots that were going to be
3 overwhelming in this election and it caused extreme -- the
4 numbers in the declaration, Your Honor, it went -- there was a
5 huge, huge increase in the number of absentee ballots. It went
6 from, you know, several hundred thousand to 1.3 million -- almost
7 1.3 million.

8 THE COURT: I understand that there's an increase in
9 the number of absentee ballots, but that's not what the
10 settlement -- Mr. Smith. Mr. Smith. Mr. Smith, hold on.

11 MR. SMITH: I'm sorry.

12 THE COURT: My question is: The settlement agreement
13 relates to a process for reviewing signature matching.

14 MR. SMITH: Right.

15 THE COURT: So what evidence do you have that that
16 process was overwhelmed by the number of absentee ballots?

17 MR. SMITH: Well, they were trying -- instead of
18 doing the -- they came up with a three-person committee, Your
19 Honor, and there was no way they could do this three-person
20 committee and get through all these ballots in a timely fashion
21 and so essentially these large counties just rushed through and
22 just rammed through the ballots in an improper way, Your Honor.

23 THE COURT: I understand that that's your argument,
24 sir. What is your evidence?

25 MR. SMITH: Our evidence, Your Honor, is the

1 affidavits that we presented to the Court.

2 THE COURT: Which affidavit demonstrates that this
3 three-person signature-matching process was overwhelmed?

4 MR. SMITH: Well, we have Ms. Voyles here live and in
5 person, for one.

6 THE COURT: Okay. All right. Let's turn to the hand
7 recount.

8 MR. SMITH: Okay. Your Honor, we all know that
9 Georgia tallies for the president are incredibly close.
10 Secretary Raffensperger reported on the Secretary website that at
11 the time that we filed our lawsuit that there was a difference of
12 about 14,000 votes between President Trump and Vice President
13 Biden.

14 Secretary Raffensperger announced there would be a
15 full hand recount of the election results with the recount having
16 concluded yesterday. The Georgia Election Code provides for a
17 recount, allows both political parties to have monitors present
18 during the recount. Secretary Raffensperger announced, quote,
19 "The designated monitors will be given complete access to the
20 entire process from the beginning." He stated that designated
21 monitors will be able to watch the recount while standing close
22 to the election workers conducting the recount. The reason, of
23 course, is to keep the recount open to the public, Your Honor,
24 and the media and to ensure that this recount is conducted fairly
25 and securely.

1 However, he knew while the recount was occurring that
2 monitors were being denied meaningful access to observe the
3 entire recount process. Attached to our motion, Your Honor, are
4 numerous affidavits of election workers and volunteer monitors
5 reporting that they were denied the ability to be present for the
6 entire process. And when they were allowed to be present they
7 frequently were denied the ability to observe the recount up
8 close.

9 When these -- in fact, I would even say that there
10 was one county, Your Honor, where the observer stood up. He saw
11 a lot of cars in the parking lot. Asked where the recount was
12 going on. Was told there was nothing going on. He heard people
13 down the hall. He asked again. They said nothing is going on
14 here. He barged on down the hall, opened the door, and they're
15 in there recounting.

16 When these individuals saw irregularities in the
17 recount process and tried to draw attention to these problems,
18 they were ignored or even ejected from the recount, Your Honor.
19 They observed inconsistencies in the security of the ballots and
20 voting equipment that caused real concern about the validity of
21 the recount.

22 Your Honor, the International Institute of Democracy
23 and Electoral Systems issued a publication in 2002 called the
24 "International Electoral Standards: Guidelines for Reviewing the
25 Legal Framework of Elections." The purpose of the international

1 IDEA standard system uses benchmarks to asses whether or not an
2 election is free and fair. Internationally universally
3 recognized election integrity standards require the presence of
4 observers in the processing of ballots as, quote, "A necessary
5 safeguard of the integrity and transparency of the election," end
6 quote. Indeed, "The legal framework must contain a provision for
7 representatives nominated by parties and candidates contesting
8 the election to observe all voting processes," end of quote.
9 "Critically, any recount must employ a consistency of methodology
10 of all ballots recounted," end of quote, and must provide, quote,
11 "for participation of opposing parties to observe and challenge
12 the interpretation of a voter's intent," end of quote. Neither
13 occurred here in this manual recount, Your Honor.

14 What's more, Secretary Raffensperger stated that this
15 would be a full hand recount, Your Honor, as well as an audit of
16 the vote and recount. That wasn't done. The Georgia Election
17 Code, Your Honor, sets forth procedures for a recount, an audit
18 and re-canvassing in 21-2-493 and 495. But the sworn statements
19 of these election workers, Your Honor, that we presented and
20 volunteer monitors evidence that those procedures weren't
21 followed, that's obviously a problem because when a state
22 election uses an election procedure it is bound by its own laws
23 governing the procedure, Your Honor.

24 Secretary Raffensperger really only conducted a,
25 quote, "risk-limiting audit," Your Honor, that is governed by

1 21-2-498 under the Georgia Code. It appears that the scope of
2 the audit was simply a test of the tabulation system which does
3 not constitute a specifically accurate estimate, Your Honor. An
4 audit also should take into consideration other facts related to
5 absentee ballots, including a full reconciliation of the number
6 of ballots printed and received by mail, as well as a full count
7 of the signature envelopes of the ballots received.

8 Also, to conduct a full audit, Your Honor, absentee
9 ballots and envelopes should be examined as to the weight of the
10 ballots, envelopes, brightness of the ballots and envelopes, and
11 the fold marks on the ballots, Your Honor. These are all means
12 of verifying absentee ballots are not fraudulent and would help
13 ensure that a risk-limiting audit is sufficient to ensure that
14 statistical probability described in 21-2-498(d) is met.

15 When Secretary Raffensperger decided to use the
16 D-Suite system, Your Honor, for Georgia's new voting system he
17 stated, quote, "The State can make scanned images of all ballots
18 cast in statewide elections available allowing anyone to do a
19 ballot count to check the accuracy of the results." In other
20 words, Your Honor, you can take pictures of these ballots and put
21 them on the internet and anyone in the whole world could look at
22 this and we'd have a totally transparent system.

23 But the defendants haven't published their scanned
24 images of the ballots so the recount has been done improperly and
25 the defendants haven't provided another means for the public to

1 confirm that Georgia votes were tabulated correctly. The outcome
2 of the defendants' failure to properly conduct a hand recount and
3 the unauthorized changes to the process for handling defective
4 absentee ballots is an election result that is tainted with
5 fraud, irregularities, and constitutional violations.

6 I'll discuss our constitutional arguments later, Your
7 Honor, but I'd like to call my first witness, our one live
8 witness, Your Honor, here to testify, Ms. Susan Voyles.

9 MS. MCGOWAN: Your Honor --

10 THE COURT: Hold on.

11 Before we do that, Mr. Smith, is the standing
12 argument with regard to the recount essentially the same, that
13 Mr. Wood as an individual voter has standing?

14 MR. SMITH: That's correct, Your Honor. That's
15 correct, Your Honor.

16 THE COURT: And that is based on, you said, *Roe v.*
17 *Alabama*?

18 MR. SMITH: That's correct. *Roe v. Alabama* and *Arcia*
19 *vs. Florida Secretary of State* case.

20 THE COURT: Okay. And what is the constitutional
21 claim that he's bringing based on the recount?

22 MR. SMITH: Due process, Your Honor.

23 THE COURT: Procedural due process or substantive due
24 process?

25 MR. SMITH: Both, Your Honor.

1 THE COURT: Both?

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: Okay. Can you explain what due process
4 violation has occurred? Does he have a constitutional right to
5 have an election monitored -- or a recount monitored?

6 MR. SMITH: A transparent election, Your Honor, and a
7 right to recount.

8 THE COURT: He has a constitutional right to a
9 recount?

10 MR. SMITH: He has a right to a fair and open
11 election, yes, Your Honor.

12 THE COURT: And what authority is there for that?

13 MR. SMITH: Excuse me?

14 THE COURT: What authority are you relying on for
15 that?

16 MR. SMITH: *Baker vs. Carr*, Your Honor.

17 THE COURT: Okay. All right. I'll hear from the
18 Secretary of State's counsel. Do you wish to make an opening
19 statement?

20 MS. MCGOWAN: Your Honor, I believe we'll reserve our
21 argument. I just wanted to raise a housekeeping issue that we
22 have evidentiary objections to Ms. Voyles' testimony to the
23 extent that it goes beyond the scope of the complaint. I want to
24 know how Your Honor wants to handle those objections.

25 THE COURT: All right. Obviously, if you have an

1 objection to the testimony, I'll hear that now. If it is an
2 objection to the declarations or other evidence that's been
3 submitted, we can take that up later.

4 MS. MCGOWAN: Okay. We do have an objection to her
5 testimony to the extent it goes beyond the scope of the
6 complaint. The complaint is limited to two central factual
7 allegations with regard to the absentee ballot
8 signature-verification process and as to the party monitors and
9 whether or not they were improperly denied access to the audit.
10 Ms. Voyles' affidavit that was submitted in support of their
11 motion does not address either one of these issues and so to the
12 extent that she's going to testify about those topics here today,
13 we would object to that as being irrelevant and outside the
14 scope.

15 THE COURT: All right. Well, that sounds like an
16 objection to the declaration and perhaps we can take that up
17 later in conjunction with the others. Let's hear the testimony
18 and object -- you should object on a question-by-question or
19 subtopic-by-topic basis; all right?

20 MS. MCGOWAN: All right. Thank you.

21 THE COURT: Mr. Smith, go ahead.

22 Ms. Holland, if you can please swear in the witness.

23 THE CLERK: Ma'am, could you please raise your right
24 hand.

25 (the witness was sworn)

DIRECT EXAMINATION

BY MR. SMITH:

Q. Ms. Voyles, would you state your name for the record, please.

A. My full name is Susan Foster Voyles and I live in Sandy Springs, Georgia.

Q. And what county is that?

A. It is in Fulton County.

Q. And what do you do for a living?

A. I'm a policy analyst and I also have many volunteer things that I do.

Q. Tell me about your role as an election worker in Georgia.

A. I have been a poll manager for over 20 years in Georgia ordinarily at the location of (inaudible). In the last six years we've moved around a little bit.

(off-the-record discussion)

THE COURT: Mr. Smith, we're having trouble hearing her. Can you place a microphone closer to the witness?

MR. SMITH: Okay. Can you hear her now, Your Honor?

BY MR. SMITH:

Q. Where do you live?

A. Sandy Springs, Georgia. Fulton County.

THE WITNESS: Is that better?

THE COURT: That's much better, yes. Thank you.

1 BY MR. SMITH:

2 Q. Would you tell the Court where your precinct is where
3 you've been a poll manager.

4 A. The location is SS02 A and B in Sandy Springs.

5 Q. And how are you aware of the recount that was performed
6 in Georgia?

7 A. On Friday afternoon approximately 1:30 I received an email
8 from my supervisor from Fulton election. Her name's Marie
9 Wright. I've known her as a supervisor probably at least a
10 decade. She was sending out an alert to see if poll managers
11 and their assistants could come in and do a hand recount.

12 Q. Okay. And so tell me about the procedure. What
13 happened?

14 A. I emailed her that I could. We were notified that we
15 needed to be there Saturday through Wednesday. We need to
16 commit to all days from 7:00 a.m. until 5:00 p.m. If we could
17 not commit to the entire time, we were asked not to come at all.
18 So I committed to that. We went down early Saturday morning and
19 we were there prior to 7:00 o'clock. We signed in. When we
20 signed in, there was a corresponding number next to our name and
21 that was to be the table at which we were going to sit.

22 Q. Okay. Where did this recount take place?

23 A. It took place at the Georgia World Congress Center.

24 Q. All right. And did you receive training for the
25 recount?

1 A. Somewhat. There was a small video about 5 minutes long.
2 There was no audio. There were some captions to the video. I
3 had plenty of time so I watched it three times and it just gave
4 a visual as to how we were to count the ballots and
5 instructions, of course, that were in the closed caption gave us
6 that procedure. There were no procedures if we saw any
7 irregularities or had serious concerns.

8 MS. MCGOWAN: Your Honor, this is where the State
9 would object. This testimony is outside the scope of plaintiff's
10 pleadings. There were no allegations in the amended complaint
11 regarding the process by which the audit was conducted. It was
12 solely related to whether party observers had access.

13 THE COURT: All right. I'll overrule the objection
14 for now.

15 BY MR. SMITH:

16 Q. All right. Did you receive any information or standards
17 on how to interpret spoiled ballots or other ballot
18 discrepancies?

19 A. No.

20 Q. Okay. Describe what you did after watching the training
21 video.

22 A. They were still putting tables into the room and it was
23 about 9:45 before I received my table so I was talking to
24 another poll worker that I had known from -- I don't know the
25 poll number, but it was a Fulton County poll center.

1 Q. Tell me what was the further process of what happened.

2 A. Once we got to our table?

3 Q. Yes.

4 A. When we were finally given our table -- it was three
5 conference-type tables put together, the same ones that you
6 would have for -- you know, if you were in a meeting and you
7 needed to write. At the table -- the third table that was up
8 above had "Trump," "Biden," "Jorgensen," "write-in," and then
9 "blank," and they were just large, computer-generated pieces of
10 paper. There was a corrugated box already sitting on our table.
11 The corrugated box did have the Secretary of State's seal
12 (inaudible).

13 THE REPORTER: I'm sorry. I can't hear.

14 THE COURT: Mr. Smith, we need to repeat that last
15 answer, we couldn't hear that.

16 BY MR. SMITH:

17 Q. Okay. Can you repeat that answer, please.

18 A. I'd be happy to.

19 Once we got to our table we had an additional table
20 in front of us where it had the names of "Trump," "Biden,"
21 "Jorgensen," "blank," and -- I'm sorry, "write-in" and then
22 "blank" ballots and that's where -- after we'd done our count,
23 that's where we would put the ballots.

24 The corrugated box that I received was taped shut and
25 it had the Secretary seal on top of the box. The seal was

1 unsigned and very lightly attached. It's typical whenever we
2 open something that has been resealed in our poll work that we do
3 reseal it with the Secretary's seal and sign our name to the
4 seal, but this had no signature on it.

5 We opened our box. We had the help of somebody with
6 box cutters because it was taped rather securely. Inside our box
7 were absentee-style ballots and we had approximately 700 to 800
8 ballots that were stored in batches.

9 Q. All right. Then what happened? Walk me through what
10 happened after that.

11 A. We would check out batch after batch and we would begin the
12 counting process and what we would do is -- the woman with me,
13 her name was Barbara, she would pick up a ballot -- well, first
14 I would take them all out and I would hand her the entire batch
15 and I'd take the white sheet of paper off that was the tally
16 that came with those ballots. We were then given an orange
17 sheet to put our tally to make sure they corresponded.

18 Barbara would take from the stack the entire ballots.
19 She would pick up one ballot, she'd bring it to me - we were only
20 doing the president and that was our only assignment - and she
21 would say, for example, "Joseph R. Biden." She would hand me
22 that same ballot. I would make sure that I looked at it
23 carefully and saw that it said "Joseph R. Biden" and if that was
24 indeed the case I would place that up above and we'd continue
25 with the other candidates (inaudible) until we started through

1 that smaller batch within the big box.

2 Q. How long did that continue?

3 A. I think our first batch probably took us about -- probably
4 about two and a half hours, the complete entire batch. Box, I'm
5 sorry. The batch did not take that long.

6 Q. What did the ballots look like?

7 A. They look like the ballots -- they're the long white
8 ballots that we get that have separate computer marking on the
9 side. They have -- it started out with the candidate's name at
10 the top. Well, at the very top it has the purpose of the ballot
11 which was absentee and provisional.

12 Then underneath that it had every office that there
13 was. On the left-hand side it was the president and then the
14 senate candidates for David Perdue's seat. There was a very long
15 column that had all the senate candidates for Johnny Isakson's
16 seat currently held by Kelly Loeffler and then it had -- if I
17 recall, it had the (inaudible) next on the right-hand side. The
18 other side also continued with other officers and --

19 Q. What was the texture about? Was there anything unusual
20 about any of the ballots?

21 A. Most of the ballots looked like typical absentee ballots
22 that I had seen before where the edges were kind of worn.
23 Paper, you could tell people had put their hands on the paper.
24 It maybe even had a little tear. You could tell if they had
25 been folded and put into an envelope. But there was a

1 particular batch that stood out to me.

2 Q. And why did they stand out to you?

3 A. This particular batch was very pristine, very white. All
4 the bubble marks looked uniform like -- I was just amazed. And
5 even the feel -- I remember rubbing my hands going up and down
6 on this because the feel of the paper was different. When
7 you've handled absentee or provisional ballots for over 20 years
8 you have -- it would just be like, you know, anything else that
9 you're accustomed to handling and these felt very different.
10 But it was stark white ballots, it was the consistent markings
11 of the ballots. I remember everything about that batch. I even
12 remember one that looked as though it had been put in a copy
13 machine too fast, to be honest with you, or a scanner because it
14 was kind of -- it was not perfectly printed. It was a little
15 bit askew.

16 Q. Was there anything else different about that batch of
17 ballots?

18 A. That batch of ballots contained 97 votes -- there was 100
19 ballots, 97 votes for Joseph R. Biden, 1 vote for Jorgensen, and
20 2 votes for Trump. That was very unusual.

21 Q. And when did the counting end on Saturday?

22 A. On Saturday we were done somewhere between 4:30 and 4:45.

23 Q. Okay. And were you told to come back?

24 A. We were told to see us first thing in the morning so we did
25 come back Sunday morning. We arrived about 6:45.

1 Q. Okay. And then what happened?

2 A. We were amazed when we first walked in in the morning
3 because the previous morning there had been a line through the
4 halls at the World Congress Center. This morning we walked in,
5 we didn't even sign in. One person just sort of waved at us and
6 said you can go to your previous table, but this time there were
7 no ballots at the table. We had been told the previous day that
8 we would be there until at least Monday afternoon or evening
9 because there were so many ballots -- there were so many ballots
10 in the warehouse. So on Sunday when we walked in and saw so few
11 people there that was rather surprising to us.

12 We went to our table, held up our little card before
13 7:00 o'clock so that we could indicate that we would like to have
14 some ballots and there was a table in front of us with two
15 counters and a table behind us with two counters. By "counters"
16 I mean two people counting, I'm sorry. They were there and they
17 got their ballot boxes prior to us. Their ballot boxes, the
18 girls behind us had at least 3,000 ballots in their box. Seeing
19 what they received and it appearing that they had 3,000
20 (inaudible) there was an accounting of how many ballots were in
21 there, that's how (inaudible).

22 THE REPORTER: I can't hear her. She's too soft.

23 THE COURT: Mr. Smith, I need her to repeat that
24 again. Is there any way to improve the mic? It keeps going in
25 and out.

1 THE WITNESS: How about this? Is that better?

2 THE COURT: About the same. All right. Just speak
3 as loud as you can, ma'am.

4 MR. SMITH: Speak as loud as you can.

5 THE WITNESS: All right.

6 MR. SMITH: Your voice kind of falls off at times.

7 THE WITNESS: From what part?

8 BY MR. SMITH:

9 Q. Talk about the ballots and how many ballots you had
10 versus how many ballots the people behind you had.

11 A. The counters in front of us and the counters behind us had
12 at least 3,000 ballots in their ballot boxes. We were still
13 waiting on ours even though we arrived about 15, 20 minutes
14 before the other counters got there. They received their ballot
15 boxes before we got ours. We were still waiting on ours.
16 Finally 45 minutes later we got our ballot box.

17 I had the gentleman who brought me the box break the
18 seal. And we had told numerous people, we weren't just holding
19 up our checkmark, because there really wasn't anything -- there
20 were very few counters in there. Anyway, I had him break the
21 seal on my ballot box. I went to look inside and was amazed we
22 had one batch and that batch included 60 ballots from the Quality
23 Living Center in southwest Atlanta, I believe.

24 Q. Okay. And after that box what happened?

25 A. Well, that box -- those were all from the DMV so they were

1 all pretty much the same. However, there again, we were very
2 amazed at the fact that those were -- there were 2 ballots for
3 Trump and 58 ballots for Biden.

4 Q. Were you then told to go home after that?

5 A. We waited probably about another 30 minutes for another box
6 and when one never came, then an election official came by and
7 she told us "Thank you very much for your service. You can go
8 home." It was shortly after 10:00 o'clock.

9 Q. 10:00 o'clock in the morning?

10 A. In the morning, yes.

11 Q. But you weren't finished; were you? Or they weren't
12 finished; were they?

13 A. They were not finished. They had other ballots. They had
14 other boxes. We also had offered to help either of the other
15 two candidates -- you see, these ballots were separated by the
16 batches within the box which would make it easily able for
17 somebody to go and assist with the counting if you took one of
18 the batches out of there and then return that to the counting
19 file.

20 Q. Were the other people counting as teams or were they
21 counting individually?

22 A. Well, I will say that the gals behind us were counting as a
23 team. However, the gals in front of us were not. They were
24 counting individually and were not even in close proximity to
25 each other at the table.

1 MR. SMITH: No further questions of her at this time,
2 Your Honor.

3 THE COURT: All right. Thank you.

4 Any cross-examination by the Secretary of State?

5 MS. MCGOWAN: Yes, Your Honor. And before I begin, I
6 would like to renew our objection to her testimony. Pretty much
7 all of her testimony is outside the scope of the amended
8 complaint, but I would like to question the witness.

9 THE COURT: All right. That objection's overruled.
10 Go ahead.

11 CROSS-EXAMINATION

12 BY MS. MCGOWAN:

13 Q. Good afternoon, Ms. Voyles.

14 A. Good afternoon.

15 Q. The batch of ballots that you described as pristine, you
16 described them as absentee-styled ballots. Can you elaborate
17 on what you mean by that? Typically the absentee ballot is
18 the same as the provisional ballot; correct?

19 A. That's correct. And in manager lingo, it really is an
20 absentee-style, it's given a code number, it's given a ballot
21 number, and that's why I called it a "style," I'm sorry.

22 Q. And as a poll worker at your polling location at
23 election day you would have a supply of paper -- provisional
24 ballots that were used as backup ballots, right, if a voter
25 needed to vote provisionally?

1 A. Yes. And we have to account for every single one of those
2 that we have.

3 Q. Exactly. And did these ballots that you described as
4 "pristine" when you were conducting the audit, did they look
5 identical to the paper ballots that you would keep on hand at
6 your polling location, just that you felt that the paper felt
7 different?

8 A. The paper felt different and the fact that it was not
9 creased at all. Whether it was an absentee ballot or whether it
10 was a provisional ballot, it would have been put into an inner
11 envelope and then an outer envelope and both of those envelopes
12 would have been sealed which would have further creased that
13 ballot. These ballots were not creased. And we were given no
14 envelopes for those ballots so it would have been impossible for
15 us to verify any signatures.

16 Q. So on election day when a voter votes provisionally do
17 you place that provisional ballot in an envelope?

18 A. Pardon me?

19 Q. You just testified that you don't have envelopes for the
20 provisional ballots.

21 A. No, on election day I do have envelopes. I have a white
22 inner envelope and you, the voter, I would hand you a
23 provisional ballot, I would hand to you a marking device, a pen,
24 and then I would hand you the white envelope. I am writing on
25 the outside of the salmon-colored envelope which is the outer

1 envelope. By the time you bring me your white envelope I have
2 your name, your voter ID on it, why you're voting provisional
3 and, of course, our poll number. You put it into -- you put
4 your inner envelope into the outer envelope. You're listed on a
5 numbered list of voters for provisional voters and then I have a
6 large orange sack with a very tight lip on it that you would
7 slip your ballot into that. It's sealed on the bottom so I have
8 no access to it and I would not touch the ballot once you have
9 sealed your own ballot.

10 Q. And you would put those in a box at the end of the day
11 on election day and seal that?

12 A. No. I would carry that bag with me to -- this big, sort of
13 orange canvas bag is actually the provisional ballot box, so to
14 speak.

15 Q. The box of ballots, the batch that you looked at, you
16 said that the box that they we were in had been sealed;
17 correct?

18 A. It had been sealed, but not signed properly.

19 Q. Did you report any of these issues to any of the county
20 election officials?

21 A. We did.

22 Q. Did you get a response?

23 A. "It's in there. It's okay," that was the response.

24 Q. Did you report any of these issues to the Secretary of
25 State's office?

1 A. No, I did not.

2 Q. If this was suspicious to you and you didn't feel like
3 the county was treating it with the appropriate amount of
4 attention, why didn't you report it to the Secretary of
5 State's office?

6 A. I did report some things to the Secretary's office and I
7 did fill out -- and I did not -- there were some anomalies that
8 I needed satisfaction to. I was very disturbed at the way the
9 count went. I believe that that was -- and the style of the
10 ballots, I really was amazed at that.

11 Q. This particular batch of ballots that you were concerned
12 about, did you say it was about 100?

13 A. I said there were about 700 to 800 in the box. About 100
14 of them caused me concern.

15 Q. And you saw no other ballots that caused you concern?

16 A. Yes. I saw the ballots the next day that caused me grave
17 concern.

18 Q. And that was from the -- I believe it was a rehab
19 center, you said?

20 A. It was called Quality Living and it's a recovery facility.

21 Q. And those were about 60, I believe?

22 A. They were exactly 60.

23 Q. Did you personally observe any monitors that were not
24 permitted by county officials to observe the audit process?

25 A. Yes, I did. I did observe two parties that were not able

1 to even get in in the beginning and once they were able to get
2 in -- first we were told there would be one monitor for every 10
3 tables, that is impossible, and I was not a monitor so I cannot
4 precisely say as to their -- but there was no -- these monitors
5 first stood kind of - kind of loosely between 10 tables.

6 There's no way they could observe what was going on. And then
7 later on when they would come over to observe closely, which the
8 law says they're allowed to be, they were chastised and told to
9 get away by Fulton County officials.

10 Q. Did you personally witness any ballot not being
11 tabulated correctly during the audit process?

12 A. When you say "tabulated" -- I mean, they were tabulated so
13 many times. At what point are you talking about? The kind of
14 tabulations that I was doing or prior to me?

15 Q. The tabulation that you were doing.

16 A. Our ballots are tabulated correctly. From what we got, we
17 were able to tabulate those and go through them. We actually
18 were looking at ours to make sure we did not have ballots
19 sticking together.

20 Q. Have you ever served in any leadership capacity in a
21 republican organization?

22 A. Yes, I have.

23 Q. Can you describe what you -- how active you've been in
24 the republican party.

25 A. I've been very active, yes, for years.

1 MR. SMITH: Objection, Your Honor; not relevant.

2 THE COURT: Overruled.

3 MS. MCGOWAN: I have no further questions. Thank
4 you, Ms. Voyles.

5 THE COURT: Any redirect, Mr. Smith?

6 MR. HAMILTON: Your Honor, on behalf of the
7 intervenor defendants may I ask a handful of questions?

8 MR. SMITH: Your Honor, the intervenor has not been
9 moved in. We object to them asking any questions at this point.
10 They can observe, but they've not been moved in yet.

11 THE COURT: Mr. Hamilton, you represent the
12 democratic party?

13 MR. HAMILTON: That's correct, Your Honor.

14 THE COURT: All right. Mr. Smith, are you objecting
15 to their intervention?

16 MR. SMITH: Yes, Your Honor. At this point we are,
17 yes.

18 THE COURT: On what basis?

19 MR. SMITH: Well, we don't believe at this point
20 they're a relevant party.

21 THE COURT: Well, they were a party to the settlement
22 agreement that you're challenging; were they not?

23 MR. SMITH: Yes, yes, they were. Yes, Your Honor,
24 they were. But they're not the ones enforcing it, Your Honor.

25 THE COURT: All right. The motion's granted and I'll

1 allow Mr. Hamilton to ask questions on behalf of his client. Go
2 ahead.

3 MR. HAMILTON: Thank you, Your Honor. And I'll be
4 brief.

5 CROSS-EXAMINATION

6 BY MR. HAMILTON:

7 Q. Good afternoon, Ms. Voyles. I'd just like to ask you a
8 couple of questions and I'm looking at your affidavit that
9 you signed and submitted to the Court. Do you recall signing
10 that affidavit?

11 A. Yes, sir, I do.

12 Q. Is it true, everything that's in there?

13 A. Yes, it is true.

14 Q. Okay. In the declaration you indicate that you watched
15 a short training video, I think you mentioned that a little
16 bit earlier in your testimony here, is that accurate, that
17 you watched a training video when you showed up to assist
18 with the recount?

19 A. Yes. I watched it about three times. It was two children
20 demonstrating how to move the ballots from one person to
21 another, it was about 5 minutes long, there was no audio and it
22 was only close captioned.

23 Q. So the answer is, yes, you watched that video?

24 A. Yes, I did.

25 Q. And you watched it three times?

1 A. I did, because I didn't have anything else to do so...

2 Q. And you did the best you could to follow the
3 instructions provided in that video produced by the Secretary
4 of State's office; is that correct?

5 A. Yes, sir. (Inaudible) but, yes, I did.

6 Q. And then you indicated in your declaration that you were
7 required to sign an oath saying that you would conduct the
8 audit impartially and fairly to the best of your ability and
9 you were told that if you did anything wrong you'd have to go
10 before the State Board of Elections. Do you recall saying
11 that in your declaration, ma'am?

12 A. Yes, sir, I do.

13 Q. And did you comply with that oath?

14 A. Yes, sir, I did.

15 Q. Did you do your best to administer the recount fairly
16 and impartially?

17 A. Yes, I did.

18 Q. Okay. And then in Paragraph 10 of your declaration you
19 indicated that you were given instructions on how to pick up
20 certain piles and count ballots in piles. Do you recall
21 saying that in your affidavit?

22 A. Yes, sir.

23 Q. And did you follow those instructions?

24 A. To the letter.

25 Q. You did the best of your ability to conduct the audit in

1 compliance with those instructions?

2 A. We did, sir.

3 Q. Okay. And then with respect -- you've been an election
4 worker for 20 years, I think. In connection with this
5 recount process or the canvass, were you involved in
6 duplicating damaged ballots at all?

7 A. No, sir, that was not my role.

8 Q. That was not your role?

9 A. No. We were given either ballot boxes or this corrugated
10 box. Our sole purpose was to take what was in the box, take one
11 batch out at a time and count them, that was all we were told to
12 do.

13 Q. So you can't testify here today and you're not
14 testifying here today about anything about the duplication
15 process or how it was conducted; correct?

16 A. That is correct.

17 MR. HAMILTON: Thank you.

18 No further questions, Your Honor. Thank you.

19 THE COURT: All right. Does counsel for the proposed
20 intervenor NAACP and the Georgia Coalition for the Peoples'
21 Agenda, do they wish to ask any questions?

22 MR. GREENBAUM: We don't have any questions for this
23 witness, Your Honor.

24 THE COURT: All right. Any redirect, Mr. Smith?

25 MR. SMITH: No, no redirect. Wait a minute. Hold

1 on. Hold on.

2 REDIRECT EXAMINATION

3 BY MR. SMITH:

4 Q. Do you have to fold provisional ballots?

5 A. Are you talking about in my capacity as a poll manager or
6 did I have to fold them that day?

7 Q. Both.

8 A. In my capacity as a poll manager, I do not actually fold
9 the ballot. The voter would fold the ballot. But, yes, they do
10 have to be folded. They have to be put in the inner white
11 envelope and then the outer salmon-colored envelope and into the
12 ballot box.

13 Q. So those pristine ballots that you described that were
14 perfectly marked, they couldn't have been provisional
15 ballots; could they?

16 A. No, sir.

17 Q. All right. Did you see any absentee ballots when you
18 were doing the count when you were down at the World Congress
19 Center?

20 A. This box of about 700, I did that at least -- well, 700 to
21 800. So I did have a quantity of other ballots and they were
22 all worn, they were all dirty and one of the other ballots, yes,
23 they are provisional and absentee. So I did see them, yes, and
24 they were well-worn whereas this particular batch was not.

25 Q. Did you see envelopes?

1 A. We were never given envelopes. We never had them. Those
2 were already separated before we got the batch.

3 Q. You never saw any envelopes?

4 A. We never saw any envelopes.

5 Q. So you don't know if those pristine ballots were
6 provisional?

7 MR. HAMILTON: Objection; leading.

8 THE COURT: Overruled.

9 THE WITNESS: I do not know whether they were
10 provisionals or absentees. But either way, they would have been
11 folded, whether they were provisional or absentee, because the
12 absentee ballots have a white inner envelope and a yellow inner
13 envelope.

14 MR. SMITH: Nothing further, Your Honor.

15 THE COURT: All right. Mr. Smith, is that your only
16 witness?

17 MR. SMITH: Yes, Your Honor. Our only live witness,
18 Your Honor.

19 THE COURT: All right. And what other declarations
20 are you submitting or you propose to submit in support of your
21 motion or is it all of them?

22 MR. SMITH: I have a declaration that I submitted for
23 myself, Your Honor, and I'll read that. I filed it with the
24 Court earlier today. This is my analysis based on information
25 from the Secretary of State's website. It's publicly available

1 so anyone could replicate my analysis. This information I
2 reviewed was State-compiled mail-in ballot data from 2016, 2018,
3 and 2020.

4 My analysis shows that Georgia's rate of rejection
5 for mail-in ballots average 3.06 percent and 3.58 percent for the
6 2016 and 2018 general elections, Your Honor. For the 2020
7 primary elections, however, this rejection rate dropped from
8 1.02 percent and for the 2020 general election that rate dropped
9 to .32 percent, .0.32 percent. Your Honor, that's a 90-percent
10 decrease in the rate of mail-in-ballot rejections compared to the
11 2016 and 2018 elections. And that's with a huge increase in the
12 number of absentee ballots going from several hundred thousand to
13 1.2, 1.3 million.

14 The number of mail-in ballots cast in Georgia, on the
15 other hand, has increased nearly 500 percent from the 2016 and
16 2018 elections to the 2020 general election. We would expect to
17 see between 40,000 and 45,000 ballots rejected based on the
18 Georgia historical average rejection rate, but instead only 4,196
19 votes were rejected. Given how close the number of votes are
20 separating President Trump and Vice President Joe Biden, the
21 historical rejection rates were improper and illegal ballots
22 could have changed the outcome of the race here in Georgia.

23 I would also add, Your Honor -- and then I'll save
24 the rest for my closing -- Your Honor had asked about due
25 process. The *Baker vs. Carr* case, 369 US 186, "A citizen's right

1 to vote free of arbitrary impairment by State action has been
2 judicially recognized as a right secured by the Constitution of
3 the United States, when such impairment resulted from dilution by
4 a false tally." The plaintiffs there were voters who sued on
5 behalf of themselves, as Mr. Wood has here, Your Honor.

6 THE COURT: All right. Anything further?

7 MR. SMITH: Yes.

8 And Mr. Wood didn't vote in the other two elections.
9 Only in the 11-3 election. So as to why this is an emergency,
10 the plaintiff's rights as an individual voter, they weren't ripe
11 until 11-3, Your Honor, November 3rd election. So his vote
12 wasn't diluted before then. I'll save the rest of my -- but
13 that's our case, Your Honor. I'll save the rest of my argument
14 until my closing.

15 THE COURT: That information that you just gave about
16 Mr. Wood, is that in a declaration or in any sworn testimony?

17 MR. SMITH: No. No, Your Honor.

18 THE COURT: All right. Ms. McGowan.

19 MS. MCGOWAN: Your Honor, Mr. Willard from our office
20 is going to do the argument but the State would first like to
21 object to Mr. Smith's affidavit. Mr. Smith is serving as counsel
22 for plaintiff and it's improper for him to act also in the
23 capacity as a fact witness and much of his testimony involves
24 statistical analysis, providing factual evidence, and I believe
25 the last part of his affidavit is even highly argumentative so we

1 object to the admissibility of that evidence.

2 THE COURT: Well, I don't have the declaration in
3 front of me. Those percentages that you read off, Mr. Smith, are
4 those straight from the Secretary of State's website or did you
5 have to run calculations?

6 MR. SMITH: No. That was just a calculation from --
7 it was like an advanced spreadsheet, Your Honor.

8 MS. MCGOWAN: The issue, though, Your Honor, is that
9 the reason for rejection --

10 MR. SMITH: Anybody can do that with a calculation
11 based on the information at the Secretary of State website.

12 THE COURT: Ms. McGowan, go ahead.

13 MS. MCGOWAN: The rejection rates vary from
14 year-to-year because there were different requirements for the
15 absentee ballots verified that had changed over time and so it's
16 sort of an apples-to-oranges comparison, but I believe my
17 co-counsel is going to address that in our argument.

18 THE COURT: Okay. I'll allow the admission of the
19 declaration, but I'm happy to hear argument as to its weight.
20 Mr. Willard.

21 MR. WILLARD: Thank you, Your Honor.

22 As Ms. McGowan said -- and just a couple of
23 housekeeping matters before we get started to really clear up
24 some of the confusing and leading terms that plaintiff has
25 bandied about, just to bring the Court back to what we actually

1 have in front of us.

2 First, he continually interchanges a hand recount
3 with the manual tabulation and the audit process. Just to be
4 clear, and as our response that we filed today sets out, what has
5 just been conducted is the audit that is called for as part of
6 the State's move to this new election system. It is not a hand
7 recount or a recount of the race as the Georgia Code set out.
8 That is not a process that is triggered until after the
9 certification and Mr. Smith and his client, Mr. Wood, have no
10 role in that process. The only people who can request a recount
11 in a particular race is a losing candidate for that particular
12 office and we haven't gotten to that point yet because the
13 Secretary is not scheduled to certify the election results until
14 tomorrow at which point a recount does not become ripe until
15 after that fact.

16 He has also thrown out today - it is not briefed in
17 either his emergency motion or any of his pleadings - a
18 vote-dilution claim. He has failed to sufficiently allege that.
19 If the Court would like us to go into that despite the fact that
20 he has not pled it, we will be happy to do that post-hearing, but
21 I won't be getting into that today because he has not established
22 the elements of a vote-dilution claim.

23 Further, he threw out today for really the first time
24 an allegation that the signature-match process was either not
25 done or was done improperly, but he has provided no evidence to

1 the Court supporting that, nor any cognizable argument that that
2 has happened.

3 And, finally, as Ms. McGowan said, in terms of the
4 plaintiff's apples-to-oranges comparison, he's comparing the
5 totality of the absentee-ballot rejections from 2018. As our
6 brief response makes clear, the General Assembly made a policy
7 decision following the 2018 election to change the evaluation of
8 absentee ballots partially due to identity theft concerns and the
9 fact that voters felt uncomfortable putting their date of birth
10 on the outside of the envelope. The General Assembly took that
11 off the outer envelope where it was no longer visible to anyone
12 during the mail transmission. That resulted in a significant
13 decrease in the percentage of absentee ballots that were rejected
14 at the outset. There were quite a number in 2018 that were
15 rejected for that missing information.

16 In terms of when you actually do an apples-to-apples
17 comparison - and it is referenced in Chris Harvey's affidavit
18 that we will be moving into evidence, it's an exhibit in our
19 brief response - when you actually look at ballots from 2018 that
20 were rejected signature match and you look at ballots from 2020,
21 after the cure period, those numbers are identical in terms of --

22 MR. SMITH: Your Honor, if he continues on he's going
23 to become a fact witness.

24 MR. WILLARD: I am referencing what is in our
25 affidavit, Your Honor. It is in our brief response, as well. I

1 will point the Court to both of those and, like I said, we'll be
2 moving Mr. Harvey's affidavit into evidence at the conclusion of
3 our argument in chief.

4 THE COURT: Now, you said that the numbers of
5 absentee ballots that were rejected in this election as compared
6 to 2018 was the result of the change in the requirement of the
7 date of birth being placed on the outside of the envelope. Did I
8 understand that correctly?

9 MR. WILLARD: Your Honor, when you look at the 2018
10 numbers that were rejected for signature mismatch and compare
11 them with the rejected numbers of absentee ballots in 2020 that
12 were rejected for signature mismatch, the percentage of rejection
13 is identical to what it was in 2018. And that is after you take
14 out the oranges that Mr. Smith was talking about because the
15 numbers that he's using from 2018 to arrive at the percentage of
16 rejection incorporates the date-of-birth rejections from 2018,
17 the missing information. In addition, at the outset the initial
18 rate of rejection in 2020 was higher than it was in 2018.

19 MR. SMITH: Excuse me, Your Honor.

20 MR. WILLARD: But the General Assembly had made the
21 policy argument --

22 THE COURT: Mr. Smith, let him finish. I'll give you
23 an opportunity to respond.

24 MR. SMITH: Okay.

25 MR. WILLARD: The General Assembly had made the

1 policy determination to allow voters the opportunity to cure a
2 signature mismatch or missing signature. And so it's only after
3 that cure process reduced the number of rejected ballots down
4 that you arrive at the final number for 2020 and even with that
5 reduced number the rejection rate for signature mismatch in 2020
6 is practically identical to what it was in 2018 as a percentage
7 of the rejected ballots.

8 THE COURT: How do you know and what evidence have
9 you submitted that tethers the difference to be because of the
10 date-of-birth requirement?

11 MR. WILLARD: We have the 2018 numbers based on --
12 they had a registrar -- the county officials have to note in the
13 system the reason for an absentee-ballot rejection and what
14 Mr. Smith is apparently relying on is the totality, all the
15 little codes that county election officials put in in 2018 for
16 rejecting the ballot. The Secretary of State's office did an
17 analysis of only the 2018 ballots that were rejected for
18 signature mismatch based on the coding that county officials put
19 in, compared that with the 2020 rejection rate, and determined
20 that the percentages were practically identical between the 2018
21 general election rejection for signature mismatch and the 2020
22 rejection rates for signature mismatch.

23 THE COURT: All right. Anything more you want to
24 say, Mr. Willard?

25 MR. WILLARD: Yes, Your Honor. That was just the

1 opening trying to clear up some of the things that plaintiff had
2 raised today, but we still have our argument in chief.

3 THE COURT: Okay. Go ahead.

4 MR. SMITH: Your Honor, may I make a statement,
5 please, about that?

6 THE COURT: All right, go ahead. Mr. Smith, why
7 don't you address that and then we'll hear the rest of the
8 Secretary of State's argument.

9 MR. SMITH: He's testifying -- Your Honor, the
10 deadline for submitting evidence was at noon today and he
11 submitted no affidavit or declaration before noon today on those
12 points and he's testifying -- if he's going to testify, then I
13 have a right to cross-examine him. If he's become a witness,
14 then he can't be counsel and a witness at the same time and so we
15 would object to that testimony and we'd move to strike it.

16 MR. WILLARD: Your Honor, the declaration of Chris
17 Harvey was submitted at 11:55 a.m. this morning and is Item 34 on
18 the docket.

19 THE COURT: Okay. Mr. Smith, it sounds like it was
20 submitted by noon so do you maintain your objection?

21 MR. SMITH: If he submitted that in his declaration
22 at or before noon, then we'll withdraw our objection on that
23 point. But if he's testifying as to things that were not -- he
24 just said he was going to submit an affidavit later today, then
25 we would object to that information coming in at this point.

1 THE COURT: All right. Mr. Willard, I'll hear the
2 remainder of your argument now.

3 MR. WILLARD: Thank you, Your Honor. Thank you.

4 The plaintiff has failed to allege, much less
5 establish, a claim for judicial relief in this case. He lacks
6 standing to bring the claims that he has brought. His claims are
7 moot. He fails to establish any of the required elements for
8 injunctive relief and his claims should further be barred by
9 laches.

10 As I mentioned at the outset, the plaintiffs are
11 conflating the manual audit under 21-2-498, which doesn't even
12 have to be a statewide audit, but the Secretary elected to
13 conduct a statewide audit of the presidential race. It is an
14 end-of-the-cycle reassurance that the General Assembly has asked
15 the Secretary and the State Election Board to undertake with the
16 new election system to reassure the public that the system
17 accurately reflects the will of the electorate.

18 As I said, there is a separate provision of Georgia
19 law that actually establishes the procedure for a recount
20 certification and, once again, neither Mr. Wood nor Mr. Smith can
21 bring that claim. That is limited to a losing candidate in a
22 particular race.

23 The establishment of standing is a threshold issue,
24 as this Court has acknowledged in pressing the plaintiffs on the
25 issue of standing, and as the Eleventh Circuit in *Jacobson* said,

1 "Federal courts have an obligatory duty at the front end of
2 litigation to ensure that plaintiffs have standing before they
3 proceed with the claim." In this case plaintiff has adopted a
4 scattershot approach, including today's argument, to try to
5 clothes hook as many potential constitutional violations or
6 alleged constitutional violations as possible in an effort to try
7 to get the Court to grant relief.

8 In terms of the equal protection arguments that
9 plaintiffs have made, the plaintiff has solely made generalized
10 allegations of being a voter and a republican party donor. He
11 has not made the particularized claims that would establish an
12 equal-protection violation that he can litigate before the Court
13 today. As the *Jacobson* court instructed, "A generalized
14 grievance or frustration about an electoral loss is not
15 sufficient to establish standing."

16 Plaintiff further lacks the standing of the electors
17 and election clause because, as the Third Circuit recently found,
18 an individual voter or group of voters has no standing under that
19 particular clause because they cannot stand in for the General
20 Assembly in asserting a violation or alleged usurpation for
21 legislative authority.

22 Plaintiff further lacks standing for a due process
23 claim. Plaintiff has suffered no personal denial of due process.
24 The affidavit submitted failed to establish any violation of due
25 process factually. There is no cognizable right to be a poll

1 observer or an audit recount observer which is, in part, what
2 plaintiffs are attempting to complain about.

3 *Jacobson* also has admonitions to the Court as to
4 plaintiff's real lack of redressability that he's established
5 here today. His complaint is really against county election
6 workers, none of whom -- no county election official is named in
7 this litigation and *Jacobson* basically said you can't plant a
8 flag on the State and let the relief flow down to the parties
9 with whom your beef is really against. So plaintiff has failed
10 to establish standing under the *Jacobson* paradigm.

11 In addition, as the Court pointed out, plaintiff's
12 claims are moot in actually bringing these claims. Plaintiff
13 failed to serve any of the State defendants notice of his motion
14 for TRO until yesterday. This is despite the fact that the
15 settlement agreement was adopted early this calendar year. The
16 rules were promulgated in March of this year, they were amended
17 in April of this year, and it wasn't until his preferred
18 candidate lost the election that plaintiff decided to allege that
19 there had been some usurpation of legislative authority in
20 bringing these claims challenging the settlement agreement and
21 the promulgated rules by the State Election Board.

22 In this case the electorate has voted. The counties
23 have all certified their election results to the Secretary of
24 State. The Secretary of State's duty at this point is simply to
25 tally up the 159 certifications from Georgia's respective

1 counties and certify those results so that we can move forward
2 with the election process, including the federally mandated
3 mailing out of new cards which must take place by this Saturday
4 for the upcoming runoff elections.

5 He cannot use injunctive relief to undo the completed
6 acts of the unnamed county officials who have already certified
7 the election results. In order to even claim injunctive relief,
8 he has to establish a substantial likelihood of success on the
9 merits, the likelihood of irreparable injury, you have to balance
10 the harm to the plaintiff against the harm to the defendant, and
11 you have to consider the public interest.

12 Plaintiff has not pled, much less established, a
13 constitutional violation on the part of the State defendants.
14 The State defendants have acted pursuant to Georgia law at all
15 times in the conduct of this election. Here, unlike the
16 situation in *Bush vs. Gore*, the State defendants have actually
17 attempted and have successfully imposed a framework that ensures
18 a uniform process throughout the state in conducting this
19 election.

20 Further, there is no violation of the electors and
21 election clause and plaintiff cannot establish a substantial
22 likelihood of success. The State Election Board promulgated a
23 rule that is completely in harmony with 21-2-386. Signature
24 match was designed to prevent improper voting with necessary
25 safeguards in place to ensure that individual electors were not

1 disenfranchised. The safe harbor provision cure provision
2 contemplated within the absentee ballot verification process is a
3 legislative creation and, thus, the cure process is clearly
4 within constitutional norms.

5 Further, O.C.G.A. 21-2-31(7) - that's 31, paren 7 -
6 is an express legislative delegation to the State Election Board
7 of the authority to promulgate rules and regulations to define
8 uniform and nondiscriminatory standards concerning: One, what is
9 a vote and, two, what will be counted as a vote, and the rules
10 promulgated in March of this year and as amended in April of this
11 year clearly fall within that express legislative delegation.

12 What the State Election Board did was nothing more
13 than put the mechanics in place for what the General Assembly
14 passed in enacting 21-2-386 and the plaintiffs have not
15 established that there is any deviation from the legislative
16 expression in terms of what the State Election Board actually did
17 in promulgating its rules.

18 Plaintiff fails to make any argument that is
19 cognizable for a due process claim supported by any actual facts.
20 His claim centers on the manual tabulation for the audit process.
21 There is no factual basis that plaintiff has established for
22 finding a denial of due process. There are no due process rights
23 to be a monitor of the manual tabulation as part of the audit
24 process. If you look at the state statute, it talks about the
25 fact that the public shall have the right to observe, but there

1 is no statutorily or administratively created right that has been
2 violated in terms of any of the affidavits that have come in from
3 the plaintiff and there is a lack of redressability under
4 *Jacobson* for any alleged violations by county officials and the
5 only named defendants are State defendants. He cannot
6 extrapolate any alleged county violations onto the State
7 defendants any longer in the Eleventh Circuit after the *Jacobson*
8 decision.

9 The final two factors of the test for determining
10 whether injunctive relief is proper is a balancing of the
11 equities and consideration of the public interest and in the
12 election context they're typically considered together. The
13 State has a strong interest in enforcing the state election law
14 requirements that have been in place during the entirety of this
15 election cycle. The election is over and rather than accept that
16 his preferred candidate has lost plaintiff seeks the largest
17 disenfranchisement of eligible electors since the abolition of
18 the poll tax and other vestiges of Jim Crow in the State of
19 Georgia.

20 Finally, Your Honor, laches serves to bar any claim
21 that plaintiff might have asserted for relief. As mentioned
22 earlier, these rules were originally promulgated and adopted in
23 March of this year. They were subsequently substantively amended
24 in terms of the notification procedure in April of this year.
25 The general primary was held in June, there was an August runoff,

1 and the general election was held on November 3rd. Plaintiff
2 failed to serve his TRO seeking injunctive relief on any of the
3 State defendants until November 18th.

4 Courts must be, as they should be, reluctant to
5 change the electoral rules postelection. Circuit courts around
6 the country have disfavored and refused to alter the rules of the
7 game after voters have cast their ballots assuming, rightly so,
8 that the votes are going to be cast within a specific framework
9 as the State has promulgated it at the outset of the election
10 cycle. Plaintiff attempts to change the rules at the end of the
11 game to alter the score.

12 If the Court has no questions for me at this time,
13 I'll sum up my argument with one final point.

14 THE COURT: Go ahead, sir.

15 MR. WILLARD: There has been a great deal of angst,
16 anger, frustration, concern from all sides in the period
17 preceding the election as well as the period following the
18 general election. I understand the plaintiff's frustration at
19 his favored candidate's loss. However, that does not justify the
20 attempted manufacture of specious and unsupported constitutional
21 violations in an attempt to undo the will of the electorate.

22 In every contested election there is one winning
23 candidate and at least one losing candidate. Our system is
24 designed to encourage candidates to make their pitch to voters
25 and to have voters cast their ballots within the framework that

1 the State has set up at the outset of the cycle. The votes have
2 all been cast and Georgia counties have tabulated the results.
3 We ask this Court to deny any relief or further attempts to
4 certify the express will of the voters and we would ask you deny
5 plaintiff's requested relief.

6 THE COURT: Thank you.

7 Mr. Hamilton.

8 MR. HAMILTON: Thank you, Your Honor.

9 This lawsuit and the pending motion seeks
10 unprecedented, truly astonishing relief, an order invalidating
11 literally millions of ballots cast by lawful Georgia voters on
12 the flimsiest of evidentiary records. There's no basis in the
13 law for such an order. No court has ever entered such sweeping
14 relief and there's no foundation in the record before the Court
15 for doing so here. The evidence before the Court is little more
16 than hearsay, conclusory statements, speculation, and improper
17 opinion testimony and, Your Honor, for that reason, I would
18 submit that the preliminary injunction motion should be denied
19 and the case should be promptly dismissed.

20 First, and perhaps most obviously, as Your Honor's
21 questions have suggested, plaintiff lacks standing to assert the
22 claims presented in the complaint. Standing is essential for the
23 Court's jurisdiction under Article III. But plaintiff has
24 neither pleaded nor proved a cognizable injury in fact and
25 instead asserts only generalized grievances about defendant's

1 supposed defiance of state law and that is simply insufficient to
2 establish standing. To establish an injury in fact under Article
3 III, a plaintiff needs to plead and then prove that the injury is
4 concrete, particularized and actual or imminent rather than
5 hypothetical.

6 In the voting context, the Supreme Court has made it
7 clear that a person's right to vote is individual and personal in
8 nature. Voters who allege facts showing disadvantage to
9 themselves might have standing to sue. But where the alleged
10 injury is that the law has not been followed, that's the kind of
11 undifferentiated, generalized grievance about the conduct of
12 government that does not establish injury in fact for standing
13 purposes, but that's what the plaintiffs have here in this
14 courtroom today.

15 THE COURT: Sir, how do you distinguish the Eleventh
16 Circuit authority that plaintiff cited, *Roe v. Alabama*, and the
17 others?

18 MR. HAMILTON: That theory -- the vote-dilution
19 theory has been repeatedly rejected by federal courts across the
20 country, including the United States Court of Appeals by the
21 Third Circuit in an order just this week. Each of those courts
22 have explained that any purported vote dilution somehow caused by
23 the counting of illegal votes would affect all Georgia voters,
24 not merely the plaintiffs and their voters. So it's a
25 generalized grievance rather than a particularized harm and can't

1 support standing. That's been recognized by numerous courts
2 across the country and just in the last week this theory has been
3 rejected over and over and over again and this case is no
4 different.

5 *Baker vs. Carr*, which you didn't ask about, Your
6 Honor, but it's been cited a couple of times, is an apportionment
7 case. That was a case in which congressional apportionment
8 hadn't been done for 60 years so the voters in one congressional
9 district, their votes were diluted as compared to voters in
10 another congressional district. That's dramatically different
11 than here. Whatever harm might have befallen these plaintiffs is
12 uniform across the board and that's a non-particularized,
13 generalized grievance that does not establish standing for
14 Article III purposes.

15 The plaintiff asserts that the standing allegation
16 is, quote, "The qualified elector and a registered voter," closed
17 quote, it therefore has Article III standing. That's just not
18 enough. He hasn't shown how he is specifically injured. It's
19 that defendants supposedly didn't follow the law regarding
20 absentee ballot signature-verification protocols, but that's the
21 same kind of undifferentiated, generalized grievance about the
22 conduct of government that has been rejected over and over.

23 In fact, the main case that he relies on in his
24 papers is *Meek* and the Eleventh Circuit specifically rejected
25 that case explaining that, quote, "A plaintiff who merely seeks

1 to protect an asserted interest in being free of an allegedly
2 illegal electoral system," closed quote, "does not have a
3 cognizable injury for standing purposes." That was the *Dillard*
4 *vs. Chilton County Commission* case from the Eleventh Circuit in
5 2007, we've cited it in the papers.

6 THE COURT: So in your view, who would have standing,
7 if anyone, to challenge the settlement agreement? Would the
8 republican party? Would the candidate? Is there anyone who
9 could challenge it?

10 MR. HAMILTON: Who can challenge the settlement
11 agreement? You know, I don't know the answer to the question, to
12 be candid, Your Honor. It's certainly not a member of the
13 general public. The Attorney General might have standing to
14 assert a claim against -- or challenge that settlement agreement.

15 But here no one -- here it's a generalized grievance.
16 This individual hasn't been injured specifically by that. He's
17 not even -- he's simply alleged his standing as a voter. Not as
18 a candidate, not as a party, and not as an election official and
19 so I don't think -- whoever else might have standing to challenge
20 such an agreement, it certainly isn't just an individual voter.
21 Nor is it a donor. The other theory that is advanced by
22 plaintiff that he claims he donated to republican candidates, his
23 interests are aligned with those of the Georgia republican party
24 and that may well be true, but it doesn't help him here. Again,
25 he hasn't been injured and he can't represent the interests of

1 the Georgia republican party or the two monitors referred to in
2 the amended complaint. Standing requires a showing that he
3 individually has been injured, not somebody else that isn't
4 before the Court, because those individuals, if they want to
5 bring a claim, can bring a claim themselves or those
6 organizations can bring a claim themselves and they have not.

7 There's no authority for the proposition that merely
8 making a political contribution allows the donor -- or creates
9 the donor standing for Article III purposes and plaintiff cites
10 no cases for that proposition. And I don't blame him because
11 there are none that would support that. So plaintiff has not
12 established injury in fact and, as a result, has no standing and
13 as a result of that this Court has no jurisdiction under Article
14 III.

15 He also lacks prudential standing to bring the
16 elections and electors clauses or the due process clause claim.
17 The election and electors -- the elector and elections clause
18 claims rely solely on the General Assembly's purported rights,
19 but he, at the risk of stating the obvious, is not the General
20 Assembly and can't step into their shoes, as counsel just said.

21 He alleges that the settlement agreement is not
22 consistent with the laws of the State of Georgia and, therefore,
23 violates Article II, Section 1 and Article I, Section 4 of the
24 elections and electors clause respectively. He has no ability to
25 assert that claim on behalf of the general election -- sorry, the

1 General Assembly -- nor has he identified any hindrance to the
2 General Assembly from bringing a claim if they wanted to
3 themselves. So to answer Your Honor's question, I suppose the
4 General Assembly might have standing to challenge the settlement
5 agreement should they choose to, but they're not in court here
6 before you today.

7 And the same is really true of the due process claim
8 which appears to assert the rights of the Georgia republican
9 party or maybe it's the rights of the individual monitors that
10 are cited in the amended complaint, but he doesn't have
11 prudential standing to raise claims on behalf of those others
12 himself. As an individual voter as an individual citizen he can
13 raise only the claims that he himself has. So for all those
14 reasons, we have a big standing problem here which is a
15 jurisdictional problem for the case before you, Your Honor, and
16 for that reason the case should be dismissed.

17 As counsel's indicated and I believe Your Honor has
18 indicated as well in some of the questions, even if he had --
19 even if Mr. Wood had standing to bring these claims, they're
20 barred by laches as a result of this inexplicable 8-month delay.
21 I won't go through the elements of laches, I know the Court is
22 familiar with it and we've cited it in our cases. Federal courts
23 routinely apply the laches defense in election cases against
24 claims for injunctive relief which, of course, are an equitable
25 claim.

1 More than 8 months ago that settlement agreement was
2 finalized, long after absentee ballots had been separated from
3 their envelopes and after no less than three elections had been
4 conducted pursuant to the procedures adopted by the Secretary,
5 this lawsuit landed on your doorstep just a couple of days ago.
6 Millions of Georgia voters have relied on the procedures adopted
7 by the Secretary and duly promulgated by the Board of Elections.
8 Plaintiff has not provided even the barest of facts to undermine
9 the validity of those voters who relied on those procedures to
10 cast their ballots.

11 This complaint was filed on November 3rd. I'm sorry,
12 November 13th. The amended complaint was filed on November 16th,
13 more than 8 months after the settlement agreement was finalized,
14 59 days after voters began voting by absentee ballot, 32 days
15 after election officials started separating those ballots from
16 their envelopes, and 13 days, almost two full weeks, after the
17 general election. I listened closely for any explanation for
18 that delay and there was none.

19 THE COURT: He said it's because he did not --
20 there's no evidence in this regard, but there was a proffer from
21 Mr. Smith that the plaintiff did not vote in those prior
22 elections.

23 MR. HAMILTON: Right. Well, so the first problem is
24 that's argument by counsel. That's not evidence in the record
25 and, of course, to establish a claim you have to have evidence.

1 We're here today on an emergency motion, Your Honor, the motion
2 plaintiffs request accommodating his claim and allowing him to
3 come forward with evidence and he has none to support that
4 contention.

5 But even if he had, there's no -- I mean, it doesn't
6 line up with the claim. The claim is a challenge that the
7 Secretary acted improperly in entering into that settlement
8 agreement, that the Secretary acted improperly in adopting those
9 regulations and issuing that guidance. That was a claim that
10 doesn't depend on whether Mr. Wood voted or didn't vote. That
11 was a claim that doesn't depend on which candidate wins or which
12 candidate doesn't win or how many absentee ballots were cast or
13 how many were rejected. That claim was ripe 8 months ago. So
14 for all those reasons, Your Honor, I won't belabor the point, the
15 laches defense, I believe, precludes this claim and certainly
16 precludes this motion.

17 So let me turn to the motion briefly, the motion for
18 preliminary injunction. Counsel's already identified the
19 standards and the factors to be considered by the Court. I would
20 submit that the plaintiff cannot begin to meet those factors on
21 the record before the Court and has failed to do so.

22 The first one is, of course, likelihood of success on
23 the merits. That is by far the most important and yet plaintiff
24 cannot meet that standard. First on the equal protection claim.
25 Plaintiff asserts that there's been disparate treatment of

1 voters. To sustain such an equal protection claim a plaintiff
2 must necessarily allege that similarly situated voters have been
3 treated differently. But he doesn't actually allege that he or
4 any other voter in Georgia is being treated differently from any
5 other similarly situated voter because of the settlement
6 agreement.

7 Instead, he argues that the disparate treatment is
8 because the absentee-ballot processing, according to the process
9 set forth in the settlement agreement, is somehow, he claims,
10 different or inconsistent with what the law of Georgia requires.
11 But that, plaintiff concedes, is a uniform guidance across the
12 state. The procedures, by definition, were adopted not for this
13 county or that county, not for this voter or for that voter, but
14 for the State of Georgia so that is not an equal protection
15 claim, it can't be. It's incoherent. It's not an equal
16 protection claim by definition. And even if it were, under the
17 Anderson/Burdick analysis the Secretary has a strong interest in
18 uniform application of state election law that easily justifies
19 the modest procedures adopted pursuant to the settlement
20 agreement.

21 Those regulations merely require double checking the
22 ballot-rejection determinations through the statutory process.
23 It ensures uniform and fair treatment of all voters within the
24 existing statutory framework. As counsel just said, it is
25 entirely consistent and harmonious with the statutory framework

1 and so plaintiff is unlikely to succeed on that claim and it
2 should be dismissed.

3 The election and electors clause claim fares no
4 better. Those clauses of the United States Constitution vest
5 authority in the legislature of each state to regulate the time,
6 place and manner of elections and to direct election of
7 presidential electors. But innumerable courts examining the
8 issue have held that the term "legislature" does not preclude the
9 delegation of such legislative authority. So the claim can only
10 exist if the actions of the Secretary, in adopting that rule in
11 providing that guidance, somehow exceed the authority granted to
12 him by the Georgia General Assembly and they plainly didn't.

13 Under Georgia law the Secretary of Georgia is the
14 chief elections officer and the General Assembly has granted him
15 the power and authority to manage Georgia's election system,
16 including the absentee-voting system. He's also the Chair of the
17 Board of Elections which is the governmental body responsible for
18 uniform election practice in Georgia. The Secretary was well
19 within that authority in entering into the settlement agreement
20 and ensuring that the signature-verification protocols were
21 uniform across Georgia in every one of its 159 counties.

22 This claim, the elections and electors claim, is
23 entirely premised on the notion that by promulgating these
24 regulations that the defendant somehow altered the statutorily
25 mandated procedure contrary to the election code, and that's just

1 simply wrong as a matter of fact.

2 As counsel indicated, the signature-review guidance
3 explicitly promotes uniform application of the verification
4 process as required by local law and that OEB issued by the
5 Secretary simply strengthens those procedures. It's simply
6 incoherent to suggest that ensuring a more rigorous compliance
7 with the law is somehow a violation of the law. So the elections
8 and electors clause claim fail as well, he's unlikely to succeed
9 on them. He certainly hasn't shown a substantial likelihood of
10 success on the merits.

11 The only remaining claim is the due process claim
12 which is premised on the purported denial of republican
13 observers' right to observe the hand recount or, technically, the
14 risk-limiting audit that Georgia has been conducting over the
15 past few days. But that claim claims precious little support in
16 either the law or the factual record before the Court.

17 To succeed on a procedural due process claim -- the
18 Court asked is this a procedural due process or a substantive due
19 process and I believe the answer of counsel was "both," so let's
20 talk about procedural due process. The plaintiff must
21 demonstrate that he has a private interest that will be affected
22 by the official action. But neither Georgia law nor the US
23 Constitution provides a private individual with an enforceable
24 private right in observing a risk-limiting audit conducted under
25 Georgia law, much less a recount.

1 Rather, as plaintiff recognizes, Georgia law provides
2 that a candidate or political parties may send two
3 representatives to be present at a recount. It doesn't say
4 anything about a risk-limiting audit. Thus, plaintiff, who
5 doesn't even allege that he tried to observe the recount, it
6 wasn't him, nor the individual monitors who submitted supporting
7 affidavits on behalf of plaintiff are due any process as they
8 have no right to monitor this risk-limiting audit that's
9 underway.

10 And more fundamentally, even if an individual could
11 hold such an interest, which they can't, the process announced by
12 the Secretary and memorialized in the very affidavits on which
13 plaintiff relies demonstrates that they were provided more
14 observation rights than they're entitled to. Far more than the
15 two per political party that are allowed to observe an actual
16 recount.

17 Virtually every affiant supporting plaintiff's
18 motions testified that they and others were able to freely
19 observe and participate in this process. Even Ms. Voyles today
20 testified that she was freely able to observe. So while
21 plaintiff and the various affiants may not have liked the access
22 they were given nothing in their affidavits indicate that they
23 were deprived of access to the recount process, to the audit
24 process, that they were due.

25 Then as to substantive due process, that claim fails

1 at the outset. It's well-established that federal courts do not
2 involve themselves in garden-variety election disputes. For a
3 substantive due process claim to be implicated the situation must
4 go well beyond the ordinary dispute over the counting and marking
5 of ballots, but that is obviously what's at issue here. So the
6 substantive due process claim and the procedural due process
7 claim are both unlikely to succeed.

8 The remaining factors are easy to address and I'll do
9 this quickly. Irreparable harm. Plaintiff has failed to
10 establish that he will suffer any harm, much less irreparable
11 harm, if the requested injunction is denied. At most, he brings
12 generalized grievances or third-party claims. He hasn't been
13 harmed. He won't be harmed tomorrow or the next day or the next
14 day.

15 In sharp contrast, plaintiff's requested relief would
16 cause deep and lasting irreparable harm to millions of Georgian
17 voters. Voters who did nothing wrong. Voters who were fully
18 qualified to vote in this election as American citizens. That,
19 Your Honor, is the definition of "irreparable harm," but it would
20 be inflicted on innocent voters by the millions, not on Mr. Wood.

21 The last factor is balancing equities and the public
22 interest and this is, perhaps, the easiest to address. Plaintiff
23 asks this Court to disenfranchise after the fact a multitude of
24 voters who dutifully cast their ballots. The very request is
25 breathtaking and wildly unsupported by the law or the record

1 before the Court. Instead of remedying a constitutional
2 violation, granting relief would literally strip millions of
3 Georgians of their constitutional rights. In contrast,
4 plaintiff, who unjustifiably waited 8 months and three election
5 cycles to bring this claim, has articulated no injuries
6 whatsoever and as such would suffer no harm for the Court to deny
7 the motion.

8 The same is true of plaintiff's requested relief with
9 respect to recount which seeks statewide recourse for purported
10 infringement in only a handful of counties and republican-only
11 surveillance of every step of Georgia's processing of individual
12 votes in a manner likely violating multiple provisions of Georgia
13 law. So the relief is unprecedented in scope and not justified
14 by the record before the Court.

15 Your Honor, plaintiff literally seeks to strip
16 millions of Georgians, each one an American citizen, of their
17 vote by wholesale invalidation of ballots by judicial order and
18 that's just simply an astonishing request. One would imagine
19 that a plaintiff approaching any court with a request for such
20 relief would do so cautiously and armed with well-reasoned brief,
21 ample legal authority and perhaps, most importantly, a powerful
22 factual record supporting such a request. But the plaintiff
23 stands before you empty handed, bereft of legal authority even
24 remotely justifying such relief and, even more dramatically,
25 without a factual record on which to stand. For that reason,

1 Your Honor, intervenor defendants would request that the Court
2 deny the motion out of hand and dismiss this case in its
3 entirety.

4 THE COURT: All right. Thank you.

5 Mr. Greenbaum, we have not yet ruled on your client's
6 motion to intervene. Is there anything you're seeking to add to
7 this argument or can we defer that motion to another day?

8 MR. GREENBAUM: Your Honor, we would like to have the
9 opportunity to have a few minutes of argument here to supplement
10 some points -- some additional points related to this motion.

11 THE COURT: Mr. Smith, I presume you're objecting to
12 the intervention; is that right?

13 MR. SMITH: Yes, Your Honor. I don't think the NAACP
14 has any standing in this case. They don't have any -- they
15 weren't involved in the consent order and I don't see what
16 relevance they have to the case.

17 THE COURT: All right. Well, I think this is a
18 closer call, frankly, than the intervention of the democratic
19 party, one that I'd like to resolve on the briefings, which I
20 know that the motion of intervention was just filed, I believe,
21 yesterday. But if there's something you want to add for the
22 record, Mr. Greenbaum, I'll allow you to do it, but if you would
23 please be brief and only address things that have not already
24 been covered.

25 MR. GREENBAUM: All right. Thank you, Your Honor. I

1 appreciate the opportunity to briefly address the Court on behalf
2 of the two organizations that have about 15,000 voters, as well
3 as the three individuals whose right to vote is at risk here. So
4 a few things.

5 With respect to the standing issue, one of the things
6 that hasn't been talked about as much is the lack of harm to the
7 plaintiff here. Plaintiff was able to vote in this election and
8 if you look at one of the cases that plaintiff has cited in terms
9 of their argument for standing is the *Arcia* case, it's 772 F.3d
10 1335, and you'll find a significant contrast between that case
11 and the one at hand, Your Honor. That case involved voters who
12 were going to be denied the right to vote because they were
13 citizens but through some matching procedure were identified as
14 noncitizens. So they brought a case forward saying this violates
15 my fundamental right to vote. Actually, in that case the Court
16 found standing here. You don't have this situation here where
17 the plaintiff was able to vote in this election.

18 I would also -- and really quickly with respect to
19 the first two claims, the equal protection claim -- equal
20 protection clause claim and the elections clause claim only go to
21 the settlement agreement. One of the things about the elections
22 clause claim is that only the legislature or somebody who stands
23 in the shoes of the entire legislature can bring that claim. So
24 the plaintiff doesn't have standing at all to bring that claim.

25 Then there's been some discussion that I want to

1 supplement a little bit in terms of the timing of things. Yes,
2 plaintiff did not vote in the two prior elections (inaudible)
3 apply equally to everybody in the state the time to have brought
4 it would have been at the time the district court signed off on
5 that settlement agreement and ended that case, not months later.
6 I don't even think the plaintiff would have had a legitimate
7 argument to have brought the case before the election, but at
8 least there it would have been handled at a point prior to votes
9 being commingled. At this point it's frankly too late to do it.

10 And then also with respect to substantive due
11 process, I'd like to call your attention, Your Honor, to a case
12 that we cited at Page 12 in our brief. It's *Curry vs. Baker*, 802
13 F.2d 1302, and it really differentiates -- it really shows you
14 how high the standard is to make a substantive due process claim
15 and there the facts were, frankly, a lot stronger than the
16 relatively weak facts in this case and the Court said you haven't
17 made out substantive due process. So it's a very, very high
18 standard.

19 I'll just say briefly with procedural due process,
20 the courts have not at all been open to procedural due process
21 claims in this environment. I can say that as a voting rights
22 lawyer having had a couple cases in this election cycle where
23 courts have denied procedural due process claims -- and those
24 were instances in which our vote -- the voters that we
25 represented, had specific harms. There were harms to themselves.

1 Which is not something that you have in this case, again, because
2 the plaintiff in this case was able to vote. Let me see if
3 there's anything else I forgot to mention.

4 There was a lot of back and forth regarding the
5 statistics earlier and I believe that the proper paragraph to
6 look at in Mr. Harvey's declaration's Paragraph 7 which discusses
7 the statistics and, in fact, the percentage of ballots that were
8 rejected on signature mismatch was the same in 2018 as it was in
9 this election.

10 You know, I'll just close by saying that with respect
11 to the factors of balance of harm and the public interest in
12 particular, even if there were a legitimate claim here, when
13 you're talking about effectively throwing out 5 million votes, an
14 unprecedented number of votes in this Georgia election, the
15 balance of harms and the public interest are clearly on the
16 defendants' side in this case. Thank you, Your Honor.

17 THE COURT: Thank you.

18 All right. Mr. Smith, I'll let you have the last
19 word.

20 MR. SMITH: Yes, Your Honor. Thank you. Thank you
21 for your patience.

22 Your Honor, we're here to seek a fair, as I stated in
23 my opening, transparent and open process. As far as counsel for
24 the AG's office said, they talked about hearsay and other
25 evidence and that kind of thing, as Your Honor is well aware

1 under the Federal Rules, we're here for a temporary restraining
2 order. Evidentiary rules under the Federal Rules are somewhat
3 lax and allows for affidavits. Even hearsay is allowed in these
4 types of proceedings. But we believe we've got lots of evidence.
5 In fact, some of the counsel have stated there was no evidence.
6 Well, we've provided live testimony as well as almost 15
7 affidavits so there's plenty of evidence before Your Honor to
8 sustain our motion for a temporary restraining order.

9 As far as standing is concerned, it's interesting,
10 for instance, the NAACP is here wanting to become a party to this
11 lawsuit but yet -- and they're saying they're representing voters
12 but yet they're trying to argue we have no standing. They also
13 state that --

14 THE COURT: Which is why I haven't granted their
15 motion to intervene.

16 MR. SMITH: Well, yes, a motion to intervene. Let me
17 also state that I have been retained by the Donald J. Trump
18 campaign and if standing is an issue, we're happy to move to add
19 them as well as a party, if Your Honor thinks that's necessary to
20 move forward with this case. But we believe that my client alone
21 stands alone and the case law that was cited is that he alone has
22 sufficient standing to move forward.

23 THE COURT: Well, Mr. Smith, let me just address that
24 right off the cuff. I'm not giving advisory opinions. What's
25 before me is one client, one plaintiff, and that's Mr. Wood. I

1 think it is extremely significant that the candidate is not a
2 party to this case when it comes to the standing issue.

3 MR. SMITH: Well, Your Honor, we're prepared to add
4 him as a party, if necessary, Your Honor.

5 THE COURT: Well, that's not before us today.

6 MR. SMITH: All right. So anyway, we believe that,
7 Your Honor, we do have sufficient standing under the Eleventh
8 Circuit arguments that we made earlier. The case law is clear
9 that my client does in fact have standing to bring this suit and
10 to bring these motions, Your Honor, as I've stated earlier.

11 We're asking the Court to require Secretary
12 Raffensperger to do what he said he was going to do in a press
13 release and that was to have an open recount, hand recount,
14 re-canvass, and audit. We're asking the Court to prohibit the
15 certification of the Georgia election results for the
16 presidential election until after the full hand recount is
17 properly done. Our filing states that the deadline to certify
18 these results is November 20th, but under the federal safe harbor
19 provisions Secretary Raffensperger has until December 8th to
20 certify the results.

21 The four-prong test for emergency injunctive relief
22 is well-known, Your Honor, that there's likely success on the
23 merits; number two, irreparable harm; three, balance of equities
24 favors my client; and number four, an injunction's in the public
25 interest.

1 The preliminary injunction is customarily granted on
2 the basis of procedures that are less formal and that evidence is
3 less complete than at a trial on the merits, as Your Honor is
4 well aware. At the preliminary injunction stage the district
5 court may rely on affidavits and hearsay, as I stated earlier,
6 that would not ordinarily be admissible in a permanent
7 injunction.

8 As to irreparable harm, the Court recently stated,
9 quote, "It is well settled that an infringement on the
10 fundamental right to vote amounts to irreparable injury," and we
11 believe that my client has been irreparably injured, Your Honor.
12 If the Georgia vote count, including defective absentee ballots
13 not processed according to the Georgia Election Code, is
14 certified Georgia's election results are improper, suspect and
15 create a chance of the state's electoral college votes to be
16 awarded to the wrong candidate. There is no way to remedy that
17 so clearly we have irreparable harm. Why should we sit here and
18 wait and find out later that these were done wrong? Your Honor
19 has the opportunity to make sure that everything is done the
20 right way.

21 As we balance the harm factor and public interest
22 factor emerge when the government is the opposing party. The
23 defendants will suffer little harm as long as they certify
24 Georgia's election results before the federal safe harbor
25 deadline on December the 8th. If the defendants prevail by or

1 before that date, the same electors will be appointed with ample
2 time to vote in the electoral college, Your Honor. If my client
3 prevails, however, that can only be because the defendants had no
4 legitimate right in certifying constitutionally flawed election
5 results. Either way, the defendants will not suffer harm from a
6 slight delay. By contrast, if the vote total is certified
7 without conducting a proper recount -- that is, if Secretary
8 Raffensperger never does what he said he would do -- my client
9 would lose his opportunity for meaningful relief entirely as to
10 it's not clear what remedies would remain after certification.

11 Of course, the public at large has an interest in
12 ensuring that Georgia's election results are meaningful and fair.
13 The public has a strong interest in exercising the fundamental
14 political right to vote. That answer is best served by favoring
15 enfranchisement and ensuring that qualified voters exercise of
16 their right to vote is successful. The public interest,
17 therefore, favors permitting as many qualified voters to vote as
18 possible. We've cited the *Obama for America vs. Husted* case,
19 Your Honor. My client's easily satisfied those factors for
20 injunctive relief.

21 So the only remaining analysis is whether he has a
22 substantial likelihood of success on the merits, which he clearly
23 does. The Anderson/Burdick standard applies here under which the
24 courts must, quote, "Weigh the character and magnitude of the
25 burden the State's rule imposes on those rights against the

1 interests the State contends justify that burden, and consider
2 the extent to which the state's concern make the burden
3 necessary," and that's the *Timmons vs. Twin Cities* case, Your
4 Honor, in the Supreme Court of the United States.

5 "Even when a law imposes only a slight burden on the
6 right to vote, relevant and legitimate interests of sufficient
7 weight still must justify that burden," and that's the *Democratic*
8 *Executive Committee of Florida vs. Lee* case, an Eleventh Circuit
9 case in 2019, Your Honor. "To establish an undue burden on the
10 right to vote under the Anderson/Burdick test, plaintiffs need
11 not demonstrate discriminatory intent behind the signature-match
12 scheme of the notice provisions because we are considering the
13 constitutionality of a generalized burden on the fundamental
14 right to vote for which we apply the Anderson/Burdick balancing
15 test instead of a traditional equal protection inquiry," and
16 that's cited in the *Lee* case.

17 Your Honor, the fundamental right to vote is one of
18 the most fundamental rights that we share. My client's equal
19 protection argument is straightforward. States may not, by
20 arbitrary action or other unreasonable impairment, burden the
21 citizen's right to vote, quote, "Having once granted the right to
22 vote on equal terms, the State may not, by later arbitrary and
23 disparate treatment, value one person's vote over that of
24 another," and that's the *Bush v. Gore* test, Your Honor.

25 This requires, quote, "Specific rules designed to

1 ensure uniform treatment in order to prevent," quote, "arbitrary
2 and disparate treatment to voters," end quote. The right to vote
3 extends to all phases of the voting process from being permitted
4 to vote, to placing one's vote in the ballot box, to having that
5 vote actually counted. Thus, the right to vote applies equally
6 to the initial allocation of the franchise as well as the manner
7 that they exercise. Once the right to vote is granted, the State
8 may not draw distinctions between voters that are inconsistent
9 with the guarantees of the Fourteenth Amendment's equal
10 protection clause, and that's the *Pierce v. Allegheny County*
11 *Board of Election* case. Treating voters different thus violates
12 the equal protection clause when disparate treatment is the
13 result of arbitrary processes.

14 By changing the process for handling defective
15 ballots from something other than what is authorized by the
16 Georgia General Assembly and set forth in the Georgia Election
17 Code created an *ad hoc* system, Your Honor. The Supreme Court of
18 this country has stated that, quote, "A consent decree must, of
19 course, be modified if, as it later turns out, one or more of the
20 obligations created upon the parties has become impermissible
21 under federal law," and that's the *Rufo, R-U-F-O, vs. Inmates of*
22 *Suffolk County Jail* case, 502 US 367, a 1992 case, Your Honor.
23 That's exactly the case here, Your Honor. The litigation
24 settlement is improper because in it Secretary Raffensperger
25 promulgated a rule regarding federal elections that's contrary to

1 Georgia's statutorily prescribed defective absentee-ballot system
2 and that, in turn, is a constitutional violation, Your Honor.

3 The Supreme Court held long ago, quote, "We can
4 perceive no reason for holding the power confined to the states
5 of the Constitution," end of quote. "To set the time, manner and
6 place for federal elections," quote, "has ceased to exist because
7 the operation of the system has not fully realized the hopes of
8 those by whom it was created. Still less can we recognize the
9 doctrine that because the Constitution has been found in the
10 march of time sufficiently comprehensive to be applicable to the
11 conditions not within the minds of the framers and not arising in
12 their time, it may therefore be wrenched from the subjects
13 expressly embraced within it and amended by judicial decision
14 without action by the design organs in the mode by which alone
15 amendments can be made," and that's the *McPherson vs. Blacker*
16 case, Your Honor, 146 US 1, and that's an 1892 case, Your Honor.

17 The defendants lack any authority whatsoever to alter
18 Georgia statutory defective absentee-ballot procedure and the
19 *McPherson* holding makes it abundantly clear that even though
20 Secretary Raffensperger can make rules regarding the time, place
21 and manner of elections, no deference should be given to his
22 unauthorized actions that are contrary to the Georgia Election
23 Code.

24 The litigation settlement has also created a system
25 in which citizens who vote by absentee ballot are treated

1 differently than individuals who vote in person with regard to
2 confirming their identity and rejecting ballots. Remember that
3 three-person panel, Your Honor. Introducing the requirement that
4 three people must decide the outcome of a defective absentee
5 ballot also creates more discretion and room for disparate
6 treatment of absentee ballots. Quite frankly, Your Honor, they
7 weren't even doing that. What we're learning is some county
8 officials didn't apply the litigation settlement
9 signature-matching system at all and that's where it was applied.
10 It was different from county to county. It was different in
11 Fulton. It was different in Brunswick. It was different in
12 Floyd. It was different in Hancock.

13 We can tell that the litigation settlement and the
14 signature-matching requirements create disparate treatment
15 amongst voters by looking at Georgia historic absentee-ballot
16 rates which I discussed. They skyrocketed, Your Honor, from
17 several hundred thousand to well over a million votes.

18 We also know that nonpolitical organizations that
19 concern (inaudible) that increasing absentee ballots that there
20 would be an increase in voter fraud and irregularities. These
21 issues constitute equal protection violations with respect to
22 Georgia election results were the (inaudible).

23 The remedy we're asking for here is simple, Your
24 Honor. Prevent Secretary Raffensperger from certifying Georgia's
25 presidential election results until a full, proper hand count

1 recount is performed. That way we can be confident that whatever
2 the election result is, whether it's President Trump or Vice
3 President Joe Biden, the results are valid.

4 The so-called, quote, "hand recount" that the
5 Secretary announced also led to violations of due process. Once
6 the Secretary declared that a recount, re-canvassing and audit
7 would occur he was required to ensure those things were actually
8 done and were done properly in all 159 counties, Your Honor.
9 However, it seems that only a recount was done as evidenced by
10 the affidavits that are attached to our motion, Your Honor, and
11 the testimony here today. The recount wasn't truly a hand
12 recount, wasn't properly conducted, and monitors weren't allowed
13 to actually and meaningfully observe the entire recount. In
14 other words, it wasn't transparent, Your Honor. And they can --
15 under the new system they can post those ballots electronically
16 for the whole world to see on the web. You heard the testimony
17 of Ms. Voyles about this, a poll manager who's worked for
18 20 years doing this, who personally observed the problems of the
19 recount. The defendant's failure to ensure that the processes of
20 these full hand recounts and the audit where followed creates a
21 due process concern.

22 The United States Election Assistance Commission,
23 which has been congressionally created, provides in its election
24 management guidelines that a critical part of any canvass of the
25 vote must include allowing observers to check any possible,

1 quote, "signature mismatches on absentee-ballot envelopes or in
2 the poll votes," end of quote. So although a full hand recount
3 could have identified some of these issues created by the
4 November 3rd election and proper handling of the absentee
5 ballots, because that full hand recount wasn't a full hand
6 recount we've lost the ability to ensure that the votes were
7 accurately tabulated. The Secretary could publish scanned images
8 of signatures on absentee ballots, as he indicated he would do,
9 so that the public at large could review those images, but thus
10 far the Secretary hasn't done that.

11 The bottom line is this: Doesn't it make sense to
12 delay the certification of the election results until
13 December 8th so that a proper recount could be completed with
14 monitors being given proper access to observe in all 159
15 counties? If that isn't done, if the Court doesn't issue the TRO
16 and order a recount, then what happens if we find out months down
17 the line when a full analysis really is completed that Georgia
18 electoral college votes were awarded to the wrong candidate.
19 Let's not even get to that because we can avoid it now. We can
20 ensure that Georgia's ballots are correctly handled and tallied
21 so that regardless of who the winner is we can be confident in
22 the outcome.

23 All we need is for Secretary Raffensperger to do what
24 he said he would do, follow Georgia law, not the litigation
25 settlement, in handling defective absentee ballots, perform a

1 full hand count and at that recount ensure workers are trained in
2 signature matching and that monitors have access to the entire
3 recount process and the ability to address concerns and
4 irregularities they observe.

5 Let me just address a few final points, Your Honor.
6 As far as laches and mootness claims, it just makes no sense
7 since it wasn't a clear -- it wasn't clear there was a problem
8 until the election and until the recount raised these issues. As
9 the Secretary of State said just last week, he would do the
10 recount, audit and recount, and suit wasn't brought until it was
11 clear no recount canvass was taking place concerning absentee
12 ballot signature checks and until it was clear observers were
13 unable to meaningfully monitor the recount.

14 Your Honor, in addition to the affidavits that we've
15 submitted, we've received many, many more that we haven't
16 submitted and many, many calls and emails from other folks. As
17 to the signature matching being uniform, how can it be uniform
18 and yet no guidance has been provided by the Secretary of State?

19 So in closing, Your Honor, we would ask that Your
20 Honor grant the TRO, as we believe there is time to do that and
21 it would ensure Georgia has an accurate recount, an accurate hand
22 recount, so that the voters and the citizens of the state can be
23 proud of their vote. Thank you.

24 THE COURT: All right. Mr. Smith, a few things.
25 First, we seem to be conflating the terminology of "hand recount"

1 with "audit," and I know that in your motion and in your briefing
2 you refer to it as a hand recount. But to be clear, what you're
3 challenging is the process that the Secretary of State has
4 undergone, which is the audit of the voting, because, as we heard
5 from the Secretary of State, the recount would not occur until
6 after the vote is certified so that has not even occurred yet.
7 What you are challenging, if I'm hearing you correctly, is the
8 audit that has already occurred; is that right?

9 MR. SMITH: Your Honor, we're challenging -- what
10 we're challenging is what he said he was going to do, what he
11 said over a week ago. He said -- he came out in his press
12 conference and he said he was going to do a re-canvass recount,
13 hand recount and audit, that's what he said. That's what we're
14 challenging.

15 THE COURT: All right.

16 MR. SMITH: Not the statutory recount that occurs
17 after, as counsel said.

18 THE COURT: All right. Yeah, that's what I figured.
19 I just wanted to make sure the record was clear on that.

20 Did your client vote in person or by absentee?

21 MR. SMITH: He voted in person, I believe, Your
22 Honor.

23 THE COURT: Okay. You referenced a number of other
24 affidavits, declarations, calls that you've received. Obviously
25 none of that is in the record, none of that is before me.

1 As for the declarations that you have submitted, as
2 well as the live testimony that was presented today, all of that
3 has been submitted and considered. I believe you referenced
4 declarations that have not been considered. Again, for clarity
5 of the record, everything that has been submitted that was timely
6 submitted in support of your motion has been accepted and
7 admitted.

8 MR. SMITH: Yes, that's correct, Your Honor.

9 THE COURT: Let's take a 10-minute recess and we'll
10 be back.

11 (a recess was taken from 5:31 p.m. until 5:47 p.m.)

12 THE COURT: All right. We're back on the record.
13 Mr. Smith, can you hear me?

14 MR. SMITH: Yes, I can hear you, Your Honor.

15 THE COURT: Okay. Great.

16 All right. Plaintiff's motion for temporary
17 restraining order is denied and let me go through my reasoning
18 for that.

19 First, as I obviously was concerned about going in,
20 first and foremost is the standing issue. With regard to the
21 elections and electors clause, Supreme Court precedent is clear
22 that a state government's failure to properly follow the
23 elections clause of the Constitution does not confer standing on
24 a private citizen. That's *Lance v. Coffman*, a Supreme Court case
25 of 2007. The electors clause, which shares a similarity with the

1 elections clause, has been interpreted in the same manner. So I
2 find the plaintiff lacks standing under either of those clauses.

3 Equally, plaintiff lacks standing under his equal
4 protection claim. Wood brings a disparate treatment theory, but
5 there is no evidence in the record that plaintiff has been
6 treated differently than any other voter in the Georgia election.
7 He is bringing a generalized grievance about the conduct of the
8 government which, again, the Supreme Court has consistently held
9 does not state an Article III case or controversy.

10 With regard to the vote-dilution theory that was
11 raised today, that has been squarely rejected for purposes of
12 imputing standing. To the extent a fraudulent vote dilutes valid
13 votes, it impacts all of the voters, not a single voter, and no
14 single voter is specifically disadvantaged and so for that reason
15 the plaintiff lacks standing in that regard as well.

16 So does his status as a republican donor which is, I
17 think, a creative argument, one that I don't know has been put
18 forth much in previous authorities, but it certainly does not
19 improve his standing in this case and that has been rejected by
20 the Eleventh Circuit again because it does not give this
21 particular plaintiff, this particular voter, any individualized
22 grievance under the Eleventh Circuit case in *Jacobson* of this
23 year.

24 The plaintiff also lacks standing for his due process
25 claim relating to the hand recount or the "audit" as we have

1 referred to it. Again, this is a generalized grievance.
2 Plaintiff did not allege that he was designated by any political
3 party to serve as a monitor nor that he represented any party in
4 designating monitors. His grievance is based on his status as a
5 voter and a donor so he lacks any particularized injury
6 sufficient to give him standing.

7 And although third-party standing could be
8 appropriate in some circumstances, the case law disfavors it and
9 the plaintiff has not shown and put on any evidence that the
10 Georgia republican party or even the monitors themselves are
11 seeking a vindication of their rights. And I do find it
12 significant, as I noted earlier, that neither the republican
13 party nor the Trump campaign or any other candidate has joined
14 this lawsuit, that would have certainly changed the analysis when
15 it comes to standing. What's before me is an individual donor,
16 an individual voter, and under existing Supreme Court and
17 Eleventh Circuit authorities it is abundantly clear that he lacks
18 standing to bring this case.

19 Another procedural hurdle that was discussed and that
20 I agree with as another basis for denying this motion, at least
21 with respect to the plaintiff's challenge to the settlement
22 agreement -- now, this does not apply to his challenge to the
23 audit, but it does to the settlement agreement which is the
24 laches argument. I didn't hear any justification for why the
25 plaintiff delayed bringing this claim until two weeks after the

1 general election and on the cusp of the election results being
2 certified. The settlement agreement was entered over 8 months
3 ago. At least three statewide elections have been performed in
4 Georgia under the terms of this same settlement agreement,
5 including the general election, and the absentee-ballot counting
6 that is the core of the settlement agreement started over two
7 months ago in September.

8 The only reason that was proffered - and, again, it
9 is only a proffer without any evidence - is that the plaintiff
10 did not vote in those previous elections. Again, that is not
11 evidence that's been submitted. But even assuming that that is
12 true, it still does not justify the delay because the settlement
13 agreement was entered, again, over 8 months ago and whether or
14 not this particular plaintiff chose to vote has nothing to do
15 with whether he thought he had a redress with the courts to
16 challenge that settlement agreement. Again, I don't find that he
17 has standing to do so. But even if he did, his undue delay
18 prejudiced the Secretary of State and certainly prejudiced the
19 millions of Georgia citizens who have already voted in this
20 election and for that reason the laches argument also prevails
21 here.

22 I also want to note the Supreme Court has been fairly
23 explicit even during this term in cautioning that federal courts
24 last-minute interference with state election laws is ordinarily
25 inappropriate and that caution certainly applies to the remedies

1 that the plaintiff is seeking here.

2 Even if we were to leave aside the procedural
3 hurdles, the standing issues and the laches defense, it appears
4 to me that the plaintiff fails to state a claim that could
5 withstand a motion to dismiss and so I find that he has not
6 satisfied his burden of establishing a likelihood of success on
7 the merits.

8 There's no doubt that the right to vote, even an
9 individual's right to vote, is sacrosanct and it is of the most
10 fundamental significance under our Constitution. But just
11 because the right to vote is fundamental does not mean that
12 individual voters have the right to dictate the manner in which
13 votes will be cast, accepted, or rejected. The decision of how
14 the right to vote will be implemented is a power that is retained
15 by the states and it's not for the courts to meddle with that
16 process unless the regulations that are imposed by the state rise
17 to the level of a constitutional deprivation of the right to
18 vote.

19 The plaintiff here is claiming a violation of his
20 constitutional rights. But, again, as an individual voter
21 plaintiff can only make a case for that constitutional violation
22 if he can demonstrate that the state classified voters in
23 disparate ways or placed undue restrictions on his right to vote
24 and neither has been shown here.

25 First as to Count One, the equal protection clause

1 relating to the settlement agreement, plaintiff has not
2 demonstrated how he has been treated differently than other
3 voters. He is not an absentee voter, as Mr. Smith acknowledged.
4 He does not explain how the procedures in the settlement
5 agreement treated him differently than any other similarly
6 situated voter. Nor does he show how the settlement agreement
7 placed any undue restrictions on his individualized right to
8 vote.

9 With regard to Count Two, the equal protection
10 clause -- I'm sorry, the elections and electors clause
11 violations, again, leaving aside the standing issues with an
12 individual voter seeking to bring claims under those clauses,
13 plaintiff's allegations is that the settlement agreement
14 contravenes state law and was entered without authority because
15 only the legislature could enact those procedures. I don't see
16 merit to that argument, frankly. I find, based on the record
17 before me, that the settlement agreement was consistent with
18 state law and granted the Secretary of State his authority to
19 issue implementing rules and regulations that are consistent with
20 state law.

21 But even if that hurdle could be overcome, it still
22 does not rise to the level of a constitutional violation for this
23 particular plaintiff because it does not impose any disparate
24 treatment as to him or impose any undue burden on his
25 constitutional right to vote. If anything, it achieves

1 consistency -- or at least seeks to achieve consistency among all
2 county election officials in the state to follow the same exact
3 procedure when it comes to accepting or rejecting absentee
4 ballots. And by doing that it actually furthers plaintiff's
5 stated goals as he indicated that they were in his complaint in
6 his motion and in this argument today, which is of achieving
7 free, fair, and transparent public elections.

8 Certainly we heard some evidence today of some
9 isolated issues and problems that may have occurred at the county
10 level. But, again, those are grievances that should have and
11 probably were, it sounds like, taken up with county officials.
12 And if that did not satisfy the concerns certainly that could
13 have been sought and redressed with a lawsuit against those
14 county officials. But bringing this claim against the Secretary
15 of State on federal constitutional grounds does not have merit.

16 With regard to the due process challenge - and
17 Mr. Smith clarified today that that challenge is on both
18 procedural and substantive due process grounds - the procedural
19 due process ground requires the plaintiff to show a private
20 interest that's affected by the fairness or unfairness of the
21 official action. The plaintiff, again, did not serve -- or at
22 least there's no evidence that the plaintiff served or sought to
23 serve as an election monitor or that he was involved in the
24 monitoring process. And even if he did, monitoring an election
25 or monitoring an audit of an election is not a constitutional

1 right. There is no constitutional right in monitoring an
2 election. Monitoring an election is not a life, it's not a
3 liberty, and it's not a property. So for that reason the
4 procedural due process claim fails.

5 The substantive due process claim also fails and that
6 is an easier call because it is well-established by a consistent
7 body of precedent, both at the Supreme Court and circuit court
8 levels, that garden-variety election disputes, including disputes
9 surrounding the counting and marking of ballots, does not rise to
10 the level of a constitutional deprivation and that is exactly
11 what we heard from Ms. Voyles' testimony.

12 I credit her testimony. I found her to be credible
13 on the concerns that she raised and the observations that she
14 raised from what she observed during her part and process in the
15 election, but those are exactly the garden-variety issues with
16 voting and counting of votes that the Supreme Court and circuit
17 courts have consistently held are not constitutional violations
18 and are not substantive due process violations. The plaintiff
19 provides no authority for the proposition that that conduct and
20 that type of conduct rises to the level of a constitutional
21 violation.

22 With regard to the likelihood of irreparable harm,
23 again, that countenances against the plaintiff here again. There
24 is no evidence that this plaintiff, this particular voter, this
25 particular donor will suffer any harm, much less irreparable

1 harm, by denying this motion. The fact that the candidate or
2 candidates that this plaintiff voted for or whose campaigns he
3 donated to did not prevail in the election does not meet the
4 legal standard of harm, much less irreparable harm. Again, the
5 plaintiff's grievances are generalized and are of a third-party
6 nature. The plaintiff here has suffered no unique harm.

7 Finally, with regard to the balancing of equities and
8 the public interest. Again, both of those factors warrant
9 denying plaintiff's motion. The relief that the plaintiff is
10 seeking here is quite striking as we have observed today. It
11 would require halting the certification of results in a state
12 election in which millions of people have voted. It would
13 interfere with an election after it has already begun, which is a
14 significant hardship that certainly outweighs any threatened
15 injury to this particular plaintiff, which, again, I find that he
16 has not suffered any legal injury, and it harms the public
17 interest in countless ways, particularly in the environment in
18 which this election occurred and the need by our state, our
19 district and our community, to have certainty in the results of
20 the election. To halt the certification at literally the 11th
21 hour would breed confusion and potential disenfranchisement that
22 I find has no basis in fact or in law. So for all of those
23 reasons, the plaintiff's motion is denied.

24 Is there anything he will for us to take up today,
25 Mr. Smith?

1 MR. SMITH: No, Your Honor.

2 THE COURT: Anything on behalf of the Secretary of
3 State?

4 MS. MCGOWAN: No, Your Honor. Thank you.

5 THE COURT: Mr. Hamilton on behalf of the democratic
6 party.

7 MR. HAMILTON: No. Thank you, Your Honor. Thank you
8 for your time.

9 THE COURT: All right. Mr. Greenbaum?

10 MR. GREENBAUM: No, Your Honor.

11 THE COURT: Okay. All right. Thank you everyone. I
12 hope everyone stays healthy and safe. All right. We're
13 adjourned.

14 (proceedings concluded at 6:05 p.m.)
15
16
17
18
19
20
21
22
23
24
25

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF GEORGIA

3 CERTIFICATE OF REPORTER

4
5 I do hereby certify that the foregoing pages are a
6 true and correct transcript of the proceedings taken down by me
7 in the case aforesaid.

8
9 This the 23rd day of November, 2020.

10
11 /S/ Alicia B. Bagley
12 ALICIA B. BAGLEY, RMR, CRR
13 OFFICIAL COURT REPORTER
14 (706) 378-4017
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

L. LIN WOOD, JR.

Plaintiff(s)

V.

BRAD RAFFENSPERGER, et al.

Defendant(s)

Case No. 1:20-CV-4651-SDG

NOTICE OF FILING OF OFFICIAL TRANSCRIPT

Notice is hereby given that an official transcript of a proceeding has been filed by the court reporter/transcriber in the above-captioned matter. Counsel/Parties have twenty-one (21) days from the date of delivery of the transcript to the Clerk to file with the Court a Request for Redaction of this transcript. If no Request for Redaction is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.

Any counsel or party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter/transcriber or view the document at the Clerk's Office public terminal.

11/24/2020

Date

ALICIA B. BAGLEY, RMR, CRR

Court Reporter

VERIFICATION OF FINANCIAL ARRANGEMENTS

Proceeding Type: TRO

Proceeding Date: 11-19-20

Volume Number: 1

Notice is hereby given that financial arrangements for a copy of the transcript have been made with the following individual(s): Ray Smith, Emilie Denmark, Susan Coppedge

as counsel/party in this case. He/She is to be provided with remote access to the transcript via CM/ECF and PACER.

11/24/20

Date

ALICIA B. BAGLEY, RMR, CRR

Court Reporter

UNITED STATES DISTRICT COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 20-14418-RR

L. LIN WOOD, JR.,

Appellant,

vs.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, et al.,

Appellees.

INITIAL BRIEF OF APPELLANT

On appeal from the United States District Court, Northern District of Georgia

Ray S. Smith, III
SMITH & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
Attorney for Appellant
rsmith@smithliss.com

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Appellant, L. LIN WOOD, JR., pursuant to Fed.Ed. R. Civ. P. 26.1, and 11th Cir. R. 26.1-3, hereby submit this Certificate of Interested Persons and Corporate Disclosure Statement, as follows:

Beane, Amanda J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Blumenfeld, Jeremy P. - Counsel for Proposed Intervenor Woodhall, et al.

Brailey, Emily R. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Callais, Amanda R. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Carr, Christopher – Counsel for Appellee

Clarke, Kristen- Counsel for Proposed Intervenor Woodhall, et al.

Coppedge, Susan P. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Elias, Marc E. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Greenbaum, Jon M. - Counsel for Proposed Intervenor Woodhall, et al.

Grimberg, Steven D. – United States Northern District Court Judge

Hamilton, Kevin J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Houk, Julie M. - Counsel for Proposed Intervenor Woodhall, et al.

Hounfodji, Catherine North- Appellee

Knapp, Jr., Halsey G. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Krevolin and Horst, LLC- Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Kuhlmann, Gillian C. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Law Office of Bryan L. Sells, LLC - Counsel for Proposed Intervenor Woodhall, et al.

Lawyers' Committee for Civil Rights Under Law- Counsel for Proposed Intervenor Woodhall, et al.

Le, Anh - Appellee

Lewis, Joyce Gist- Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Manning, Susan Baker- Counsel for Proposed Intervenor Woodhall, et al.

Mashburn, Matthew- Appellee

McGowan, Charlene S. - Counsel for Appellee

Mertens, Matthew J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Morgan, Lewis & Bockius LLP - Counsel for Proposed Intervenor Woodhall, et al.

Office of Attorney General of Georgia- Counsel for Appellee

Perkins Coie LLP - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Powers, John- Counsel for Proposed Intervenor Woodhall, et al.

Raffensperger, Brad - Appellant

Rosenberg, Ezra D. - Counsel for Proposed Intervenor Woodhall, et al.

Sells, Bryan L. - Counsel for Proposed Intervenor Woodhall, et al.

Smith, III, Ray - Counsel for Appellant

Sparks, Adam M. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Sullivan, Rebecca N. – Appellant

Velez, Alexi M. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Webb, Bryan K. - Counsel for Appellee

Willard, Russell D. - Counsel for Appellee

Wood, Jr., L. Lin. – Appellant

Worley, David J. - Appellee

STATEMENT REGARDING ORAL ARGUMENT

Appellant believes that oral argument would benefit the Court. This appeal involves important constitutional issues regarding the dilution and impairment of Plaintiff's fundamental right to vote and the Defendants' illegal and unconstitutional procedures for processing and rejecting absentee ballots in the 2020 elections. These procedures violated Plaintiff's rights to Equal Protection under the United States Constitution. Unless this Court intervenes, said unconstitutional procedures will not only continue to impair Plaintiff's right to vote, but also will adversely affect and taint the upcoming Senatorial runoff election.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.....	2
STATEMENT REGARDING ORAL ARGUMENT.....	5
TABLE OF CONTENTS.....	6
TABLE OF CITATIONS.....	8
JURISDICTIONAL STATEMENT.....	12
STATEMENT OF ISSUES.....	12
STATEMENT OF THE CASE AND FACTS.....	13
SUMMARY OF ARGUMENT.....	19
ARGUMENT.....	19

THE DISTRICT COURT ERRED IN DENYING INJUNCTIVE
RELIEF BECAUSE THE ELECTION WAS, AND ABSENT
INJUNCTIVE RELIEF, THE RUNOFF ELECTION WILL
BE CONDUCTED IN AN UNLAWFUL MANNER RENDERING
IT UNCONSTITUTIONAL AND VIOLATIVE OF THE
PLAINTIFF’S FUNDAMENTAL RIGHT TO VOTE

Standard of Review.....20

Merits.....20

A. The Appellant Has Standing to Maintain This Lawsuit

B. The Appellees Instituted a Procedure for Processing Absentee Ballots
That Conflicts with State Law, Which Exceeded Defendants’ Authority,
and is Unconstitutional

C. The Appellees’ Procedure for Processing Absentee Ballots Violates
Appellant’s Rights to Equal Protection under the United States
Constitution

CONCLUSION.....40

CERTIFICATE OF SERVICE.....41

SERVICE LIST.....42

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Anderson v. Celebrezze</u> , 460 U.S. 780 (1983)	34
<u>Ariz. St. Leg. v. Ariz. Indep. Redistricting Comm 'n</u> , 576 U.S. 787 (2015)	27, 28
<u>*Baker v. Carr</u> , 369 U.S. 186 (1962)	21, 22, 24, 35
<u>Bogert v. Secretary Commonwealth of Pennsylvania, et al.</u> , 2020 WL 6686120 (3d Cir. November 13, 2020)	12
<u>Burdick v. Takushi</u> , 504 U.S. 428 (1992)	34, 35
<u>*Bush v. Gore</u> , 531 U.S. 98 (2000)	22, 24, 34, 35, 36
<u>Charfauros v. Bd. of Elections</u> , 249 F.3d 941 (9th Cir. 2001)	36
<u>Charles H. Wesley Educ. Found., Inc. v. Cox</u> , 408 F.3d 1349 (11th Cir. 2005)	25
<u>City of Cleburne v. Clerburn Living Center</u> , 473 U.S. 432 (1985)	33
<u>Democratic Exec. Comm. of Fla. v. Lee</u> , 915 F.3d 1312 (11th Cir. 2019)	34

<u>Department of Trans. v. City of Atlanta,</u> 260 Ga. 699, 703 (Ga. 1990)	27
<u>Dunn v. Bloomstein,</u> 405 U.S. 330 (1972)	35
<u>Fish v. Kobach,</u> 840 F. 3d 710, (10th Cir. 2016)	20, 38, 39
<u>Fla. State Conference of NAACP v. Browning,</u> 522 F.3d 1153 (11th Cir. 2008)	21
<u>Gill v. Whitford,</u> 138 S.Ct. 1916 (2018)	21
<u>Gray v. Sanders,</u> 372 U.S. 83 (1963)	23
<u>Harper v. Va. State Bd. of Elections,</u> 383 U.S. 663 (1966)	22, 26
<u>Lance v. Coffman,</u> 549 U.S. 437 (2007)	21
<u>Lujan v. Defenders of Wildlife,</u> 504 U.S. 555 (1992)	21
<u>Mitchell v. Wilkerson,</u> 258 Ga. 608, 610 (Ga. 1988)	28
<u>Moore v. Circosta,</u> 2020 WL 6063332 (MDNC October 14, 2020)	29
<u>Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla.,</u> 508 U.S. 656 (1993)	25
<u>New Ga. Project v. Raffensperger,</u> 2020 WL 5200930 (N.D. Ga. Aug. 31, 2020)	37, 38, 39

<u>Nken v. Holder,</u> 556 U.S. 418 (2009)	38
<u>North Fulton Med. Center v. Stephenson,</u> 269 Ga. 540 (Ga. 1998)	28
<u>Obama for Am. v. Husted,</u> 697 F.3d 423 (6 th Cir. 2012)	40
<u>Pierce v. Allegheny County Bd. of Elections ,</u> 324 F.Supp.2d 684 (W.D. Pa. 2003)	36
<u>Premier Health Care Investments, LLC. v. UHS of Anchor, LP,</u> 220 WL 5883325 (Ga. 2020)	27
<u>Reynolds v. Sims,</u> 377 U.S. 533 (1964)	22
<u>Roe v. Alabama,</u> 43 F. 3d 574 (11th Cir. 1995)	26
<u>Rufo v. Inmates of Suffolk County Jail,</u> 502 U.S. 367388 (1992)	33
<u>Schaivo v. Schaivo,</u> 403 F. 3d 1223 (11 th Cir. 2005)	12
<u>Siegel v. Lepore,</u> 254 Fed. 3d 1163 (11th Cir. 2000)	20, 39
<u>Smiley v. Holm,</u> 285 U.S. 355 (1932)	27
<u>Timmons v. Twin Cities Area New Party,</u> 520 U.S. 351 (1997)	34
<u>United States v. Students Challenging Regulatory Agency Procedures (SCRAP),</u> 412 U.S. 669 (1973)	25

STATUTES

28 U.S.C. § 1292(a)(1)	12
O.C.G.A. § 21-2-220(c)	31
O.C.G.A. § 21-2-31	32, 37
O.C.G.A. § 21-2-31(2)	17
O.C.G.A. § 21-2-386	37
O.C.G.A. § 21-2-386(a)(1)(B)	15
O.C.G.A. § 21-2-386(a) (1)(C)	15, 16

OTHER AUTHORITY

U.S. Const. Art. I, § 4, cl. 1	27
Ga. Const. Art. III, § I, Para. I	27
U.S. Const. amend XIV, § 1	33

JURISDICTIONAL STATEMENT

This is an appeal of an interlocutory order of a district court of the United States refusing an application for an injunction, which appeal is authorized by 28 U.S.C. § 1292(a)(1). See *Bognet v. Secretary Commonwealth of Pennsylvania, et al.* 2020 WL 6686120 *5 (3d Cir. November 13, 2020) (recognizing the immediate appealability of voter and candidates motion for temporary restraining order and preliminary injunction.); *Schaivo v. Schaivo*, 403 F. 3d 1223, 1225 (when denial of TRO might have serious, perhaps irreparable consequence, same can be effectively challenged only by immediate appeal).

STATEMENT OF ISSUES

- I. The District Court erred in denying injunctive relief because the election was, and absent injunctive relief, the run-off election will be conducted in an unlawful manner rendering it unconstitutional and violative of the Plaintiff's fundamental right to vote.
- II. The Appellees instituted a procedure for processing absentee ballots that conflict with State Law and is unconstitutional.
- III. The Appellees' Procedure for Processing Absentee Ballots Violates Appellant's Rights to Equal Protection under the United States Constitution

STATEMENT OF THE CASE AND FACTS

Appellant/Plaintiff, an individual residing in Fulton County, Georgia, is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. See O.C.G.A. §§ 21-2-2(7), 21-2-216(a); (see also Verified Am. Compl. for Decl. and Inj. Relief (DE 5, the "Complaint", at 8). Plaintiff sought declaratory relief and an emergency injunction from the district court below, among other things, halting the certification of Georgia's results for the November 3, 2020 presidential election and determining that the results were defective. As a result of the appellees'/defendants' violations of the United States Constitution and other election laws, Plaintiff alleged below the Georgia's election tallies are suspect and tainted with impropriety.

On November 13, 2020, Plaintiff filed his original Verified Complaint for Declaratory and Injunctive Relief, which was subsequently amended. The named defendants include Defendant Brad Raffensperger, in his official capacity as Secretary of State of Georgia and as Chairperson of Georgia's State Election Board, as well as the other members of the State Election Board in their official capacities - Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board"). (See DE 5, Compl., at 9-10.) The Complaint alleges violations of the United States Constitution and the amendments

thereto in the regards to the November 3, 2020 general election, as well as the "full hand recount" of all ballots cast in that election, to be completed by November 18, 2020 (the "Hand Recount"), with those same violations likely to occur again in the January 5, 2021 run-off election for Georgia's United States Senators. (See generally *id.*)

The Georgia Legislature established a clear and efficient process for handling absentee ballots. To the extent that there is any change in that process, that change must, under Article I, Section 4 of the Constitution, be prescribed by the Georgia Legislature. (*See* DE 5 Compl., at 17-18.)

Specifically, the unconstitutional procedure in this case involved the unlawful and improper processing of absentee ballots. The Georgia Legislature instructed county registrars and clerks (the "County Officials") regarding the handling of absentee ballot O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-380.1. (*See* DE 5 Compl., at 19.) The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:

Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector's

voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and *shall*, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath...

O.C.G.A. § 21-2-386(a)(1)(B) (emphasis added); (*see* DE 5 Compl., at 20).

The Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot"). *See* O.C.G.A. § 21-2-386(a)(1)(C); (DE 5 Compl., at 22.) With respect to defective absentee ballots:

If the elector has failed to sign the oath, or if the signature does not appear to be valid, or if the elector has failed to furnish required information or information so furnished does not conform with that on file in the registrar's or clerk's office, or if the elector is otherwise found disqualified to vote, the registrar or clerk shall write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least one year.

O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added); (*see* DE 5 Compl., at 23). The

Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. (*See* DE 5 Compl., at 24.)

In March 2020, Defendants Secretary Raffensperger, and the State Election Board, who administer the state elections (collectively the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (the "Democrat Agencies"), *setting forth totally different standards to be followed by County Officials in processing absentee ballots in Georgia.* (*See* DE 5 Compl., 25-26.) *See also Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, Civil Action File No. 1:19-cv-05028-WMR, United States District Court for the Northern District of Georgia, Atlanta Division, Doc. 56-1 (DE 6, 30-35).

Although Secretary Raffensperger is authorized to promulgate rules and regulations that are "conducive to the fair, legal, and orderly conduct of primaries and elections," all such rules and regulations must be "consistent with law." O.C.G.A. §21-2-31(2); (*see* DE 5 Compl., at 28).

Under the Litigation Settlement, the Administrators agreed to change

the statutorily-prescribed process of handling absentee ballots in a manner that was not consistent with the laws promulgated by the Georgia Legislature. (*See* DE 5 Compl., at 28.) The Litigation Settlement provides that the Secretary of State would issue an "Official Election Bulletin" to County Officials overriding the prescribed statutory procedures. The unauthorized Litigation Settlement procedure, set forth below, is more cumbersome, and makes it much more difficult to follow the statute with respect to defective absentee ballots. (*See* DE 5, Compl., at 30-32.)

Under the Litigation Settlement, the following language added to the pressures and complexity of processing defective absentee ballots, making it less likely that they would be identified or, if identified, processed for rejection:

County registrars and absentee ballot clerks *are required*, upon receipt of each mail-in absentee ballot, to compare the signature or make of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot.

If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file in eNet or on the absentee ballot application. If a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot application, the registrar or absentee ballot clerk shall write the names of the three elections officials who conducted the signature review across the face of the absentee ballot envelope, which shall be in addition to writing "Rejected" and the reason for the rejection as required under O.C.G.A. § 21-2-386(a)(1)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C) and State Election Board Rule 183-1-14-.13.

(See DE 5 Compl., paragraph 33; see Ex. A, Litigation Settlement, p. 3-4, paragraph 3, "Signature Match" (emphasis added).)

SUMMARY OF ARGUMENT

The Plaintiff suffered an injury in fact and actual harm as a result of the unconstitutional absentee ballot processing procedures utilized in connection with the November 3, 2020 presidential election and the manual re-count. The procedures were illegal and in derogation of the state legislature's clear statutory scheme for elections and accordingly, were unconstitutional. The procedures were promulgated by the Defendants' in violation of the non-delegation doctrine. Moreover, in issuing these procedures, the Defendants exceeded their statutory authority. These procedures violated the Plaintiff's constitutional rights to Equal Protection under the law.

As a result, this Court should reverse the district court and enter, or direct that the district court enter, an injunction declaring that the election results are defective, and ordering the Defendants to cure their constitutional violations by re-doing the election in a manner consistent with the requirements of the United States Constitution.

ARGUMENT

THE DISTRICT COURT ERRED IN DENYING INJUNCTIVE RELIEF BECAUSE THE ELECTION WAS, AND ABSENT INJUNCTIVE RELIEF, THE RUNOFF ELECTION WILL BE CONDUCTED IN AN UNLAWFUL MANNER RENDERING IT UNCONSTITUTIONAL AND VIOLATIVE OF THE PLAINTIFF'S FUNDAMENTAL RIGHT TO VOTE

Standard of review

The Court of Appeals reviews a district court's decision to deny a preliminary injunction for abuse of discretion. *Fish v. Kobach*, 840 F. 3d 710, 723 (10th Cir. 2016). This Court reviews the district court's factual findings for clear error and its conclusions of law *de novo*. *Id.* Although review of a denial of a preliminary injunction is normally limited to whether the district court abused its discretion, an appellate court under some circumstances may decide the merits of a case in connection with such a review. *Siegel v. Lepore*, 254 Fed. 3d 1163, 1171 n.4 (11th Cir. 2000).

Merits

A. The Appellant Has Standing to Maintain This Lawsuit

The requirements for standing, under Article III of the Constitution, are three-fold: First, the plaintiff must have suffered, or must face an imminent and not merely hypothetical prospect of suffering, an invasion of a legally protected interest resulting in a "concrete and particularized" injury. Second, the injury must have been caused by the defendant's complained-of actions. Third, the plaintiff's injury or threat of injury must likely be redressable by a favorable court decision. *Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153, 1159 (11th Cir.2008). An injury sufficient for standing purposes is "an invasion of a legally protected

interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, (1992).

In the voting context, “voters who allege facts showing disadvantage to themselves as individuals have standing to sue,” *Baker v. Carr*, 369 U.S. 186, 206, (1962), so long as their claimed injuries are “distinct from a ‘generally available grievance about the government,’” *Gill v. Whitford*, 138 S.Ct. 1916, 1923 (2018)(quoting *Lance v. Coffman*, 549 U.S. 437, 439, 1 (2007) (per curiam)).

Contrary to the District Judge’s conclusion (DE 54 at 12), Plaintiff Wood consistent with several constitutional provisions, established an injury sufficient for standing. Specifically, under the Fourteenth Amendment of the U.S. Constitution, a state may not “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV. The Fourteenth Amendment is one of several constitutional provisions that “protects the right of all qualified citizens to vote, in state as well as federal elections.” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). Because the Fourteenth Amendment protects not only the “initial allocation of the franchise,” as well as “the manner of its exercise,” *Bush v. Gore*, 531 U.S. 98, 104, (2000), “lines may not be drawn which are inconsistent with the Equal

Protection Clause” *Id.* at 105 (citing *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966)).

The Supreme Court has identified two theories of voting harms prohibited by the Fourteenth Amendment. First, the Court has identified a harm caused by “debasement or dilution of the weight of a citizen's vote,” also referred to “vote dilution.” *Reynolds*, 377 U.S. at 555. Plaintiff presented a dilution claim below.

Second, the Supreme Court has found that the Equal Protection Clause is violated where the state, “[h]aving once granted the right to vote on equal terms,” through “later arbitrary and disparate treatment, value[s] one person's vote over that of another.” *Bush*, 531 U.S. at 104-05 (2000); see also *Baker v. Carr*, 369 U.S. 186, 208 (1962) (“A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, or by a refusal to count votes from arbitrarily selected precincts, or by a stuffing of the ballot box.”) (internal citations omitted). The Plaintiff supplied evidence in the form of numerous affidavits (D.E. 6 at Page 45-54; DE 7, DE 20, DE 30, and DE 35) outlining numerous irregularities in the actual re-counting of votes including attributing the votes of one candidate to the other, the failure of counters to compare signatures on absentee ballots with other signatures on file, processing of absentee ballots that appear to be counterfeit

because they had no creases indicative of having been sent by mail, and the manner in which they were bubbled in, not allowing observers sufficient access to meaningfully observe the counting and concluding fraudulent conduct occurred during the vote re-counting as well as the live testimony of Susan Voyles. These irregularities rise to the level of an unconstitutional impairment and dilution of the Plaintiff's vote.

The second theory of voting harm requires courts to balance competing concerns around access to the ballot. On the one hand, a state should not engage in practices which prevent qualified voters from exercising their right to vote. A state must ensure that there is “no preferred class of voters but equality among those who meet the basic qualifications.” *Gray v. Sanders*, 372 U.S. 368, 379-80, 83 (1963). On the other hand, the state must protect against “the diluting effect of illegal ballots.” *Id.* at 380. Because “the right to have one's vote counted has the same dignity as the right to put a ballot in a box,” *id.*, the vote dilution occurs only where there is both “arbitrary and disparate treatment.” *Bush*, 531 U.S. at 105. To this end, states must have “specific rules designed to ensure uniform treatment” of a voter's ballot. *Id.* at 106.

In *Bush*, the Supreme Court held that, “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value

one person's vote over that of another.” 531 U.S. at 104-05. Plaintiff argued below that he has been subjected to arbitrary and disparate treatment because he voted under one set of rules, and other voters, through the guidance in the unlawful consent agreement, were permitted to vote invalidly under a different and unequal set of rules, and that this is a concrete and particularized injury.

For the purposes of determining whether Plaintiff has standing, is it not “necessary to decide whether [Plaintiff’s] allegations of impairment of his vote” by Defendants’ actions “will, ultimately, entitle them to any relief,” *Baker*, 369 U.S. at 208; whether a harm has occurred is best left to this court's analysis of the merits of Plaintiff’s claims. Instead, the appropriate inquiry is, “[i]f such impairment does produce a legally cognizable injury,” whether Plaintiff “is among those who have sustained it.” *Baker*, 369 U.S. at 208.

For purposes of standing, a denial of equal treatment is an actual injury even when the complainant is able to overcome the challenged barrier:

When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The “injury in fact” in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

Ne. Fla. Chapter of Assoc. Gen. Contractors of Am. v. City of Jacksonville, Fla., 508 U.S. 656, 666 (1993).

The Supreme Court has rejected the argument that an injury must be “significant”; a small injury, “an identifiable trifle,” is sufficient to confer standing. *United States v. Students Challenging Regulatory Agency Procedures (SCRAP)*, 412 U.S. 669, 689 n. 14, 93 (1973). Plaintiff Wood submits that he has suffered an injury sufficient to confer standing. “A plaintiff need not have the franchise wholly denied to suffer injury. Any concrete, particularized, non-hypothetical injury to a legally protected interest is sufficient.” *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1352 (11th Cir. 2005).

For instance, requiring a registered voter to produce photo identification to vote in person, but not requiring a voter to produce identification to cast an absentee or provisional ballot is sufficient to demonstrate disparate treatment and thus, an injury sufficient for standing.

Additionally, the inability of a voter to pay a poll tax, for example, is not required to challenge a statute that imposes a tax on voting, *see Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966), and the lack of an acceptable photo identification is not necessary to challenge a statute that requires photo identification to vote in person. Because Plaintiff Wood has demonstrated that the

unlawful “Consent Agreement” subjected him to arbitrary and disparate treatment, vis-à-vis, other voters, he has clearly suffered a sufficient injury. See also *Roe v. Alabama*, 43 F. 3d 574, 580-581 (11th Cir. 1995)(voter and candidates in statewide election had standing to allege violation of their constitutional rights based on the counting of improperly completed absentee ballots, which diluted votes of the voters who met requirements of absentee ballot statute and those who went to the polls on election day.)

B. The Appellees Instituted a Procedure for Processing Absentee Ballots That Conflicts with State Law and is Unconstitutional

The Elections Clause of the United States Constitution states that “[t]he Times, Places and Manner of holding Elections for Senators and Representatives *shall be prescribed in each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. Const. Art. I, § 4, cl. 1 (emphasis added); (see DE 5 Compl., at 12). Regulations of congressional and presidential elections, thus, “must be in accordance with the method which the state has prescribed for legislative enactments.” *Smiley v. Holm*, 285 U.S. 355, 367 (1932); see also *Ariz. St. Leg. v. Ariz. Indep. Redistricting Comm’n*,

576 U.S. 787, 807-08 (2015); (*see* DE 5 Compl. at 13). In Georgia, the "legislature" is the General Assembly (the "Georgia Legislature"). *See* Ga. Const. Art. III, § I, Para. I; (*see* DE 5 Compl., at 14).

The Supreme Court of Georgia has recognized that statutes delegating legislative authority violate constitutional nondelegation and separation of powers. *Premier Health Care Investments, LLC. v. UHS of Anchor, LP*, 220 WL 5883325 (Ga. 2020). The non-delegation doctrine is rooted in the principle of separation of powers in that the integrity of the tripartite system of government mandates the general assembly not divest itself of the legislative power granted to it by the State Constitution. *Department of Trans. v. City of Atlanta*, 260 Ga. 699, 703 (Ga. 1990)(finding OCGA § 50-16-180 through 183 created an impermissible delegation of legislative authority). *See also Mitchell v. Wilkerson*, 258 Ga. 608, 610 (Ga. 1988)(election recall statute's attempt to transfer the selection of the reasons to the applicant amounted to an impermissible delegation of legislative authority.)

Because the Constitution reserves for state legislatures the power to set the time, place, and manner of holding federal elections, state executive officers have no authority to unilaterally exercise that power, much less flout existing

legislation, nor to ignore existing legislation. (*See* DE 5 Compl., at 15.) While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," it does hold states accountable to their chosen processes in regulating federal elections. *Ariz. St. Leg.*, 135 S.Ct. at 2677, 2668.

In *North Fulton Med. Center v. Stephenson*, 269 Ga. 540 (Ga. 1998), a hospital outpatient surgery center which had already relocated to a new site and commenced operations applied to the State Health Planning Agency for a certificate of need under the agency's second relocation rule, which certificate was provided by the agency. A competitor sought appellate relief and the Georgia Supreme Court held that the agency rule conflicted with the State Health Planning Act, and thus, was invalid and had to be stricken. Additionally, the supreme court held that the rule was the product of the agency's unconstitutional usurpation of the general assembly's power to define the thing to which the statute was to be applied. *Id* at 544. See also *Moore v. Circosta*, 2020 WL 6063332 (MDNC October 14, 2020)(North Carolina State Board of Elections exceeded its statutory authority when it entered into consent agreement and eliminated witness requirements for mail-in ballots).

The Framers of the Constitution were concerned with just such a

usurpation of authority by State administrators. In Federalist No. 59, Alexander Hamilton defended the Elections Clause by noting that “a discretionary power over elections ought to exist somewhere (emphasis supplied) and then discussed why the Article 1, Clause 4 “lodged [the power]... primarily in the [State legislatures] and ultimately in the [Congress].” He defended the right of Congress to have the ultimate authority, observing that even though granting this right to states was necessary to secure their place in the national government, that power had to be subordinate to the Congressional mandates to prevent what could arise as the “sinister designs in the leading members of a few of the State legislatures.”

Hamilton feared that the state legislatures might conspire against the Union but also that “influential characters in the State administrations” might “prefer[] their own emolument and advancement to the public weal.” But in concluding his defense of this constitutional compromise, Hamilton noted that the Clause was designed to commit to the guardianship of election “those whose situation will uniformly beget an immediate interest in the faithful and vigilant performance of the trust.”

The procedures for processing and rejecting ballots employed by the Defendants during the election. (See page ____, *infra*) constitute a

usurpation of the legislator's plenary authority. This is because the procedures are not consistent with- *and in fact conflict with*- the statute adopted by the Georgia Legislature governing processing of absentee ballots. (*See* DE 5 Compl., 34.) First, the Litigation Settlement overrides the clear statutory authorities granted to County Officials individually and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot. (*See* DE 5 Compl., 35.) Such a procedure creates a cumbersome bureaucratic procedure to be followed with each defective absentee ballot – and makes it likely that such ballots will simply not be identified by the County Officials. (*See id.*, 36.)

Second, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature. (*See id.*, 37.) The Georgia Legislature prescribed procedures to ensure that any request for an absentee ballot must be accompanied by sufficient identification of the elector's identity. *See* O.C.G.A. § 21-2-381(b)(1) (providing, in pertinent part, "In order to be found eligible to vote an absentee ballot in person at the registrar's office or absentee ballot clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417 ..."); (*see* DE 5 Compl., 38.) Under

O.C.G.A. § 21-2-220(c), the elector must present identification, but need not submit identification if the electors submit with their application information such that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system. (*See* DE 5 Compl., 39.) The system for identifying absentee ballots was carefully constructed by the Georgia Legislature to ensure that electors were identified by acceptable identification, but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot. (*See* DE 5 Compl., 40.) Under the Litigation Settlement, any determination of a signature mismatch would lead to the cumbersome process described in the settlement, which was not intended by the Georgia Legislature, which authorized those decisions to be made by single election officials. (*See id.*, 41.) The Georgia Legislature also provided for the opportunity to cure (again, different from the opportunity to cure in the Litigation Settlement), but did not allocate funds for three County Officials for every mismatch decision. (*See id.*, 42.)

Finally, under paragraph 4 of the Litigation Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering in good faith "additional guidance

and training materials" drafted by the "handwriting and signature review expert" of the Democrat Agencies. (See DE 5 Compl., at 47; see Ex. A, Litigation Settlement, p. 4, at 4, "Consideration of Additional Guidance for Signature Matching.") Allowing a single political party to write rules for reviewing signatures is not "conducive to the fair...conduct of primaries and elections" or "consistent with law" under O.C.G.A. § 21-2-31. (See DE 5 Compl., at 48.)

In short, the Litigation Settlement by itself has created confusion, misplaced incentives, and undermined the confidence of the voters of the State of Georgia in the electoral system. (See DE 5 Compl., at 49.) Neither it nor any of the activities spawned by it were authorized by the Georgia Legislature, as required by the United States Constitution. (See DE 5 Compl., at 50.)

“A consent decree must of course be modified, if, as it later turns out, one or more of the obligations placed upon the parties has become impermissible under Federal law.” *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367388 (1992). As such, the lower court should be reversed and the injunction requested below should be granted.

C. The Appellees' Procedure for Processing Absentee Ballots Violates Appellant's Rights to Equal Protection under the United States Constitution

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend XIV, § 1. This constitutional provision requires “that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburn Living Center*, 473 U.S. 432, 439 (1985).

And this applies to voting. “Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). The appellees have failed to ensure that Georgia voters are treated equally regardless of whether they vote in person or through absentee ballot. Under the Equal Protection Clause of the 14th amendment, a state cannot utilize election practices that unduly burden the right to vote or that dilute votes.

When deciding a constitutional challenge to state election laws, the flexible standard outlined in *Anderson v. Celebrezze*, 460 U.S. 780 (1983) and *Burdick v. Takushi*, 504 U.S. 428 (1992) applies. Under *Anderson* and *Burdick*,

courts must "weigh the character and magnitude of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary." *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) (citations and quotations omitted). "[E]ven when a law imposes only a slight burden on the right to vote, relevant and legitimate interests of sufficient weight still must justify that burden." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318-19 (11th Cir. 2019).

"To establish an undue burden on the right to vote under the *Anderson-Burdick* test, Plaintiffs need not demonstrate discriminatory intent behind the signature-match scheme or the notice provisions because we are considering the constitutionality of a generalized burden on the fundamental right to vote, for which we apply the *Anderson-Burdick* balancing test instead of a traditional equal protection inquiry." *Lee*, 915 F.3d at 1319.

Plaintiff's equal protection claim is straightforward: states may not, by arbitrary action or other unreasonable impairment, burden a citizen's right to vote. See *Baker v. Carr*, 369 U.S. 186, 208 (1962) ("citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a

right secured by the Constitution"). "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05. Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment to voters." *Id.* at 106-07; *see also Dunn v. Bloomstein*, 405 U.S. 330, 336 (1972) (providing that each citizen "has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction").

"The right to vote extends to all phases of the voting process, from being permitted to place one's vote in the ballot box to having that vote actually counted. Thus, the right to vote applies equally to the initial allocation of the franchise as well as the manner of its exercise. Once the right to vote is granted, a state may not draw distinctions between voters that are inconsistent with the guarantees of the Fourteenth Amendment's equal protection clause." *Pierce v. Allegheny County Bd. of Elections*, 324 F.Supp.2d 684, 695 (W.D. Pa. 2003) (citations and quotations omitted). "[T]reating voters differently " thus "violate[s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros v. Bd. of Elections*, 249 F.3d

941, 954 (9th Cir. 2001). Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]." *Bush*, 531 U.S. at 105.

Defendants are not part of the Georgia Legislature and cannot exercise legislative power to enact rules or regulations regarding the handling of defective absentee ballots that are contrary to the Georgia Election Code. By entering the Litigation Settlement, however, Defendants unilaterally and without authority altered the Georgia Election Code and the procedure for processing defective absentee ballots. The result is that absentee ballots have been processed differently by County Officials than the process created by the Georgia Legislature and set forth in the Georgia Election Code. Further, allowing a single political party to write rules for reviewing signatures, as paragraph 4 of the Litigation Settlement provides, is not "conducive to the fair...conduct of primaries and elections" or "consistent with law" under O.C.G.A. § 21-2-31.

The rules and regulations set forth in the Litigation Settlement created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots, and for determining which of such ballots should be "rejected," contrary to Georgia law. *See* O.C.G.A. § 21-2-386; (*see also* DE 5 Ex. A, Litigation Settlement, p. 3-4, if 3, "Signature Match"). This disparate treatment

is not justified by, and is not necessary to promote, any substantial or compelling state interest that cannot be accomplished by other, less restrictive means. As such, Plaintiff has been harmed by Defendants' violations of his equal protection rights, and an injunction should have been issued below. Accordingly, the district court erred in not finding the Plaintiff had a substantial likelihood of success on the merits.

Moreover, the irreparable nature of the harm to Plaintiff is apparent. "It is well-settled that an infringement on the fundamental right to vote amounts in an irreparable injury." *New Ga. Project v. Raffensperger*, 2020 WL 5200930 at *26 (N.D. Ga. Aug. 31, 2020). Indeed, the violation of a constitutional right must weigh heavily in the irreparable harm analysis on a motion for preliminary injunction. *Fish*, 840 F. 3d at 752. Further, because there can be no do-over or redress of a denial of the right to vote after an election becomes final, denial or impairment of the right to vote weighs heavily in determining the existence of irreparable harm. *Id.*

If the Georgia vote count, including defective absentee ballots that were not processed according to the Georgia Election Code, is permitted to stand, and if the same procedure is in place during the upcoming Senatorial runoff

election, then Georgia's election results are and will continue to be improper, illegal, and therefore unconstitutional. Plainly, there is no adequate remedy at law if this occurs.

The remaining two factors for the preliminary injunction test, "harm to the opposing party and weighing the public interest merge when the Government is the opposing party." *New Ga. Project v. Raffensperger*, 2020 WL 5200930 at *26 (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009) (alternations and punctuation omitted).

The fact that the State has certified the Georgia purported election results does not moot the Plaintiff's lawsuit because this litigation is ongoing. Plaintiff's fundamental right to vote continues to be impaired, President Trump has officially requested a recount and the constitutionally improper procedure would be employed in the recount, as well as in the upcoming Senatorial runoff election in January. *Siegel*, 234 F. 3d at 1372.

If the certified result is permitted to stand, and if the upcoming Senatorial runoff election is run according to the same unconstitutional process, the Plaintiff (and the citizens of Georgia) will be permanently harmed by the Defendants' infringement on Plaintiff's voting rights. *New Ga. Project v. Raffensperger*, 2020 WL 5200930 at *26-27 (concluding that movant satisfied balance of

harms/public interest factors, as "Plaintiffs will be forever harmed if they are unconstitutionally deprived of their right to vote").

Nor should the doctrine of laches operate to bar Plaintiff's claims. The lawsuit was filed within days of the election and until the Plaintiff cast his vote and all votes were purportedly in, Plaintiff had not suffered an injury. In any event, delay in seeking preliminary relief is only one factor to be considered among others, and there is no categorical rule that delay bars the issuance of an injunction. *Fish*, 840 F. 3d at 753.

Moreover, the public will be served by the relief requested. "[T]he public has a strong interest in exercising the fundamental political right to vote. That interest is best served by favoring enfranchisement and ensuring that qualified voters' exercise of their right to vote is successful. The public interest therefore favors permitting as many qualified voters to vote as possible," and having those votes properly processed and tallied pursuant to Georgia law. *Obama for Am. v. Husted*, 697 F.3d 423, 436-37 (6th Cir. 2012) (citations and quotations omitted). As such, this Court should direct or reverse with instructions that the trial court direct that the election must be re-done in a constitutionally permissible manner.

CONCLUSION

For the reasons stated above, the District Court's order should be reversed with instructions to grant the Plaintiff an injunction determining that the results of the 2020 general election in Georgia are defective as a result of the above described constitutional violations and requiring the Defendants to cure said deficiencies in a manner consisted with Federal and Georgia law, and not in accordance with the improper procedures established in the litigation settlement. Further, the Defendants should be enjoined from employing the constitutionally defective procedures in the re-count requested by President Trump and in the upcoming Senatorial runoff election.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the within and foregoing submission does not exceed the word count limit imposed by Rule 24 complies with the requirements of FRAP 32(g).

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been electronically filed with this Court via CM/ECF and was furnished to all counsel on the attached service list by e-mail on November 25, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Appellant

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

SERVICE LIST

Wood v. Raffensperger, et al.
Case No. 1:20-cv-04651-SDG

CHRISTOPHER M. CARR
Deputy Attorney General
BRYAN K. WEBB
Deputy Attorney General
Russell D. Willard
Senior Assistant Attorney General
Charlene S. McGowan
Assistant Attorney General
40 Capitol Square SW
Atlanta, GA 30334
cmcgowan@law.ga.gov
404-458-3658 (tel)
Attorneys for State Defendants

Adam M. Sparks
Halsey G. Knapp, Jr.
Joyce Gist Lewis
Susan P. Coppedge
Adam M. Sparks
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

Marc E. Elias*
Amanda R. Callais*
Alexi M. Velez*
Emily R. Brailey*
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, DC 20005
Telephone: (202) 654-6200
melias@perkinscoie.com
acallais@perkinscoie.com
avelez@perkinscoie.com
ebrailey@perkinscoie.com

Kevin J. Hamilton*
Amanda J. Beane*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
Telephone: (206) 359-8000
khamilton@perkinscoie.com
abeane@perkinscoie.com

Gillian C. Kuhlmann*
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, California 90067
Telephone: (310) 788-3900
gkuhlmann@perkinscoie.com

Matthew J. Mertens*
Georgia Bar No: 870320
PERKINS COIE LLP
1120 NW Couch Street, 10th Floor
Portland, Oregon 97209
Telephone: (503) 727-2000

**Pro Hac Vice Application Pending*

*Counsel for Intervenor-Defendants, Democratic Party of Georgia (“DPG”),
DSCC, and DCCC (“Political Party Committees”)*

Bryan L. Sells
Law Office of Bryan L. Sells, LLC
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com

John Powers*
jpowers@lawyerscommittee.org
Kristen Clarke
kclarke@lawyerscommittee.org
Jon M. Greenbaum*
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg*
erosenberg@lawyerscommittee.org
Julie M. Houk*
jhouk@lawyerscommittee.org
LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: (202) 662-8300

Susan Baker Manning^
Jeremy P. Blumenfeld^
Catherine North Hounfodji^
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: +1.202.739.3000
Facsimile: +1.202.739.3001
susan.manning@morganlewis.com
jeremy.blumenfeld@morganlewis.com

catherine.hounfodji@morganlewis.com
william.childress@morganlewis.com
chris.miller@morganlewis.com
benjamin.hand@morganlewis.com

** admitted pro hac vice*

^ Pro hac vice admission pending

*Counsel for Proposed Intervenors James Woodhall, Helen Butler, Melvin Ivey,
Members of the Proposed Intervenors the Georgia State Conference of the
NAACP, and the Georgia Coalition for the People's Agenda*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. Lin Wood, Jr.,

Plaintiff,

v.

Brad Raffensperger, et al.,,

Defendants.

Civil Action No. 1:20-cv-04651-SDG

Date: Nov. 19, 2020

Time: 3:00 p.m.

**PROPOSED BRIEF OF PROPOSED INTERVENORS NAACP OF
GEORGIA, ET AL. IN OPPOSITION TO PLAINTIFF'S
EMERGENCY MOTION FOR INJUNCTIVE RELIEF**

TABLE OF CONTENTS

	Pages
I. INTRODUCTION	1
II. PLAINTIFF’S EMERGENCY MOTION SHOULD BE DENIED	2
A. Plaintiff Lacks Standing	2
1. Plaintiff Brings a Generalized Grievance in This Case	2
2. Plaintiff Does Not Have Standing to Bring a Claim Under the Electors and Elections Clauses	4
B. Plaintiff Is Not Likely To Succeed On The Merits Of His Claims	5
1. No Valid Constitutional Claim Arises Out of the Valid DPG Settlement	6
2. Plaintiff’s Monitoring Claim Fails as a Matter of Law	9
3. Plaintiffs’ Requested Relief Defies Well-Established Federal and Georgia Law	12
4. The Prohibition of Certification In Whole Or In Part Is Disproportionate To Plaintiff’s Purported Injury And Would Violate the U.S. Constitution	14
5. Plaintiff’s Requested Declaratory Relief Is Disproportionate and Itself Unconstitutional	17
C. Plaintiff’s Claims With Respect to the November 2020 Election Are Barred by Laches	18
CONCLUSION	22

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>AmBrit, Inc. v. Kraft, Inc.</i> , 812 F.2d 1531 (11th Cir. 1986)	18
<i>Amtrak v. Morgan</i> , 536 U.S. 101 (2002).....	19
<i>Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n</i> , 576 U.S. 787 (2015).....	4, 5
<i>Baber v. Dunlap</i> , 349 F. Supp. 3d 68, 76 (D. Me. 2018)	13
<i>Bognet v. Secretary of the Commonwealth of Pennsylvania</i> , — F.3d —, 2020 WL 6686120 (3d Cir. Nov. 13, 2020)	3, 4, 5
<i>Burton v. State of Ga.</i> , 953 F.2d 1266 (11th Cir. 1992)	13
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	16
<i>Carlson v. Ritchie</i> , 830 N.W.2d 887 (Minn. 2013)	21
<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95 (1983).....	2
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013).....	2
<i>Coleman v. Miller</i> , 307 U.S. 433 (1939).....	5
<i>Corman v. Torres</i> , 287 F. Supp. 3d 558, 568-569 (M.D. Pa. 2018)	4

<i>Costello v. United States</i> , 365 U.S. 265 (1961).....	19
<i>Curry v. Baker</i> , 802 F.2d 1302 (11th Cir. 1986)	12
<i>Democratic Party of Georgia, Inc. v. Raffensperger</i> , No. 1:19-cv-05028-WMR.....	8
<i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 2:20-CV-966, 2020 WL 5997680 (W.D. Pa. Oct. 10, 2020).....	11
<i>Duncan v. Poythress</i> , 657 F.2d 691 (5th Cir. 1981)	13
<i>Foster v. Love</i> , 522 U.S. 67 (1997).....	5
<i>Genter v. Allstate Property and Cas. Ins. Co.</i> , No. 11-cv-0709, 2011 WL 2533075 (W.D. Pa. June 24, 2011).....	15
<i>Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections</i> , 446 F. Supp. 3d 1111, 1126-27 (N.D. Ga. 2020)	20
<i>Hendon v. N.C. State Bd. of Elections</i> , 710 F.2d 177 (4th Cir. 1983)	21
<i>Kowalski v. Tesmer</i> , 543 U.S. 125 (2004).....	2
<i>Lewis v. Cayetano</i> , 823 P.2d 738 (Haw. 1992).....	21
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	2
<i>Maddox v. Stephens</i> , 727 F.3d 1109 (11th Cir. 2013)	12
<i>Malone v. Tison</i> , 282 S.E.2d 84 (Ga. 1981)	14

<i>Martin v. Kemp</i> , 341 F. Supp. 3d 1326 (N.D. Ga. 2018).....	9
<i>McMichael v. Napa County</i> , 709 F.2d 1268 (9th Cir. 1983)	13
<i>Meade v. Williamson</i> , 745 S.E.2d 279 (Ga. 2013)	14
<i>Ne. Ohio Coalition for Homeless v. Husted</i> , 696 F.3d 580 (6th Cir. 2012)	17
<i>Plyman v. Glynn Cty.</i> , 578 S.E.2d 124 (Ga. 2003)	19
<i>Powell v. Power</i> , 436 F.2d 84 (2d Cir. 1970)	13
<i>Rainey v. Byrd</i> , 521 U.S. 811 (1997).....	5
<i>Rees v. PNC Bank, N.A.</i> , 308 F.R.D. 266 (N.D. Cal. 2015).....	15
<i>Reid v. Morris</i> , 309 Ga. 230, 845 S.E.2d 590 (2020)	7
<i>Republican Party of Pa. v. Cortes</i> , 218 F. Supp. 3d 396, 404-05 (E.D. Pa. 2016)	20
<i>Soules v. Kauaians for Nukolii Campaign Comm.</i> , 849 F.2d 1176 (11th Cir. 1988)	21
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016).....	2
<i>Stein v. Cortés</i> , 223 F. Supp. 3d 423 (E.D. Pa. 2016).....	15
<i>Sw. Voter Registration Educ. Project v. Shelley</i> , 344 F.3d 914 (9th Cir. 2003)	20

<i>Toney v. White</i> , 488 F.2d 310 (5th Cir. 1973)	20
<i>U.S. Term Limits, Inc. v. Thornton</i> , 514 U.S. 779 (1995).....	5
<i>United States v. Barfield</i> , 396 F.3d 1144 (11th Cir. 2005)	19
<i>United States v. City of Cambridge, Md.</i> , 799 F.2d 137 (4th Cir. 1986)	21
<i>Williamsburg Commons Condo. Ass’n v. State Farm Fire and Cas.</i> <i>Co.</i> , 907 F. Supp. 2d 673 (E.D. Pa. 2012).....	15

Statutes

3 U.S.C. §§ 5, 7	16
3 U.S.C. § 6.....	16
O.C.G.A. § 1-3-1 (d)(6)	7
O.C.G.A. § 21-2-384(d).....	18
O.C.G.A. § 21-2-406	18
O.C.G.A. § 21-2-11.....	16
O.C.G.A. §§ 21-2-381(b)(3) and 21-2-386(a)(1)(C)	9
O.C.G.A. § 21-2-386 (a) (1) (B)	7
O.C.G.A. § 21-2-386 (a) (1) (B)-(C)	7
O.C.G.A. § 21-2-386 (a) (1) (C)	7
O.C.G.A. § 21-2-408(d).....	18
O.C.G.A. § 21-2-495.....	17
O.C.G.A. § 21-2-495(c)(1)	10
O.C.G.A. § 21-2-495(d).....	10

O.C.G.A. § 21-2-499(b).....	10, 16
Other Authorities	
1990 Ga. Op. Atty. Gen. 60 (Ga. A.G.).....	18
The Atlanta Journal-Constitution (Mar. 7, 2020) (last visited Nov. 19, 2020)	19
Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14.....	19
Notice of Public Hearing (Mar. 5, 2020), https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf	19
Op. Atty. Gen. No. 90-31, 1990 WL 487258	18
<i>Secretary of State Reports Record Breaking Turnout</i> , https://sos.ga.gov/index.php/elections/secretary_of_state_reports_record_breaking_turnout	1
U.S. Constitution.....	5, 12, 14
U.S. Constitution Article II, Section 1, Clause 2	17

I. INTRODUCTION

Plaintiff's Emergency Motion for Injunctive Relief asks this Court to take the genuinely unprecedented step of throwing out the results of a general election in which nearly five million Georgians voted—a record level of election participation.¹ There is no basis whatsoever for the Court to award Plaintiff any relief in this case, much less to grant his request to prohibit certification of the results of the November 3, 2020 Georgia general election. *See* Mot. at 24. To do so would not just disenfranchise Proposed Intervenor James Woodall, Helen Butler, and Melvin Ivey, as well as the members of Proposed Intervenor the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda,² but this would disenfranchise *every Georgia voter*.

Plaintiff's Emergency Motion for Relief is late, legally and factually baseless, and contrary to the bedrock values of our democracy. Proposed Intervenor respectfully urge the Court to reject it.

¹ *See* Mot. at 10; *Secretary of State Reports Record Breaking Turnout*, https://sos.ga.gov/index.php/elections/secretary_of_state_reports_record_breaking_turnout.

² Proposed Intervenor filed their Motion To Intervene And For Leave To File Responsive Papers As Same Time As Defendants on November 18, 2020 as ECF No. 22. As of the time of the filing of this Brief in Opposition, the Motion to Intervene is pending before the Court.

II. PLAINTIFF’S EMERGENCY MOTION SHOULD BE DENIED

A. Plaintiff Lacks Standing

Plaintiff cannot obtain preliminary relief—and indeed cannot maintain suit—because his complaints about Defendants’ processing of absentee ballots and conduct of the recount are, at most, the kind of generalized grievance about government conduct that the Supreme Court has repeatedly found insufficient to confer Article III standing. “The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance.” *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004). To avoid dismissal on standing grounds, a plaintiff must show (1) an injury in fact, meaning “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) a causal connection between the injury and the defendant’s conduct, and (3) a likelihood that the injury will be redressed by a favorable decision from the court. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)).

1. Plaintiff Brings a Generalized Grievance in This Case

Plaintiff fails to allege that he will suffer an “actual or imminent” injury, as opposed to one that is merely “conjectural” or “hypothetical.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 402, 409 (2013); *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 107 n.8 (1983).

Plaintiff cannot demonstrate that he will suffer any injury absent the requested relief. Plaintiff's alleged injury rests solely on the unsupported assertion that alleged state law violations render (1) Georgia's election results "improper and suspect"; (2) "resulting in Georgia's electoral college votes going to Joseph R. Biden"; which is allegedly (3) "contrary to the votes of the majority of Georgia qualified electors." Mot. at 22. But Plaintiff has not provided any evidence, or even alleged, that his vote was not tabulated appropriately, that another qualified electors' votes were not tabulated appropriately, or that an unqualified elector's vote was incorrectly tabulated. Plaintiff alleges generalized injuries on behalf of the Trump Campaign, which he does not have the right to assert. Plaintiff's disappointment in the election results is not a cognizable injury, much less one that a court may remedy.

For the extraordinary relief of enjoining the certification of statewide results – the challenged votes “would have to be sufficient in number to change the outcome of the election to [Plaintiff]’s detriment.” *Bognet v. Secretary of the Commonwealth of Pennsylvania*, — F.3d —, 2020 WL 6686120, at *8 (3d Cir. Nov. 13, 2020) citing *Sibley v. Alexander*, 916 F. Supp. 2d 58, 62 (D.D.C. 2013) (“[E]ven if the Court granted the requested relief, [plaintiff] would still fail to satisfy the redressability element because enjoining defendants from casting the . . . votes would not change the outcome of the election.”). Plaintiff, of course, has not even attempted to make this showing, let alone proven it successfully.

2. Plaintiff Does Not Have Standing to Bring a Claim Under the Electors and Elections Clauses

As a private citizen, Plaintiff has no standing to assert claims under the Electors and Elections Clauses that Georgia officials have purportedly failed to follow state election law. *See* Compl. ¶ 8 (Plaintiff is a registered elector who “brings this suit in his capacity as a private citizen”). In *Lance v. Coffman*, the Supreme Court squarely rejected the standing of four private citizens to bring an Elections Clause claim. 549 U.S. 437, 442 (2007). The Court held: “The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.” *Id.* The same is true here. *See also Bognet v. Sec’y of Commonwealth*, No. 20-3214, 2020 WL 6686120 at *6 (3d Cir. Nov. 13, 2020) (holding that “private plaintiffs lack standing to sue for alleged injuries attributable to a state government’s violations of the Elections Clause”); *Corman v. Torres*, 287 F. Supp. 3d 558, 568-569 (M.D. Pa. 2018) (three-judge panel) (holding that “two of 253 members of the Pennsylvania General Assembly” lacked standing to sue under the Elections Clause”).³

³ The only cases in which the Supreme Court has found standing to bring an Elections Clause or Electors Clause claim are those brought by or on behalf of a state, a state legislature or a working majority of a state legislature. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 799-804 (2015) (holding that plaintiff Arizona Legislature had standing because a voter initiative to

Moreover, as the Third Circuit recently held, “[b]ecause the Elections Clause and the Electors Clause have considerable similarity’ ... the same logic applies to [Plaintiff’s] alleged injury stemming from the claimed violation of the Electors Clause.” *Bognet*, 2020 WL 6686120 at *7; *see also Foster v. Love*, 522 U.S. 67, 69 (1997) (characterizing Electors Clause as Elections Clause’s “counterpart for the Executive Branch”); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-805 (1995) (noting that state’s “duty” under Elections Clause “parallels the duty” described by Electors Clause).

Because Plaintiff lacks standing, his Emergency Motion must be denied.

B. Plaintiff Is Not Likely To Succeed On The Merits Of His Claims

Plaintiff’s lack of standing independently justifies denial of the Emergency Motion. It also should be rejected because Plaintiff has not shown that any of the alleged conduct by Defendants rises to the level of a violation of the U.S. Constitution.

establish an independent redistricting commission eliminated its ability to implement a redistricting plan, thus causing a “concrete and particularized” institutional injury). In *Ariz. State Legislature*, the Court distinguished *Rainey v. Byrd*, 521 U.S. 811 (1997) (six individual members of Congress lacked standing to challenge the line-item veto), from *Coleman v. Miller*, 307 U.S. 433 (1939) (working majority of Kansas State Legislature had standing to challenge lieutenant-governor’s tie-breaking vote in favor of a federal constitutional amendment).

1. No Valid Constitutional Claim Arises Out of the Valid DPG Settlement

Plaintiff bases his request for emergency injunctive relief under Counts I and II on purported violations of Georgia election law that never occurred. The Settlement Agreement did not re-write any election laws on the handling of absentee ballots. Plaintiff readily concedes the Georgia Legislature has authorized the State Election Board to issue election rules and regulations that are “conducive to the fair, legal, and orderly conduct of . . . elections” and “consistent with law.” Mot. at 5 (quoting O.C.G.A. § 21-2-31(2)). This is exactly what the Settlement Agreement achieved. Accordingly, the Court should reject Plaintiff’s belated arguments that an agreement finalized over eight months before the election upended Georgia law.

Under the Settlement Agreement (Pl’s Ex. A), Secretary Raffensperger agreed to issue an Official Election Bulletin to county officials on the procedures for reviewing signatures on absentee ballot envelopes. If a registrar or clerk were to determine a signature did not match the elector’s signature on file, the Election Bulletin directed that “two other registrars, deputy registrars, or absentee ballot clerks” evaluate the signature. Pl’s Ex. A ¶ 3. If a majority of the reviewers determined the signature did not match the elector’s signature on file, the absentee ballot was to be rejected. *Id.*

This straightforward process is consistent with the signature verification procedures provided under Georgia law. In pertinent part, under O.C.G.A. § 21-2-386 (a) (1) (B), upon receiving an absentee ballot, “The register or clerk shall compare the signature or mark on the oath with the signature or mark” on file, and “shall if the information and signature appear to be valid . . . , so certify by signing or initialing his or her name below the voter's oath.” If, however, “the signature does not appear to be valid . . . , the registrar or clerk shall write across the face of the envelope ‘Rejected,’ giving the reason therefor.” O.C.G.A. § 21-2-386 (a) (1) (C).

Relying on these statutes, Plaintiff argues the Election Bulletin stripped authority from county election officials to determine “individually” the validity of absentee ballot signatures. Under basic rules of statutory construction and a plain reading of the statute, Plaintiff argument fails. That O.C.G.A. § 21-2-386 (a) (1) (B)-(C) refers to “clerk and “register” in the singular does not mean only one “clerk” or one “register” may be involved in evaluating the validity of a signature on an absentee ballot envelope. In interpreting a statute, “the singular or plural number each includes the other, unless the other is expressly excluded.” O.C.G.A. § 1-3-1 (d)(6); *see Reid v. Morris*, 309 Ga. 230, 236 n.3, 845 S.E.2d 590, 596 (2020) (applying O.C.G.A. § 1-3-1 (d)(6) to determine statutory use of the term “defendant” does not mean only one defendant may be liable for punitive damages). In drafting O.C.G.A. § 21-2-386 (a) (1) (B)-(C), the Legislature did not preclude registers,

deputy registers, and clerks from working together to evaluate questionable signatures. Nothing in the Settlement Agreement is contrary to Georgia law, and Defendants guidance on the handling of absentee ballots did what Plaintiff agrees is proper under Georgia law: provided a set of rules “conducive to the fair, legal, and orderly conduct of . . . elections” and “consistent with law.” Pl’s Mot. 5.

Plaintiff also asserts that Defendants violated Georgia law by allowing a single political party to “write rules for reviewing signatures.” Pl’s Mot. 9, 18. Plaintiff’s own exhibits refute this hyperbole. As part of the Settlement Agreement, the State Defendants agreed to “consider” providing county registers and absentee ballot clerks with training materials on evaluating voter signatures prepared by a handwriting expert retained by the plaintiffs in *Democratic Party of Georgia, Inc. v. Raffensperger*, No. 1:19-cv-05028-WMR. See Pl’s Ex. A, ¶ 4. The Settlement Agreement did not identify the materials nor did it impose any requirement on distributing those materials. Further, Plaintiff does not allege what, if any, materials were distributed nor does he explain how they would have constituted “rules for reviewing signatures.” Thus, Plaintiff has not established the Settlement Agreement violated Georgia election law.

Finally, the declaration filed this morning by Plaintiff’s counsel, see Dkt. 30-1, fails to move the needle. First, properly analyzing the Georgia Absentee Voter File and reaching conclusions based on it requires social science expertise beyond

that attested to by Plaintiff's counsel. Second, and relatedly, the declaration fails to acknowledge that a comparison of 2016 and 2018 absentee ballot rejection data related to signature mismatch is inapposite because of the notice-and-cure process was not in effect in Georgia at all until an order issued shortly before the November 2018 general election in *Martin v. Kemp*, 341 F. Supp. 3d 1326 (N.D. Ga. 2018), and was formally adopted by the Georgia Legislature via the enactment of H.B. 316 in 2019, which amended O.C.G.A. §§ 21-2-381(b)(3) and 21-2-386(a)(1)(C) to provide for notice and cure. Expanded numbers of voters utilizing the notice-and-cure process explains why the number of signature mismatch-related rejections might decrease, if that is in fact the case.

2. Plaintiff's Monitoring Claim Fails as a Matter of Law

In addition, Plaintiff cannot succeed on his due process claim. This claim is based on Plaintiff's assertion that Republican monitors "have been denied the opportunity to be present throughout the entire Hand Recount," and when present were unable to observe the recount "in any meaningful way." Mot. at 21. Plaintiff does not claim that *he* made any effort to monitor the recount, much less than he was denied the opportunity to do so. Rather, the only proffered bases for this claim are the assertions that one Trump Campaign monitor arrived at a counting location around the time indicated by the Republican Party only to find that the recount there had been finished (Coleman Decl. ¶¶ 3-5, ECF 6-2), and that another monitor *did*

observe the recount that same day at that same location and *was* able to object to certain ostensible irregularities before being asked to leave *because of the large number of other Republican monitors* (Dietrich Decl. ¶¶ 6-13, ECF 6-3).

a. Plaintiff sat on his rights as afforded by Georgia law

Plaintiff should have availed himself and two other electors of the legislatively approved remedies afforded to him under Georgia law if he thought there was a mistake or error not apparent on the face of the returns. Plaintiff waived the relief requested in this case by failing to do so. In particular, Plaintiff ignores that O.C.G.A. § 21-2-495(d) allows a losing candidate for a federal office or three electors to request a recount or recanvass of votes any time prior to the certification of the results when it appears that a discrepancy or error, although not apparent on the face of the returns, has been made. Moreover, under O.C.G.A. § 21-2-495(c)(1), a losing federal candidate has the right to request that the Secretary of State order a mandatory statewide recount when the margin between the candidates is not greater than 0.5 percentage points within two business days of the certification of the election results. The Governor's certification of the presidential electors' results is on November 21, 2020. Finally, any alleged defects in the failure to provide adequate public access to the recount alleged by the plaintiff in his complaint and motion can be readily remedied by the Trump Campaign asking for a recount within two business days of the certification of the results by the Governor. *See* O.C.G.A. § 21-

2-499(b).

b. Plaintiff does not allege a due process claim

Even if Plaintiff could assert the rights of third-parties—as, of course, he cannot—those facts do not remotely add up to a constitutional violation. Put simply, neither Plaintiff nor anyone else has a *constitutional right* to be an election monitor. *See, e.g., Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-CV-966, 2020 WL 5997680, at *67 (W.D. Pa. Oct. 10, 2020) (“At the outset, ‘there is no individual constitutional right to serve as a poll watcher[.]’”) (quoting *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020)).⁴

Plaintiff does not address the requirements for a due process claim, and instead relies on the notion that Defendants’ alleged failure to conduct the Hand Recount “a manner consistent with the Georgia Election Code” constitutes a free-floating due process violation. Mot. at 20-21; *cf.* Compl. ¶¶ 97-106 (Due Process claim alleging that the Trump Campaign was denied the ability to monitor the Hand Recount). But Plaintiff cannot ignore Supreme Court and Eleventh Circuit law.

Plaintiff fails to acknowledge, much less attempt to satisfy, the requirements of a substantive due process claim. “[P]laintiffs face a high bar when attempting to

⁴ Although Plaintiff also indicates that other non-parties harbor suspicions about irregularities in the recount, this is *not* the monitoring-related Due Process violation alleged in the Complaint (*see* Compl. ¶¶ 97-106) and Plaintiff does not attempt to make a constitutional claim based on them.

establish a substantive due process violation.” *Maddox v. Stephens*, 727 F.3d 1109, 1119 (11th Cir. 2013). A “garden variety election dispute[]” such as an “ordinary dispute over the counting and marking of ballots” falls far short of a substantive due process violation. *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986) (internal quotation omitted).

In any case, nothing in Plaintiff’s Emergency Motion shows, or even suggests, that Plaintiff, Ms. Coleman, or Ms. Dietrich were denied the opportunity to act as monitors. Plaintiff apparently never tried, Ms. Coleman arrived too late, and Ms. Dietrich was in fact able to observe the recount. And the experience of two individuals at a single place on a single day says nothing at all about the broader conduct of the election, the results of which Plaintiff asks this Court to nullify.

3. Plaintiffs’ Requested Relief Defies Well-Established Federal and Georgia Law

Here, Plaintiff’s requested relief is disproportionate to his purported injury and would violate the U.S. Constitution. Plaintiff fails to allege fraud or electoral irregularities in his Motion for a Temporary Restraining Order, and as such, it is difficult to even consider the Plaintiff’s proposed remedies. However, even if all of Plaintiff’s allegations survived, none of the remedies sought by the Plaintiff in the Motion could be granted under federal or Georgia law. No court has ever granted relief of the nature and scope requested by the Plaintiff under any set of facts, let

alone those averred in the Motion. This is a classic case in which “the cure [is] worse than the alleged disease, at least insofar as the professed concern is with the right of voters to cast effective ballots in a fair election.” *Baber v. Dunlap*, 349 F. Supp. 3d 68, 76 (D. Me. 2018).

Even if Plaintiff’s allegations could support a finding of some sort of errors in election administration, tossing out millions of votes in the presidential election is at odds with established of law. Courts have refused to “believe that the framers of our Constitution were so hypersensitive to ordinary human frailties as to lay down an unrealistic requirement that elections be free of any error.” *Powell v. Power*, 436 F.2d 84, 88 (2d Cir. 1970). A finding that “the election process itself reaches the point of patent and fundamental unfairness ... must go well beyond the ordinary dispute over the counting and marking of ballots.” *Duncan v. Poythress*, 657 F.2d 691, 703 (5th Cir. 1981) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)). The Eleventh Circuit has observed that “[i]n most cases, irregularities in state elections are properly addressed at the state level, whether through state courts or review by state election officials.” *Burton v. State of Ga.*, 953 F.2d 1266, 1268 (11th Cir. 1992). Only the most egregious election misconduct could conceivably justify the sort of mass disenfranchisement Plaintiff seeks. See *McMichael v. Napa County*, 709 F.2d 1268, 1273–94 (9th Cir. 1983) (Kennedy, J., concurring) (invalidation of election results “has been reserved for instances of willful or severe violations of

established constitutional norms”). Even if proven likely true—which they have not been—none of Plaintiffs’ allegations meet that standard.

The Georgia Supreme Court has similarly stated that “[i]t is not sufficient to show irregularities which simply erode confidence in the outcome of the election. *Elections cannot be overturned on the basis of mere speculation.*” *Meade v. Williamson*, 745 S.E.2d 279, 285 (Ga. 2013) (emphasis added) (quoting *Middleton v. Smith*, 539 S.E.2d 163 (Ga. 2000)). In this vein, that Court has held in a case where Atlanta voters registered to vote at locations that were not authorized by state law and voted in the 1981 Atlanta mayoral election, “the remedy of disenfranchisement of voters registered in violation of the statute is so severe as to be unpalatable where the good faith of the registrars is not disputed.” *Malone v. Tison*, 282 S.E.2d 84, 89 (Ga. 1981).

As a matter of law, the Motion—which does not demonstrate any concrete or specific instances of fraud, systemic or otherwise—cannot support the extreme relief requested. And far from curing any constitutional violation, the Plaintiff’s requested injunction would *create* grave constitutional violations by invalidating the legal and valid votes of millions of Georgia citizens, or by creating new election procedures.

4. The Prohibition of Certification In Whole Or In Part Is Disproportionate To Plaintiff’s Purported Injury And Would Violate the U.S. Constitution

Plaintiff’s request that the Court prohibit certification of the election results is

a disproportionate and unconstitutional response to the claims in the Motion.

Plaintiff asks the Court to enjoin certification of the 2020 election results on a statewide basis in Georgia, or, in the alternative, to enjoin certification of results that include the tabulation of defective absentee ballots. Mot. at 24. A statewide injunction is improper. It is only in the rarest of circumstances that federal courts have taken such drastic measures to prevent the certification of election results, and only where the evidence establishes that there was a fundamental failure of the election process. *See Stein v. Cortés*, 223 F. Supp. 3d 423 (E.D. Pa. 2016) (collecting cases). The Motion does not show that Plaintiff is likely to succeed on his claims of systemic or election worker error. Because Plaintiff's attempt to circumvent the will of the Georgia electorate "has no essential or important relationship to the claim for relief," his requested relief must be denied. *Rees v. PNC Bank, N.A.*, 308 F.R.D. 266, 271 (N.D. Cal. 2015) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993)); *Genter v. Allstate Property and Cas. Ins. Co.*, No. 11-cv-0709, 2011 WL 2533075, at *5 (W.D. Pa. June 24, 2011).⁵

Moreover, a judicial order nullifying Georgia's election results would be grossly inequitable because the Presidential election results must be determined by

⁵ *See also Williamsburg Commons Condo. Ass'n v. State Farm Fire and Cas. Co.*, 907 F. Supp. 2d 673, 680 (E.D. Pa. 2012) (granting motion to dismiss requested relief).

December 8, 2020, to benefit from the safe-harbor provision of the federal election code and in any event by December 14, 2020, to ensure that Georgia’s electoral votes will be counted. 3 U.S.C. §§ 5, 7; O.C.G.A. § 21-2-11 (electors must meet at noon the day directed by Congress); *see Bush v. Gore*, 531 U.S. 98, 110–111 (2000). To meet this task, Georgia law requires the Secretary of State to compute the returns of the election received by the various election superintendents and to provide such results to the Governor by 5:00 PM on November 20—*two days from now*. O.C.G.A. § 21-2-499(b). After that, consistent with federal law, the Governor must the slate of electors by issuing a certificate identifying such electors by 5:00 PM on November 21. *Id.*; 3 U.S.C. § 6. This certification process constitutes an outside limit on the ability of this Court to issue relief. *Bush*, 531 U.S. at 110-111. To prevent state officials from meeting that deadline could throw the results of this election into chaos, and could gravely undermine public confidence in the conduct of the presidential election and in the rightful winner.

The requested relief would also violate the constitutional rights of Georgia voters. Even if Plaintiff’s allegations were proven (they are not) and there were isolated and sporadic incidents in which the election laws were violated, not by voters but by election workers or other officials, this occurrence could not possibly justify wide-scale disenfranchisement of Georgians. Such a remedy—unlike the election irregularities Plaintiff alleges—would place an undue burden on the right to

vote. *See Ne. Ohio Coalition for Homeless v. Husted*, 696 F.3d 580, 595, 597-98 (6th Cir. 2012) (holding rejecting ballots invalidly cast due to poll worker error likely violates due process). Plaintiff's unconstitutional prayer for relief must be rejected.

5. Plaintiff's Requested Declaratory Relief Is Disproportionate and Itself Unconstitutional.

Plaintiff's request for declaratory relief requiring a third counting of nearly five million ballots and one-sided Republican only monitoring in both that process and in the high-stakes January 5, 2021 run-off election is disproportionate (see Mot. at 24), implausible, and wholly unsupported by either Georgia law or federal law.

The Plaintiff offers no legal or factual support to justify any of the forgoing requests for declaratory relief. Georgia law already provides the mechanisms for a recount of votes cast in a presidential election. O.C.G.A. § 21-2-495. The Plaintiff asks that the Court declare an additional "recount" of the already conducted recount. Georgia law does not provide for any additional subsequent recounts following the initial requested recount of general election results—and Plaintiff's Equal Protection and Due Process claims are premised on the notion that going beyond the express provision of the statute would violate the Georgia General Assembly's constitutional right to control the manner of the election under Article II, Section 1, Clause 2 of the U.S. Constitution. Plaintiff cannot have it both ways.

Moreover, Plaintiff is essentially demanding that the Court grant the

Republican Party an opportunity to conduct a wholly partisan, single-party recount that has absolutely no basis in the law, is unprecedented, and would wrongfully undermine public confidence in the legitimacy of the election results. This too is contrary to Georgia law. For example, the Plaintiff requests that the Court allow the Republican Party to have monitors observe signature match analysis in the January 5, 2021 runoff election in Georgia. Georgia law does not permit this. Georgia law provides that poll watchers are permitted “for the purpose of observing the conduct of the election and the counting and recording of votes.” O.C.G.A. § 21-2-408(d). However, a 1990 opinion by the Attorney General of Georgia, in connection with O.C.G.A. § 21-2-406 and O.C.G.A. § 21-2-384(d) stated that Georgia law stated that no inspection of returned absentee ballots is allowed under Georgia law. 1990 Ga. Op. Atty. Gen. 60 (Ga. A.G.), Ga. Op. Atty. Gen. No. 90-31, 1990 WL 487258. Even if Plaintiff’s claims were supported, this requested remedy is incongruous to anything allowed or provided for by Georgia or federal law.

C. Plaintiff’s Claims With Respect to the November 2020 Election Are Barred by Laches

The doctrine of laches applies forcefully in the elections context to avoid gamesmanship and precisely the kind of mass-disenfranchisement that Plaintiff seeks. Plaintiff has plainly (1) “delay[ed] in asserting a right or a claim,” (2) without excuse, (3) that delay would result in undue prejudice. *AmBrit, Inc. v. Kraft, Inc.*,

812 F.2d 1531, 1545 (11th Cir. 1986) (setting out the laches factors); *see also Amtrak v. Morgan*, 536 U.S. 101, 121-22 (2002) (laches “bars a plaintiff from maintaining a suit if he unreasonably delays in filing a suit and as a result harms the defendant”); *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005); *Costello v. United States*, 365 U.S. 265, 282 (1961); *Plyman v. Glynn Cty.*, 578 S.E.2d 124, 126 (Ga. 2003) (Georgia law).

The settlement agreement to which Plaintiff objects was entered into and made public in March 2020, eight full months before the November 3, 2020 general election. *See* Mot. at 6 n.2 (citing March 6, 2020 public filing of the settlement agreement). It was the subject of extensive publicity,⁶ and the relevant regulations contemplated by the settlement agreement were adopted after a public notice and comment period.⁷ And yet Plaintiff did nothing. Instead of bringing a timely challenge, Plaintiff waited until after the procedures he objects to had been used to

⁶ *See, e.g.*, Mark Niesse, Lawsuit settled, giving Georgia voters time to fix rejected ballots, *The Atlanta Journal-Constitution* (Mar. 7, 2020), <https://www.ajc.com/news/state--regional-govt--politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/> (last visited Nov. 19, 2020).

⁷ Georgia State Elections Board, Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing (Mar. 5, 2020), <https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf> (scheduling public hearing for April 15, 2020).

process the ballots of more than a million Georgians, and the outcome of the election—which he disliked—was made known.

It is a bedrock rule of election law that challenges to election procedures to be raised *before* the election is conducted. *See Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973) (“[T]he law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication.”). This common-sense rule protects voters and the integrity of our system of government: pre-election challenges allow problems to be fixed *before* the election is held, without disrupting votes *after* they have been cast. *See, e.g., Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (“Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented.”).

Since overturning the results of an election is an extraordinary intervention by the judiciary into democratic processes, a challenge to election procedures should be brought *when there is still time to correct those procedures*. *See Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections*, 446 F. Supp. 3d 1111, 1126-27 (N.D. Ga. 2020) (“Plaintiffs were not faced with a binary choice and should have sought court intervention sooner.”); *see also Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 404-05 (E.D. Pa. 2016) (declining to enjoin aspects of Pennsylvania’s poll-watcher statute in case filed “eighteen days before the election,”

observing that “Plaintiffs unreasonably delayed filing their Complaint and Motion, something which weighs decidedly against granting the extraordinary relief they seek”).

Were the law otherwise, parties could “lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Hendon v. N.C. State Bd. of Elections*, 710 F.2d 177, 182 (4th Cir. 1983) (quoting *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973)); *see also*, e.g., *Carlson v. Ritchie*, 830 N.W.2d 887, 892 (Minn. 2013) (“[P]etitioners cannot wait until after elections are over to raise challenges that could have been addressed before the election.”); *Lewis v. Cayetano*, 823 P.2d 738, 741 (Haw. 1992) (laches barred post-election challenge to form of ballot, where voters had at least constructive notice of the form for a month prior to the election). “Courts have been wary lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs.” *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (11th Cir. 1988); *see also*, e.g., *United States v. City of Cambridge, Md.*, 799 F.2d 137, 141 (4th Cir. 1986) (“[A] candidate or other election participants should not be allowed to ambush an adversary or subvert the election process by intentionally delaying a request for remedial action to see first whether they will be successful at the polls.”). That is precisely what Plaintiff has done here. Plaintiffs’

displeasure with the election *results* is no excuse for his delay in bringing his objection to the *procedures* by which that election was conducted.

By waiting until after the end of vote counting, Plaintiff now tries to cast a cloud over ballots cast in good faith by millions of Georgia voters, including those of Proposed Intervenor President Woodall, Ms. Butler, and Rev. Ivey, who took all necessary steps to ensure that their voices count in this election. Even assuming *arguendo* that there were problems with the conduct of the election and that any such conduct gave rise to constitutional concerns, if Plaintiff had timely asserted these claims, Defendants would have had the opportunity to address the concern. But having sat on his objections for eight months, laches now bars Plaintiff's claims.

CONCLUSION

For all of these reasons, Proposed Intervenor respectfully urge the Court to deny Plaintiff's Emergency Motion for Injunctive Relief.

Dated: November 19, 2020

Respectfully submitted,

Susan Baker Manning^
Jeremy P. Blumenfeld^
Catherine North Hounfodji^
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: +1.202.739.3000
Facsimile: +1.202.739.3001
susan.manning@morganlewis.com
jeremy.blumenfeld@morganlewis.com
catherine.hounfodji@morganlewis.com
william.childress@morganlewis.com
chris.miller@morganlewis.com
benjamin.hand@morganlewis.com

By: /s/ Bryan L. Sells

Bryan L. Sells (Bar No. 635562)
Law Office of Bryan L. Sells, LLC
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com

/s/ John Powers

Kristen Clarke^
kclarke@lawyerscommittee.org
Jon M. Greenbaum*
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg*
erosenberg@lawyerscommittee.org
Julie M. Houk*
jhouk@lawyerscommittee.org
John Powers*
jpowers@lawyerscommittee.org
**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW**
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: (202) 662-8300

* admitted *pro hac vice*

^ *Pro hac vice* motion forthcoming

Attorneys for Proposed Defendant-
Intervenors Georgia State
Conference of the NAACP, et al.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: November 19, 2020.

/s/ John Powers

John Powers

No. 20-14418

In the
United States Court of Appeals
for the Eleventh Circuit

L. LIN WOOD, JR.,
Appellant,

v.

BRAD RAFFENSPERGER, *et al.*,
Appellees.

On Appeal from the United States District Court for the
Northern District of Georgia, Atlanta Division.
No. 1:20-cv-04651-SDG — Steven D. Grimberg, *Judge*

BRIEF OF APPELLEES

Christopher M. Carr
Attorney General of Georgia
Bryan K. Webb,
Deputy Attorney General
Russell D. Willard
Senior Assistant Attorney
General
Charlene S. McGowan
Assistant Attorney General
Office of the Georgia
Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3658
cmcgowan@law.ga.gov
Counsel for Appellees

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

I hereby certify that the following persons and entities may
have an interest in the outcome of this case:

Beane, Amanda J., Counsel for Intervenor-Defendants Democratic

Party of Georgia, *et al.*,

Blumenfeld, Jeremy P., Counsel for Proposed Intervenor-

Defendants Georgia Coalition for the Peoples' Agenda, *et al.*,

Brailey, Emily R., Counsel for Intervenor-Defendants Democratic

Party of Georgia, *et al.*,

Butler, Helen, Proposed Intervenor-Defendant

Callais, Amanda R., Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Carr, Christopher M., Attorney General, Counsel for

Defendants/Appellees

Coppedge, Susan P., Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Democratic Party of Georgia, Inc., Intervenor-Defendant,

DCCC, Intervenor-Defendant,

DSCC, Intervenor-Defendant,

Elias, Marc E., Counsel for Intervenor-Defendants Democratic

Party of Georgia, *et al.*,

Georgia Coalition for the Peoples' Agenda, Inc., Proposed

Intervenor-Defendants,

Georgia State Conference of the NAACP, Proposed Intervenor-

Defendants

Greenbaum, Jon M., Counsel for Proposed Intervenor-Defendants

Georgia Coalition for the Peoples' Agenda, *et al.*,

Grimberg, Hon. Steven D., U.S. District Court Judge

Hamilton, Kevin J., Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Houk, Julie M., Counsel for Proposed Intervenor-Defendants

Georgia Coalition for the Peoples' Agenda, *et al.*,

Ivey, Melvin, Proposed Intervenor-Defendant,

Knapp, Jr., Halsey G., Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Krevolin and Horst, LLC, Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Kuhlmann, Gillian C., Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Law Office of Bryan L. Sells, Counsel for Proposed Intervenor-

Defendants Georgia Coalition for the Peoples' Agenda, *et al.*,

Lawyers Committee for Civil Rights Under Law, Counsel for

Proposed Intervenor-Defendants Georgia Coalition for the

Peoples' Agenda, *et al.*,

Le, Ahn, Matthew, State Election Board member, Defendant-

Appellee

Lewis, Joyce Gist, Counsel for Intervenor-Defendants Democratic

Party of Georgia, *et al.*

Manning, Susan Baker, Counsel for Proposed Intervenor-

Defendants Georgia Coalition for the Peoples' Agenda, *et al.*,

Mashburn, Matthew, State Election Board member, Defendant-

Appellee

McGowan, Charlene S., Assistant Attorney General, Counsel for

Defendants/Appellees

Mertens, Matthew J., Counsel for Intervenor-Defendants

Democratic Party of Georgia, *et al.*,

Morgan, Lewis & Bockius LLP, Counsel for Proposed Intervenor-
Defendants Georgia Coalition for the Peoples' Agenda, *et al.*,
Perkins Coie LLP, Counsel for Intervenor-Defendants Democratic
Party of Georgia, *et al.*,
Powers, John M., Counsel for Proposed Intervenor-Defendants
Georgia Coalition for the Peoples' Agenda, *et al.*,
Raffensperger, Brad, Secretary of State, Defendant/Appellee
Rosenberg, Ezra D., Counsel for Proposed Intervenor-Defendants
Georgia Coalition for the Peoples' Agenda, *et al.*,
Sells, Bryan L., Counsel for Proposed Intervenor Woodhall, *et al.*,
Smith, III, Ray, Counsel for Appellant
Sparks, Adam M., Counsel for Intervenor-Defendants Democratic
Party of Georgia, *et al.*,
Sullivan, Rebecca N., Vice Chair of the State Election Board,
Defendant/Appellee
Velez, Alexi M., Counsel for Intervenor-Defendants Democratic
Party of Georgia, *et al.*,
Webb, Bryan K., Deputy Attorney General, Counsel for
Defendants/Appellees

Willard, Russell D., Senior Assistant Attorney General, Counsel
for Defendants/Appellees

Wood, Jr., L. Lin, Plaintiff/Appellant

Woodall, James, Proposed Intervenor-Defendant

Worley, David J., State Election Board member,
Defendant/Appellee

The undersigned counsel certifies that no publicly traded
company or corporation has an interest in the outcome of this case
or appeal.

/s/ Charlene S. McGowan
CHARLENE S. MCGOWAN 697316
Assistant Attorney General

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary. As shown in the Appellees' response to the Court's Jurisdictional Questions, this Court lacks jurisdiction over the district court's denial of Appellant's motion for a temporary restraining order, and the case has been mooted by the certification of the slate of presidential electors by the Secretary of State and Governor. Even if this Court determines that it has jurisdiction over the appeal, the district court's order denying Appellant's motion for a temporary restraining order is grounded in well-established precedent of this Court and the Supreme Court. Appellant raises no novel or unsettled issues of law. The facts and legal arguments are adequately presented in the briefs, and the decisional process would not be significantly aided by oral argument.

TABLE OF CONTENTS

	Page
Statement Regarding Oral Argument.....	i
Statement of Issues	1
Introduction	2
Statement of the Case.....	4
A. Relevant Background.....	5
1. Georgia’s Absentee Ballot Procedures.....	5
2. Prior Litigation Over the Notice and Cure Provisions for Absentee Ballots.....	6
3. The Post-Election Audit	8
B. Proceedings Below.....	9
C. Standard of Review	10
Summary of Argument	11
Argument	13
I. The district court lacks subject-matter jurisdiction because Wood cannot establish Article III standing.....	13
A. Wood lacks standing to bring his equal protection claim.....	15
B. Wood lacks standing to bring his claim under the Elections Clause.	17
C. Wood lacks standing to bring his due process claim. ...	18
II. Wood’s claims are moot.	20
III. Wood’s claims are barred by laches.	20

TABLE OF CONTENTS
(continued)

	Page
IV. Wood fails to satisfy the requirements for a TRO.	22
A. Wood is not substantially likely to succeed on the merits.	23
1. Wood’s equal protection claim fails.	23
2. Wood’s claim under the Elections Clause fails.	25
3. Wood’s due process claim fails.	26
B. Wood faces no irreparable harm.	28
C. The balance of equities weighs against a TRO.	29
Conclusion.	30

TABLE OF AUTHORITIES

Cases

<i>Aaron v. Private Clinic Mgmt. LLC v. Berry</i> , 912 F.3d 1330 (11th Cir. 2019).....	19
<i>Allen v. Wright</i> , 468 U.S. 737 (1984)	17
<i>Baker v. Carr</i> , 369 U.S. 369 U.S. 186 (1962).....	25
<i>Bognet v. Secretary Commonwealth of Pennsylvania</i> , No. 20-3214, 2020 U.S. App. LEXIS 35639 (3d Cir. Nov. 13, 2020).	17, 18, 19, 25
<i>Brooks v. Ga. State Bd. of Elections</i> , 59 F.3d 1114 (11th Cir. 1995).....	20
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	24
<i>Christian Coal. of Fla., Inc. v. United States</i> , 662 F.3d 1182 (11th Cir. 2011)	20
<i>Crawford v. Marion Cty. Election Bd.</i> , 553 U.S. 181 (2008).....	23
<i>Curry v. Baker</i> , 802 F.2d 1302 (11th Cir. 1986).....	28
<i>Democratic Exec. Comm. of Fla. v. Lee</i> , 915 F.3d 1312 (11th Cir. 2019).....	23
<i>Dillard v. Chilton Cty. Comm’n</i> , 495 F.3d 1324 (11th Cir. 2007)...	18
<i>Donald J. Trump for President, Inc. v. Boockvar</i> , No. 2:20-cv-966, 2020 WL 5997680 (W.D. Pa. Oct. 10, 2020)	27

<i>Donald J. Trump for President, Inc. v. Sec’y Pennsylvania</i> , No. 20-3371, 2020 U.S. App. LEXIS 37346 (3d Cir. Nov. 27, 2020).	3, 4, 30
<i>Duke v. Cleland</i> , 954 F.2d 1526 (11th Cir. 1992)	22
<i>Duncan v. Poythress</i> , 657 F.2d 691 (5th Cir. 1981)	28
<i>Fulani v. Hogsett</i> , 917 F.2d 1028 (7th Cir. 1990)	21
<i>Gill v. Whitford</i> , 138 S. Ct. 1916 (2018)	14, 16
<i>Hendon v. North Carolina State Bd. of Elections</i> , 710 F.2d 177 (4th Cir. 1983)	22
<i>Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.</i> , 641 F.3d 1259 (11th Cir. 2011)	19
<i>Jacobson v. Fla. Sec’y of State</i> , 974 F.3d 1236 (11th Cir. 2020)	passim
<i>Lance v. Coffman</i> , 549 U.S. 437 (2007)	14, 17
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	13
<i>New Ga. Project</i> , 976 F.3d 1278 (11th Cir. 2020)	29
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006)	4, 29
<i>Republican Nat’l Comm. v. Democratic Nat’l Comm.</i> , 140 S.Ct. 1205 (April 6, 2020) (per curiam)	29
<i>Republican Party of Penn. v. Cortes</i> , 218 F. Supp. 3d 396 (E.D. Pa. 2016).	27
<i>Soules v. Kauaians for Nukolii Campaign Committee</i> , 849 F.2d 1176 (9th Cir. 1988).	21, 22

<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016)	13, 14, 15
<i>Toney v. White</i> , 488 F.2d 310 (5th Cir. 1973).....	22
<i>Town of Chester, N.Y. v. Laroe Estates, Inc.</i> , 137 S. Ct. 1645 (2017)	14
<i>Troiano v. Supervisor of Elections in Palm Beach Cty., Fla.</i> , 382 F.3d 1276 (11th Cir. 2004)	20
<i>United States v. Barfield</i> , 396 F.3d 1144 (11th Cir. 2005).....	21
<i>Williams v. Rhodes</i> , 393 U.S. 23 (1968)	21
<i>Winter v. Natural Res. Def. Council</i> , 555 U.S. 7 (2008)	22, 23

Statutes

O.C.G.A. § 21-2-31(2)	7, 26
O.C.G.A. § 21-2-384	5
O.C.G.A. § 21-2-386	6, 7, 8, 26
O.C.G.A. § 21-2-498	8, 9
O.C.G.A. § 21-2-499	9

Constitutional Provisions

U.S. Const. art. I, § 4, cl. 1.....	25
U.S. Const. art. III, § 2	13

STATEMENT OF ISSUES

1. Whether Wood has Article III standing to challenge measures to implement signature verification for absentee ballots, or alleged deficiencies in poll watcher access to post-election audit procedures, where he alleged no cognizable injury in fact.

2. Whether this action seeking to prevent certification of Georgia's election is moot because the election has been certified.

3. Whether this action is barred by laches.

4. Whether the district court otherwise abused its discretion in denying Appellant's motion for a temporary restraining order because he was not likely to succeed on the merits of his Equal Protection, Due Process, and Elections Clause claims, and failed to satisfy the remaining TRO factors.

INTRODUCTION

This case involves a constitutional challenge to the Georgia presidential election by Appellant L. Lin Wood, Jr. (“Wood”). Wood seeks extraordinary relief: that this Court instruct the district court to enter an injunction “declaring that the election results are defective” and order the Secretary of State to “re-do” the election. (Appellant’s Brief, at 19.)

Georgia’s presidential electors were selected by popular vote, as provided by state law. The results of this election were certified by the Secretary of State and the Governor on November 20, 2020. Wood cites to no historical or legal precedent for a federal court to “de-certify” a state’s slate of presidential electors selected in the manner established by that state’s legislature. Even if the Court determines it has jurisdiction to consider this interlocutory appeal, it is impossible for the Court to grant Wood’s requested relief, and the case should be dismissed as moot.

Wood’s motion also fails on the merits. He argues that “Georgia’s election tallies are suspect and tainted with impropriety” (Appellant’s Brief, at 13), but he offered no evidence supporting this claim in the proceedings below. Wood does not allege that his vote or any vote was not properly counted. He presented no evidence of *any* ballots that were fraudulent, cast by

an illegal voter, or otherwise invalid. His motion is based entirely upon speculation and conjecture that invalid votes *may* have been counted, premised on a misunderstanding of Georgia's procedures for verifying absentee ballots. Contrary to Wood's assertion, the verification procedures do not conflict with state law, and there is no evidence that the procedures were applied in an arbitrary or disparate manner by county elections officials.

Presented with a similar record, the Third Circuit recently rejected a challenge seeking to overturn Pennsylvania's presidential election results based upon alleged irregularities in the processing of absentee ballots. *Donald J. Trump for President, Inc. v. Sec'y Pennsylvania*, No. 20-3371, 2020 U.S. App. LEXIS 37346 (3d Cir. Nov. 27, 2020). Noting the absence of evidence of fraud or unlawful votes, the Court concluded that "tossing out millions of mail-in ballots would be drastic and unprecedented, disenfranchising a huge swath of the electorate and upsetting all down-ballot races too. That remedy would be grossly disproportionate to the procedural challenges raised." *Id.* at *6.

The record here also does not support the drastic and unprecedented remedy of setting aside the certified presidential election results. Like every state, Georgia has a compelling interest in preserving the integrity of its election process.

“Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). For this reason, “[v]oters, not lawyers, choose the President. Ballots, not briefs, decide elections.” *Donald J. Trump for President*, 2020 U.S. App. LEXIS 37346 at *30. Public confidence in the electoral process would certainly be undermined by a court invalidating the certified results of a presidential election in which nearly 5 million Georgians cast ballots. This Court should decline Wood’s legally unsupportable efforts to overturn the expressed will of the voters and affirm the decision of the district court.

STATEMENT OF THE CASE

On November 13, 2020, ten days after Election Day, Wood filed a Complaint against the Secretary of State and the members of the State Election Board (collectively, “State Defendants”), asserting claims under the Equal Protection, Due Process, and Elections and Electors Clauses. Four days later, Wood filed an emergency motion for a temporary restraining order, asking the district court to enjoin the Secretary of State from certifying the results of the general election unless 1.3 million absentee ballots cast by Georgia voters were excluded from the tabulation. The district court promptly held a hearing on Wood’s emergency

motion and issued an oral ruling denying the motion at the conclusion of the hearing, followed by a written order on November 20, 2020. The same day, the Secretary of State and Governor of Georgia certified Georgia's slate of presidential electors.

A. Relevant Background

1. Georgia's Absentee Ballot Procedures

Absentee ballots for the 2020 general election were processed by county election officials according to the procedures established by the Georgia legislature. These procedures were part of HB 316, bipartisan legislation passed in 2019 to reform the state's election code and implement a new electronic voting system. The reforms kept in place Georgia's policy of "no excuse" absentee voting, but modified the technical requirements for absentee ballots. HB 316 modified the language of the oath on the outer absentee ballot envelope to leave the signature requirement but remove the elector's address and date of birth. *See* O.C.G.A. § 21-2-384. Further, HB 316 added a "cure" provision, which requires election officials to give a voter until three days after the date of the election to cure an issue with the voter's signature before rejecting an absentee ballot for a missing or mismatched signature on the

outer envelope. *See* O.C.G.A. § 21-2-386(a)(1)(C). The “cure” provision was added to the statute’s requirement that election officials “promptly notify” the voter of a rejected absentee ballot due to a missing or mismatched signature.

2. Prior Litigation Over the Notice and Cure Provisions for Absentee Ballots

On November 6, 2019, the Democratic Party of Georgia, DSCC, and DCCC (collectively, “Political Party Organizations”) sued the State Defendants, alleging that the “promptly notify” language of O.C.G.A. § 21-2-386(a)(1)(C) was vague and ill-defined and left counties without standards for verifying signatures on absentee ballots. (App’x Vol. I at 144-49).

While that action was pending, the State Election Board (“SEB”) approved a rule that established a uniform standard for counties to follow to “promptly notify” voters when their absentee ballot is rejected as required by O.C.G.A. § 21-2-386(a)(1)(C). The rule provides that when a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk must send the voter notice of the rejection and opportunity to cure within three business days, or by the next business day if within ten days of Election Day. Ga. Comp. R. & Regs. r. 183-1-14-.13 (the “Prompt Notification Rule”).

The Prompt Notification Rule was adopted pursuant to the SEB's rule-making authority under O.C.G.A. § 21-2-31(2). It provides a uniform three-day standard for "prompt" notification required by O.C.G.A. § 21-2-386(a)(1)(C) when an absentee ballot is rejected, so that all counties give notice in a uniform manner. The Prompt Notification Rule was promulgated pursuant to the Georgia Administrative Procedure Act, published for public comment, and discussed at multiple public hearings before it became effective on March 22, 2020.

Because the Prompt Notification Rule resolved the issues in the pending lawsuit, the parties resolved the matter in a settlement agreement that included, among other terms, an agreement that (1) the State Election Board would promulgate and enforce the Prompt Notification Rule; and (2) the Secretary of State would issue guidance to county election officials regarding the signature matching process. (App'x Vol. I at 144-49).

On May 1, 2020, the Secretary of State distributed an Official Election Bulletin ("OEB"), advising county election officials of the Prompt Notification Rule and providing guidance for reviewing signatures on absentee-ballot envelopes. (App'x Vol. III at 157-64). The OEB instructed that after an election official makes an initial determination that the signature on the absentee ballot envelope

does not match the signature on file for the voter pursuant to O.C.G.A. § 21-2-386(a)(1)(B) and (C), two additional registrars, deputy registrars, or absentee ballot clerks should also review the signature, and the ballot should be rejected if at least two of the three officials agree that the signature does not match. (*Id.* at 162-63). The OEB expressly instructs county officials to comply with state law. (*Id.*)

Contrary to Plaintiff's claim that the Prompt Notification Rule and the OEB have significantly disrupted the signature verification process, these measures have had no detectable effect on the absentee ballot rejection rate since the last general election in 2018. (App'x Vol. III at 157-58). An analysis of the number of absentee-ballot rejections for signature issues for 2020 as compared to 2018 found that the rejection rate for absentee ballots with missing or non-matching signatures in the 2020 general election was 0.15%; the same rejection rate for signature issues as in 2018 before the new measures were implemented. (*Id.*)

3. The Post-Election Audit

Following the general election, the Secretary of State ordered a statewide risk-limiting audit pursuant to O.C.G.A. § 21-2-498 (the "Audit"). The Audit included a manual—by hand—tabulation of all ballots cast in the presidential election, which was conducted

at the county level. (App'x Vol. III at 158-59). Although O.C.G.A. § 21-2-498 does not explicitly call for poll watchers, the Secretary of State issued guidance to county election officials to ensure political parties the opportunity to have one designated monitor for every ten audit teams, with a minimum of two designated monitors in each county per party per room. (App'x Vol. III at 166-69). The manual tabulation for the Audit was conducted solely by county election officials, and the State Defendants had no control over the manner in which counties instructed, placed, or interacted with monitors. (App'x Vol. III at 158-59).

Following the Audit, on November 20, 2020, the Secretary of State and the Governor certified the final tabulation of votes, including the slate of presidential electors, as required by law. *See* O.C.G.A. § 21-2-499(b).

B. Proceedings Below

Wood filed this action on November 13, 2020. His Complaint, as amended, asserts three constitutional counts: (1) that the Litigation Settlement violates the Equal Protection Clause of the Fourteenth Amendment (Count I); (2) that the Litigation Settlement violates the Electors and Elections Clauses of Articles I and II (Count II); and (3) a Due Process claim based upon the allegation that the State Defendants denied Republican party

monitors meaningful access to observe and monitor the tabulation of votes or the statewide Audit (Count III). (App’x Vol. I at 79-91).

On November, 17, 2020, Wood filed an emergency motion for a temporary restraining order (“TRO”), asking the district court to enjoin the Secretary of State from certifying the results of the general election unless 1.3 million absentee ballots cast by Georgia voters were excluded from the tabulation. On November 19, 2020, the district court held an evidentiary hearing on Wood’s emergency motion, and issued an oral ruling denying the motion at the conclusion of the hearing. On November 20, 2020, the district court issued a written order denying Wood’s motion. The State Defendants moved to dismiss for lack of subject matter jurisdiction under FED. R. CIV. P. 12(b)(1). Before the district court could rule on the motion, however, Wood moved for interlocutory appellate review of the district court’s order denying his motion for a TRO, followed a day later by a notice of appeal.

C. Standard of Review

This Court reviews a district court’s denial of a motion for temporary restraining order or preliminary injunction “only for abuse of discretion.” *Long v. Sec’y, Dep’t of Corr.*, 924 F.3d 1171, 1175 (11th Cir. 2013).

SUMMARY OF ARGUMENT

The district court did not abuse its discretion in denying Wood's emergency motion for a TRO, and the Court should affirm that decision and remand the case with instructions to dismiss the action for lack of subject matter jurisdiction and mootness.

Wood's TRO motion sought to enjoin the certification of the presidential election results based upon two factual allegations: (1) that State Defendants and the Democratic Party of Georgia entered into a March 2020 settlement agreement that altered the process by which counties verify voter signatures on absentee ballots in a way that allegedly violates the Georgia election code; and (2) that Republican poll watchers were not permitted to observe the vote tabulations or post-election Audit.¹ The district court correctly held that neither of these theories present a legally cognizable claim under the Equal Protection, Elections, and Due Process clauses.

First, as a threshold matter, the district court lacks subject matter jurisdiction over the action because Wood cannot demonstrate Article III standing. Wood has not shown a concrete

¹ On appeal, Wood does not argue his due process claim based upon the allegation that poll watchers were denied proper access to observe, and has therefore abandoned this claim. (*See* Appellant's Brief, at 12).

and particularized injury to his own individual right to vote. Instead, he asserts a generalized grievance about the operation and application of state law, which is insufficient to establish standing.

Second, Wood's claims are moot. Wood's TRO motion sought to prevent certification of the presidential election results, but the election has now been certified, thus mooting his requested relief.

Third, this suit is barred by laches. Wood inexcusably delayed in seeking relief until the eve of the State's certification, *after* the election and *months* after the State Defendants had promulgated rules and guidance regarding the processing of absentee ballots that Wood now challenges. More than 1.3 million absentee ballots were cast in the presidential election, and they have already been verified, tabulated, certified, audited, and included as part of the certified results. Wood's inexcusable delay is extremely prejudicial to the Secretary of State's ability to perform his statutory duties, as well as to Georgia voters who cast their ballots with the reasonable and legitimate expectation that their legally cast votes would be counted.

Fourth, Wood fails to clearly prove the required elements for a temporary restraining order. As the district court's well-reasoned order explained, he is not likely to succeed on the merits of his

constitutional claims, faces no irreparable harm, and the balance of the equities and public interest weigh strongly against an unprecedented injunction overturning the certified results of a presidential election.

ARGUMENT

I. The district court lacks subject-matter jurisdiction because Wood cannot establish Article III standing.

Federal courts have an independent obligation to ensure that subject-matter jurisdiction exists before reaching the merits of a dispute. *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). Article III of the Constitution limits the subject-matter jurisdiction of federal courts to “Cases” and “Controversies.” U.S. Const. art. III, § 2. A party invoking federal jurisdiction bears the burden of establishing standing at the commencement of the lawsuit. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). As an irreducible constitutional minimum, Wood must show he has (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Id.* at 561. As the party invoking federal jurisdiction, Wood bears the burden at the pleadings phase of “clearly alleg[ing] facts demonstrating each element.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

Standing must be demonstrated “for each claim he seeks to press and for each form of relief that is sought.” *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017).

Injury in fact is “the first and foremost of standing’s three elements.” *Spokeo*, 136 S. Ct. at 1547-48. A plaintiff must show he suffered “an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* at 1548. Federal courts are not a “forum for generalized grievances” for claims that are “plainly undifferentiated and common to all members of the public.” *Lance v. Coffman*, 549 U.S. 437, 439, 441 (2007). Therefore, a plaintiff must demonstrate “a personal stake in the outcome” that is “distinct from a generally available grievance about government.” *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018).

Wood’s pleadings fail to clearly allege facts demonstrating an injury in fact. Wood alleges that he has standing “as a qualified elector and registered voter” and that he “made donations to various Republican candidates on the ballot for the November 3, 2020 general elections, and his interests are aligned with those of the Georgia Republican Party for the purposes of the instant lawsuit.” (App’x Vol. I at 59). However, these factual allegations are no more than a generalized grievance, as Wood fails to point to

any injury that affects him “in a personal and individual way,” rather than as part of the voting public. *Spokeo*, 136 S. Ct. at 1548.

A. Wood lacks standing to bring his equal protection claim.

Wood’s equal protection claim is premised on a vote-dilution theory, namely, that the procedures for verifying signatures on absentee ballot envelopes subjected him to “arbitrary and disparate treatment” that diluted his vote. (Appellant’s Brief at 24). The district court correctly concluded that this claim was a generalized grievance insufficient to establish standing because Wood “does not differentiate his alleged injury from any harm felt in precisely the same manner by every Georgia voter.” (App’x Vol. IV at 48).

This Court squarely rejected Wood’s generalized theory of vote dilution as a basis for standing in *Jacobson*. In that case, two individual voters argued that Florida’s ballot-order statute diluted their votes by allowing Republican candidates to reap the alleged benefit of a “primacy” effect due to their top placement on the ballot. 974 F.3d at 1246. This Court first rejected the argument that all voters have standing to bring claims involving voting rights, stating, “the Supreme Court has made clear that ‘a person’s right to vote is individual and personal in nature,’ so

‘voters who allege facts showing disadvantage to themselves as individuals have standing to sue.’” *Id.* (quoting *Gill*, 138 S. Ct. at 1929). It then held that plaintiffs’ dilution theory did not establish an injury in fact because plaintiffs offered no evidence “showing disadvantage to themselves as individuals.” *Id.*

This Court similarly rejected the voters’ party affiliation as a basis for standing, stating, “[a] candidate’s electoral loss does not, by itself, injure those who voted for the candidate,” as “[v]oters have no judicially enforceable interest in the outcome of the election.” *Id.*

Like in *Jacobson*, Wood does not allege that he had “any difficulty in voting for [his] preferred candidate or otherwise participating in the political process.” *Id.* He fails to make any particularized showing how his in-person vote was affected or treated differently by the state’s procedures for processing absentee ballots. Rather, Wood speculates that invalid absentee ballots may have been counted, which allegedly dilutes his vote. (Appellant’s Brief, at 23). Even assuming Wood had offered any evidence at all that invalid absentee ballots were counted, “such an alleged dilution is suffered equally by all voters and is not particularized for standing purposes.” *Bognet v. Secretary*

Commonwealth of Pennsylvania, No. 20-3214, 2020 U.S. App. LEXIS 35639, at *12 (3d Cir. Nov. 13, 2020).

B. Wood lacks standing to bring his claim under the Elections Clause.

Wood's Elections Clause claim is that State Defendants instituted a procedure for processing absentee ballots that conflicts with state law and the Georgia legislature's authority to regulate elections under the Elections clauses. (Appellant's Brief at 26-28). However, the Supreme Court has been clear that allegations that state officials have not followed the law is "precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past." *Lance*, 549 U.S. at 442.

Federal courts are not venues for parties to assert a bare right "to have the Government act in accordance with law." *Allen v. Wright*, 468 U.S. 737, 754 (1984). The Third Circuit recently rejected a similar claim in *Bognet*, holding that individual voters lacked standing to sue for alleged injuries attributable to a state government's alleged violations of the Elections Clause and Electors Clause. 2020 U.S. App. LEXIS 35639 at *19. That court stated, "[b]ecause Plaintiffs are not the General Assembly, nor do they bear any conceivable relationship to state lawmaking

processes, they lack standing to sue over the alleged usurpation of the General Assembly's rights under the Elections and Electors Clauses." *Id.* at *21; *see also Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324, 1332-33 (11th Cir. 2007) (holding that an allegation that the law has not been followed is "the kind of undifferentiated, generalized grievance about the conduct of government" that will not satisfy standing).

C. Wood lacks standing to bring his due process claim.

Wood's standing to assert his due process claim is even more tenuous because he attempts to assert claims on behalf of third-party Republican poll watchers, whom he alleges were denied "the opportunity to observe the [Audit] in any meaningful way" by county elections officials. (*See App'x Vol. I at 134-35*). Wood does not allege that he personally attempted to serve as a poll watcher or that the State Defendants participated in denying him or any other poll watchers the opportunity to observe the Audit. Not only is Wood's claim a generalized grievance rather than a particularized injury, none of the parties involved in the alleged conduct—the Republican poll watchers and the county election officials—are parties to this action.

Wood cannot satisfy the criteria to assert standing on behalf of third-party poll watchers. To do so, he must (1) "have suffered

an ‘injury-in-fact’ that gives [him] a ‘sufficiently concrete interest’ in the dispute”; (2) “have a close relationship to the third party”; and (3) “there must be a hindrance to the third party’s ability to protect its own interests.” *Aaron v. Private Clinic Mgmt. LLC v. Berry*, 912 F.3d 1330, 1339 (11th Cir. 2019) (citation omitted); *see also Bognet*, 2020 U.S. App. LEXIS 35639, *21. Wood makes no such allegations here.

Moreover, the alleged injury to the third-party poll watchers is not traceable to any action by the State Defendants. Wood’s grievance is with county election officials whom he alleges excluded poll watchers from observing the Audit. Wood does not allege that any of the State Defendants controlled or even participated in this conduct. As this Court has held, “[t]o satisfy the causation requirement of standing, a plaintiff’s injury must be ‘fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.’” *Jacobson*, 974 F.3d at 1253 (citation omitted); *see also Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1265 (11th Cir. 2011) (holding that an injury sufficient to establish standing cannot “result [from] the independent action of some third party not before the court.”).

II. Wood's claims are moot.

Even if Wood could establish Article III standing, his claims have been mooted by the State's certification of the presidential electors. Because the case “no longer presents a live controversy with respect to which the court can give meaningful relief,” it is moot. *Troiano v. Supervisor of Elections in Palm Beach Cty., Fla.*, 382 F.3d 1276, 1282 (11th Cir. 2004). Mootness is jurisdictional—because a federal court may only adjudicate cases and controversies, a ruling that cannot provide meaningful relief is an impermissible advisory opinion. *Id.*; see also *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (noting that because jurisdiction is limited to “cases” and “controversies,” a case is moot when it no longer presents a live controversy as to which a court can give meaningful relief); *Brooks v. Ga. State Bd. of Elections*, 59 F.3d 1114, 1118 (11th Cir. 1995) (explaining that an appeal is moot where it is “impossible for the court to grant any effectual relief whatever to a prevailing party”).

III. Wood's claims are barred by laches.

The district court also correctly held that Wood's claims are barred by laches. Laches bars a request for equitable relief when (1) the plaintiff delays in asserting the claim; (2) the delay is not excusable; and (3) the delay causes the non-moving party undue

prejudice. *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005). In the context of elections, “any claim against a state electoral procedure must be expressed expeditiously.” *Fulani v. Hogsett*, 917 F.2d 1028, 1031 (7th Cir. 1990) (*citing Williams v. Rhodes*, 393 U.S. 23, 34-35 (1968)). As time passes, the state’s interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made. *Id.*

Wood offers no reasonable excuse or evidence explaining his failure to bring his challenge to the Litigation Settlement prior to the election, before election officials began—and completed—validating signatures on absentee ballot envelopes for the general election. And there is no question in this context that delay has substantially prejudiced the State Defendants, as well as the members of the public who have cast legal ballots.

Where, as here, an election has already been conducted, any harm that might arise from an alleged constitutional violation must be weighed against “such countervailing equitable factors as the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity.” *Soules v. Kauaians for Nukolii Campaign Committee*, 849 F.2d 1176, 1177 (9th Cir. 1988). For this reason, “if aggrieved parties, without adequate explanation, do not come forward before the election, they will be

barred from the equitable relief of overturning the results of the election.” *Id.* at 1180-81 (citing *Hendon v. North Carolina State Bd. of Elections*, 710 F.2d 177, 182-83 (4th Cir. 1983)). To hold otherwise “permit[s], if not encourage[s], parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973).

IV. Wood fails to satisfy the requirements for a TRO.

Even if Wood could overcome the jurisdictional defects that are fatal to his claims, the district court correctly held that he still failed to satisfy the requirements for a TRO.

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 24 (2008). To prevail on his motion, Wood is required to show: (1) a substantial likelihood of prevailing on the merits; (2) that the plaintiff will suffer irreparable injury unless the injunction issues; (3) that the threatened injury to the movant outweighs whatever damages the proposed injunction may cause the opposing party; and (4) the injunction would not be adverse to the public interest. *Duke v. Cleland*, 954 F.2d 1526, 1529 (11th Cir. 1992). The Court “should pay particular regard for the public consequences in

employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24.

A. Wood is not substantially likely to succeed on the merits.

1. Wood’s equal protection claim fails.

Wood fails to articulate a legally cognizable claim under the Equal Protection clause. Typically, when deciding a constitutional challenge to state election laws, federal courts apply the *Anderson-Burdick* framework that balances the burden on the voter with the state’s interest in the voting regulation. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 190 (2008); *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318-19 (11th Cir. 2019).

But Wood’s equal protection claim does not even implicate *Anderson-Burdick*, because he fails to articulate how the Litigation Settlement burdens his right to vote in the first place. Both the Prompt Notification Rule and the OEB guidance are facially neutral, and Wood does not explain how either values one person’s vote over another or treats voters arbitrarily or disparately.

The Supreme Court’s decision in *Bush v. Gore* does not support Wood’s claim. There, the Supreme Court found a violation

of equal protection where certain counties were utilizing “arbitrary and disparate” standards for what constituted a legal vote in the 2000 Florida recount. *Bush v. Gore*, 531 U.S. 98, 105 (2000). Here, the Prompt Notification Rule and OEB guidance do the exact opposite: they provide uniform and consistent standards in complete harmony with the statutory framework for each county to employ when verifying signatures on absentee ballot envelopes, in order to avoid the kind of ad hoc standards that varied from county to county that the Supreme Court found unconstitutional in *Bush v. Gore*.

Wood also asserts a vote dilution theory in support of his equal protection claim, but that fails as well. This theory is based upon his speculation that county elections officials may not have properly verified the signatures on all absentee ballots, purportedly allowing some invalid absentee ballots to be counted, which in turn dilutes his vote. Wood offers no evidence that this actually happened, but nevertheless, it is not a recognized theory of vote dilution.

Vote dilution under the equal protection clause is “concerned with votes being weighed differently.” *Bognet*, 2020 WL 6686120, at *31. But Wood cannot analogize his equal protection claim to gerrymandering cases in which votes were weighted differently, as

in *Baker v. Carr*, 369 U.S. 186 (1962), which Wood cites but is inapposite here. Wood’s argument is based “solely upon state officials’ alleged violation of state law that does not cause unequal treatment.” *Bognet*, 2020 WL 6686120, at *31. However, “if dilution of lawfully cast ballots by the ‘unlawful’ counting of invalidly cast ballots were a true equal-protection problem, then it would transform every violation of state election law...into a potential federal equal-protection claim.” *Id.* at *32; *see also Jacobson*, 974 F.3d at 1247 (rejecting partisan vote dilution claim).

2. Wood’s claim under the Elections Clause fails.

The Elections Clause provides that “[t]he Times, Places, and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” U.S. Const. art. I, § 4, cl. 1. Wood contends that the State Defendants have usurped the power of the legislature by “imposing a different procedure for handling defective absentee ballots” than the one specified by statute. Yet he concedes that the State Defendants have the authority, delegated by the legislature, “[t]o formulate, adopt, and promulgate such rules and regulations ... as will be conducive to the fair, legal, and orderly conduct of primaries and elections” so long as those rules are “consistent with law.” O.C.G.A. § 21-2-31(2). Thus, Wood’s claim depends on the

assumption that the rules and guidance resulting from the Litigation Settlement are inconsistent with Georgia's election code.

They are not.

When an absentee ballot is defective because of a signature mismatch, the statute provides that “[t]he board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, [and] a copy of [that] notification shall be retained in the files of the board of registrars or absentee ballot clerk.” O.C.G.A. § 21-2-386(a)(1)(C). Once notified, the elector has the opportunity to “cure” any defects so the ballot may be counted. *See id.* The Litigation Settlement (and subsequent OEB guidance to county officials) merely clarifies the specifics of that procedure. If the clerk determines that a signature does not match, the clerk “must seek review from two other ... absentee ballot clerks,” and a ballot will only be rejected if a majority of the consulted clerks agree that the signatures do not match. Nothing about these procedures supplants or contradicts the text of the statute.

3. Wood's due process claim fails.

Wood's due process claim is premised on the allegation that Republican and Trump campaign poll watchers were denied full access to the tabulation of votes and subsequent Audit. While

Wood raised this claim below in support of his motion for a TRO, he does not raise it on appeal, and appears to have abandoned it. Nevertheless, the district court correctly held that Wood failed to articulate a discernable due process claim, under either procedural or substantive due process.

As the district court noted, there is no constitutional right to serve as a poll watcher; rather, the right is conferred by statute. *See, e.g., Donald J. Trump for President, Inc. v. Boockvar*, No. 2:20-cv-966, 2020 WL 5997680, at *67 (W.D. Pa. Oct. 10, 2020) *Republican Party of Penn. v. Cortes*, 218 F. Supp. 3d 396, 408 (E.D. Pa. 2016).

Wood fails to cite any statutory process he claims poll watchers were denied. He also does not allege that State Defendants are the ones who denied access to poll watchers to observe a process that was taking place at the county level. While the Secretary issued OEB guidance instructing counties to allow party monitors to observe the Audit, if any county failed to comply with this guidance, any legal claim should have been brought by the monitors or the affected political party against the county at the time of the alleged violation.

With respect to substantive due process, Wood's claim is nothing more than a "garden variety" election dispute that this

Court has held does not rise to the level of a constitutional deprivation. *Curry v. Baker*, 802 F.2d 1302, 1314 (11th Cir. 1986). “Although federal courts closely scrutinize state laws whose very design infringes on the rights of voters, federal courts will not intervene to examine the validity of individual ballots or supervise the administrative details of a local election.” *Id.* It is only where the election process “reaches the point of patent and fundamental unfairness” that a violation of due process may be indicated. *Id.* at 15; *see also Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. 1981) (holding that due process only prohibits action by state officials which “seriously undermine[s] the fundamental fairness of the electoral process.”).

B. Wood faces no irreparable harm.

Wood fails to articulate any specific harm that he faces if his requested relief is not granted, other than the vague claim that an infringement on the right to vote constitutes irreparable harm. However, as discussed above, Wood does not even allege that his right to vote was denied or infringed in any way—only that his preferred candidate lost. This is not a valid claim of harm or a justifiable basis for excluding legally-cast ballots. *Jacobson*, 974 F.3d at 1246 (“Voters have no judicially enforceable interest in the outcome of an election.”).

C. The balance of equities weighs against a TRO.

“Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy,” and court orders affecting elections “can themselves result in voter confusion and consequent incentive to remain away from the polls.” *Purcell*, 549 U. S. at 4-5. For this reason, the Supreme Court “has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S.Ct. 1205, 1207 (April 6, 2020) (per curiam); *see also New Ga. Project*, 976 F.3d 1278, 1283 (11th Cir. 2020) (“[W]e are not on the eve of the election—we are in the middle of it, with absentee ballots already printed and mailed. An injunction here would thus violate *Purcell*’s well-known caution against federal courts mandating new election rules—especially at the last minute.”)

Here, the election *has already been conducted*, and the slate of presidential electors has been certified. Granting Wood’s requested relief would only serve to “disenfranchise [] voters or sidestep the expressed will of the people.” *Donald J. Trump for President*, 2020 U.S. App. LEXIS 37346 at *28. It was not an abuse of discretion for the district court to recognize the

extraordinary harm to the public and the integrity of Georgia's election system that would result from Wood's requested relief.

CONCLUSION

For the reasons set out above, the district court did not abuse its discretion in denying Wood's motion for a TRO, and this Court should affirm that order. Moreover, because Wood failed to establish standing and this case is moot, the Court should remand the case to the district court with instructions to dismiss the action for lack of subject matter jurisdiction.

Respectfully submitted, this 1st day of December, 2020.

/s/ Charlene S. McGowan
Christopher M. Carr
Attorney General of Georgia
Bryan K. Webb
Deputy Attorney General
Russell D. Willard
Senior Assistant Attorney General
Charlene S. McGowan
Assistant Attorney General
Office of the Georgia
Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334
(404) 458-3658
cmcgowan@law.ga.gov
Counsel for Appellees

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 6,010 words as counted by the word-processing system used to prepare the document. This brief also complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook font.

/s/ Charlene S. McGowan
Charlene S. McGowan
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2020, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

/s/ Charlene S. McGowan
Charlene S. McGowan
Assistant Attorney General

IN THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14418

L. LIN WOOD, JR.,

Plaintiff-Appellant

v.

BRAD RAFFENSPERGER, et al.,

Defendants-Appellees

On Appeal from the United States District Court
for the Northern District of Georgia
Case No. 1:20-cv-04651-SDG before the Hon. Steven D. Grimberg

BRIEF OF *AMICI CURIAE*
GEORGIA STATE CONFERENCE OF THE NAACP, ET AL.

Kristen Clarke
Jon M. Greenbaum
Ezra D. Rosenberg
Julie M. Houk
John Powers
**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW**
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: 202.662.8300

Susan Baker Manning
Jeremy P. Blumenfeld
Martha B. Stolley
Catherine North Hounfodji
MORGAN, LEWIS & BOCKIUS, LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: 202.739.3000
susan.manning@morganlewis.com

Bryan L. Sells
LAW OFFICE OF BRYAN L. SELLS
PO Box 5493
Atlanta, GA 31107-0493
Telephone: 404.480.4212

Attorneys for Amici Curiae

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, proposed *Amici* Georgia State Conference of the NAACP, Inc. (“Georgia NAACP”) certifies through the undersigned counsel that it is a non-partisan , nonprofit membership organization and Georgia Coalition for the People’s Agenda (“GCPA”) certifies through the undersigned counsel that it is a Georgia nonprofit corporation, that it does not have a parent corporation, and that no publicly held corporation that owns ten percent or more of its stock.

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1, counsel for proposed *amici curiae* hereby certify that proposed *amici* are aware of the following attorneys, persons, associations of persons, firms, partnerships, or corporations who may have an interest in the outcome of this case or appeal:

1. Beane, Amanda J. (counsel for Intervenor-Defendants)
2. Blumenfeld, Jeremy P. (counsel for proposed *amici*)
3. Brailey, Emily R. (counsel for Intervenor-Defendants)
4. Butler, Helen (proposed *amica*)
5. Callais, Amanda R. (counsel for Intervenor-Defendants)
6. Carr, Christopher M. (counsel for Defendants)
7. Clarke, Kristen (counsel for proposed *amici*)

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT
Wood v. Raffensperger 20-14418
Page 2**

8. Coppedge, Susan P. (counsel for Intervenor-Defendants)
9. Democratic Congressional Campaign Committee (Intervenor-Defendant)
10. Democratic Party of Georgia, Inc. (Intervenor-Defendant)
11. Democratic Senatorial Campaign Committee (Intervenor-Defendant)
12. Elias, Marc E. (counsel for Intervenor-Defendants)
13. Georgia Coalition for the Peoples' Agenda, Inc. (proposed *amicus*)
14. Georgia State Conference of the NAACP, Inc. (proposed *amicus*)
15. Greenbaum, Jon M. (counsel for proposed *amici*)
16. Grimberg, Hon. Steven D. (U.S. Dist. Judge, Northern Dist. of Georgia)
17. Hamilton, Kevin J. (counsel for Intervenor-Defendants)
18. Houk, Julie Marie (counsel for proposed *amici*)
19. Hounfodji, Catherine North (counsel for proposed *amici*)
20. Ivey, Melvin (proposed *amicus*)
21. Knapp, Halsey G., Jr. (counsel for Intervenor-Defendants)
22. Krevolin & Horst, LLC (counsel for Intervenor-Defendants)
23. Kuhlmann, Gillian C. (counsel for Intervenor-Defendants)
24. Law Office of Bryan L. Sells, PC (counsel for proposed *amici*)

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT
Wood v. Raffensperger 20-14418
Page 3**

- 25.Lawyers' Comm. for Civil Rights Under Law (counsel for proposed *amici*)
- 26.Le, Anh (Defendant)
- 27.Lewis, Joyce Gist (counsel for Intervenor-Defendants)
- 28.Manning, Susan Baker (counsel for proposed *amici*)
- 29.Mashburn, Matthew (Defendant)
- 30.McGowan, Charlene S. (counsel for Defendants)
- 31.Mertens, Matthew J. (counsel for Intervenor-Defendants)
- 32.Morgan Lewis & Bockius LLP (counsel for proposed *amici*)
- 33.Perkins Coie LLP (counsel for Intervenor-Defendants)
- 34.Powers, John M. (counsel for proposed *amici*)
- 35.Raffensperger, Brad (Defendant)
- 36.Rosenberg, Ezra David (counsel for proposed *amici*)
- 37.Sells, Bryan L. (counsel for proposed *amici*)
- 38.Smith, Ray Stallings, III (counsel for Plaintiff)
- 39.Smith & Liss LLC (counsel for Plaintiff)
- 40.Sparks, Adam Martin (counsel for Intervenor-Defendants)
- 41.Stolley, Martha (counsel for *proposed amici*)

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT
Wood v. Raffensperger 20-14418
Page 4**

- 42. Sullivan, Rebecca N. (Defendant)
- 43. Velez, Alexi M. (counsel for Intervenor-Defendants)
- 44. Webb, Bryan K. (counsel for Defendants)
- 45. Willard, Russell D. (counsel for Defendants)
- 46. Wood, L. Lin (Plaintiff)
- 47. Woodall, James (proposed *amicus*)
- 48. Worley, David J. (Defendant)

TABLE OF CONTENTS

	Page(s)
I. INTEREST OF <i>AMICI CURIAE</i>	1
II. STATEMENT OF THE ISSUES	2
III. AUTHORITY TO FILE BRIEF OF <i>AMICI CURIAE</i>	2
IV. SUMMARY OF ARGUMENT.....	2
V. ARGUMENT	5
A. Plaintiff’s Appeal Is Moot.....	5
B. Standard of Review	9
C. Plaintiff Lacks Standing.....	10
1. Plaintiff’s Equal Protection Claim is Based on a Generalized Grievance that Does Not Give Him Standing	11
2. Plaintiff Has No Standing to Bring a Claim Under the Electors and Elections Clauses	13
D. Plaintiff’s Claims Are Barred by Laches	13
1. Plaintiff’s delay was unreasonable.....	14
2. An injunction would cause extreme prejudice.....	15
E. The District Court Correctly Denied Interim Injunctive Relief on the Merits.	17
1. Plaintiff Does Not Have a Valid Constitutional Claim Based on the Settlement Agreement.	18
2. Plaintiff Will Not Suffer Irreparable Injury, or Any Injury At All, in the Absence of Injunctive Relief.	22
3. Plaintiff’s Requested Election Do-Over is Inequitable and Contrary to the Public Interest.	22
VI. CONCLUSION	26

TABLE OF AUTHORITIES**Page(s)****Cases**

<i>AmBrit, Inc. v. Kraft, Inc.</i> , 812 F.2d 1531 (11th Cir. 1986)	17
<i>Baber v. Dunlap</i> , 349 F. Supp. 3d 68 (D. Me. 2018)	26
<i>Baker v. Carr</i> , 369 U.S. 186 (1962)	21
<i>Bayou Liberty Ass’n, Inc. v. U.S. Army Corps of Engineers</i> , 217 F.3d 393 (5th Cir. 2000)	12
<i>Bognet v. Sec’y of Commonwealth</i> , No. 20–3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020)	16, 17
<i>Brooks v. Ga. State Bd. of Elections</i> , 59 F.3d 1114 (11th Cir. 1995)	12
<i>Burton v. State of Ga.</i> , 953 F.2d 1266 (11th Cir. 1992)	27
<i>Bush v. Gore</i> , 531 U.S. 98 (2000)	22, 28
<i>Caddo Nation of Oklahoma v. Wichita and Affiliated Tribes</i> , 877 F.3d 1171 (10th Cir. 2017)	13
<i>Cafe 207, Inc. v. St. Johns County</i> , 989 F.2d 1136 (11th Cir. 1993)	12
<i>Carlson v. Ritchie</i> , 830 N.W.2d 887 (Minn. 2013)	20
<i>Christian Coal. of Fla., Inc. v. United States</i> , 662 F.3d 1182 (11th Cir. 2011)	12
<i>Detroit Unity Fund v. Whitmer</i> , 819 F. App’x 421 (6th Cir. 2020)	17

<i>Dillard v. Chilton County Comm’n</i> , 495 F.3d 1324 (11th Cir. 2007)	15, 16
<i>Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania</i> , No. 20-3371, 2020 WL 7012522 (3d Cir. Nov. 27, 2020)	7, 16, 23
<i>Duncan v. Poythress</i> , 657 F.2d 691 (5th Cir. 1981)	27
<i>Ethredge v. Hail</i> , 996 F.2d 1173 (11th Cir. 1993)	11, 12
<i>Fantasy, Inc. v. Fogerty</i> , 984 F.2d 1524 (9th Cir. 1993)	29
<i>Fla. State Conference of N.A.A.C.P. v. Browning</i> , 522 F.3d 1153 (11th Cir. 2008)	22
<i>Foster v. Love</i> , 522 U.S. 67 (1997)	17
<i>Gill v. Whitford</i> , 138 S. Ct. 1916 (2018).....	14
<i>Gonzalez v. Governor of Ga.</i> , 978 F.3d 1266 (11th Cir. 2020)	13
<i>Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections</i> , 446 F. Supp. 3d 1111, 1126–27 (N.D. Ga. 2020).....	19
<i>Jacobson v. Fla. Sec’y of State</i> , 974 F.3d 1236 (11th Cir. 2020)	14
<i>Kowalski v. Tesmer</i> , 543 U.S. 125 (2004)	13
<i>Lance v. Coffman</i> , 549 U.S. 437 (2007)	15, 17
<i>Lewis v. Cayetano</i> , 823 P.2d 738 (Haw. 1992).....	20

<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992)	14, 15
<i>Malone v. Tison</i> , 282 S.E.2d 84 (Ga. 1981)	28
<i>McMichael v. Napa County</i> , 709 F.2d 1268 (9th Cir. 1983)	27
<i>Meade v. Williamson</i> , 745 S.E.2d 279 (Ga. 2013)	27
<i>Nken v. Holder</i> , 556 U.S. 418 (2009)	21
<i>Northeast Ohio Coalition for Homeless v. Husted</i> , 696 F.3d 580 (6th Cir. 2012)	29
<i>Powell v. Power</i> , 436 F.2d 84 (2d Cir. 1970)	27
<i>Reid v. Morris</i> , 309 Ga. 230 (2020)	24
<i>Republican Party of Pa. v. Cortes</i> , 218 F. Supp. 3d 396 (E.D. Pa. 2016)	19
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	22
<i>Sanders v. Dooly Cnty., Ga.</i> , 245 F.3d 1289 (11th Cir. 2001)	13, 17
<i>Soules v. Kauaians for Nukolii Campaign Comm.</i> , 849 F.2d 1176 (9th Cir. 1988)	20
<i>Southwest Voter Registration Educ. Project v. Shelley</i> , 344 F.3d 914 (9th Cir. 2003)	19
<i>Spokeo, Inc. v. Robins</i> , 136 S. Ct. 1540 (2016)	14

<i>Toney v. White</i> , 488 F.2d 310 (5th Cir. 1973)	19, 20
<i>Tropicana Product Sales, Inc. v. Phillips Brokerage Co.</i> , 874 F.2d 1581 (11th Cir. 1989)	12
<i>United States v. Estrada</i> , 969 F.3d 1245 (11th Cir. 2020)	13
<i>Univ. of Texas v. Camenisch</i> , 451 U.S. 390 (1981)	10
<i>Wakefield v. Church of Scientology of Cal.</i> , 938 F.2d 1226 (11th Cir.1991)	11
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	21
<i>Wood v. Raffensperger</i> , No. 1:20-cv-04651, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020).....	<i>passim</i>

Statutes

3 U.S.C. §§ 5, 7.....	28
O.C.G.A. § 1-3-1(d)(6)	24, 25
O.C.G.A. § 21-2-11	28
O.C.G.A. § 21-2-381(b)(1)	23
O.C.G.A. § 21-2-386(a)(1)(B).....	24
O.C.G.A. § 21-2-386 (a)(1)(B)–(C).....	24, 25
O.C.G.A. § 21-2-386(a)(1)(C)	24

Rules

Fed. R. App. P. 26.1.....	31
Fed. R. App. P. 29(a)(4)(E)	31
Fed. R. App. P. 29(a)(5)	31

Fed. R. App. P. 32(a)(5)	31
Fed. R. App. P. 32(a)(6)	31
Fed. R. App. P. 32(a)(7)(B)	31
Fed. R. App. P. 32(f).....	31

Other Authorities

Emily Bazelon, <i>Trump Is Not Doing Well With His Election Lawsuits. Here's a Rundown</i> , NY Times (updated Nov. 25, 2020), available at https://www.nytimes.com/2020/11/13/us/politics/trump-election-lawsuits.html	6
Georgia State Elections Board, Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing (Mar. 5, 2020), https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf (scheduling public hearing for Apr. 15, 2020).	18
Governor Kemp Formalizes Election Certification, Calls for Signature Audit, Endorses Voter ID for Mail-In Balloting (Nov. 23, 2020), https://gov.georgia.gov/press-releases/2020-11-23/governor-kemp-formalizes-election-certification-calls-signature-audit	10
Mark Niese, <i>Lawsuit settled, giving Georgia voters time to fix rejected ballots</i> , The Atlanta Journal-Constitution (Mar. 7, 2020)	18

I. INTEREST OF *AMICI CURIAE*

As detailed in the accompanying Motion for Leave to File Brief of *Amici Curiae*, *amici curiae* are two organizations representing Georgia voters and three individual Georgians, each of whom has a strong interest in this litigation. *Amici* moved to intervene in the district court. Although the district court has not yet ruled on the motion, it permitted *amici* to participate in the November 19, 2020 hearing.

The **Georgia State Conference of the NAACP** (“Georgia NAACP”) is a non-profit advocacy group for civil rights for Black Americans with approximately 10,000 members. Georgia NAACP has been working to educate Black Georgia voters on different voting methods available during the COVID-19 pandemic and has conducted phone banking to assist Georgia voters. Georgia NAACP also has members, including individual *amici* President **James Woodall** and Rev. **Melvin Ivey**, who voted in the November election and who are at risk of being disenfranchised if the election results are thrown out.

The **Georgia Coalition for the People’s Agenda** (“GCPA”) is a coalition of more than 30 organizations that encourages voter registration and participation, particularly among African-American and other underrepresented communities. For the November 2020 election, GCPA participated in media interviews, sponsored Public Service Announcements, placed billboard ads, and conducted outreach to educate voters and to encourage participation in the 2020 election cycle. GCPA

members, including *amica* Ms. **Helen Butler**, voted in the November election and are at risk of being disenfranchised if the election results are thrown out.

II. STATEMENT OF THE ISSUES

1. Whether the Plaintiff's appeal is moot because the November election results have been certified by Georgia officials.
2. Whether the Plaintiff lacks standing.
3. Whether the Plaintiff's claims are barred by laches.
4. Whether the district court correctly denied injunctive relief on the merits.

III. AUTHORITY TO FILE BRIEF OF *AMICI CURIAE*

As noted in the accompanying Motion for Leave to File Brief as *Amici Curiae*, Defendants-Appellees Brad Raffensperger, et al. ("Defendants") and Intervenor Defendants-Appellees the Democratic Party of Georgia, Inc., et al. ("Intervenor Defendants") have consented to the filing of this *amicus* brief. Plaintiff-Appellant L. Lin Wood ("Plaintiff") has declined to consent.

IV. SUMMARY OF ARGUMENT

There has been a rash of meritless post-election litigation in swing states seeking to undermine or even invalidate the results of the November 3, 2020 general election. State and federal courts have rejected every one of those cases.¹ As the

¹ See, e.g., Emily Bazelon, *Trump Is Not Doing Well With His Election Lawsuits. Here's a Rundown*, NY Times (updated Nov. 25, 2020), available at <https://www.nytimes.com/2020/11/13/us/politics/trump-election-lawsuits.html>.

Third Circuit recently wrote in rejecting a case similar to this one: “Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.” *Donald J. Trump for President, Inc. v. Secretary Commonwealth of Pennsylvania*, No. 20-3371, 2020 WL 7012522, *1 (3d Cir. Nov. 27, 2020) (affirming order denying leave to amend in a case concerning the processing of absentee ballots and observing vote tabulations). So too here. The district court properly denied Plaintiff L. Lin Wood’s Emergency Motion for Injunctive Relief (ECF 6, the “Motion”) as legally and factually baseless, and Plaintiff’s case has only gotten weaker in this “emergency” appeal.

Plaintiff’s requested injunction would have prevented the State from certifying the results of a presidential election in which nearly five million Georgians voted, an unprecedented step that district court Judge Grimberg characterized as “extraordinary relief.” *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, *1 (N.D. Ga. Nov. 20, 2020) (“Op.”). Pure and simple, Plaintiff’s Motion was an effort to disenfranchise not just the individual *amici* and those served by the organizational *amici*, but ***every Georgia voter***.

Plaintiff’s objective to disenfranchise all Georgia voters remains the same before this Court, although he now tries a different tack, asking this Court for a form of relief never presented to the district court: an order “that the election must be *re-*

done.” Plaintiff-Appellant’s Brief (“Br.”) at 39 (emphasis added); *see also id.* at 19.² This Court’s appellate review does not include issues or requests for relief never presented below. Even if it did, only the direst of circumstances might support such sweeping judicial intervention in a completed election, and the recent election does not come close to fitting the bill.

Indeed, there is no basis for Plaintiff to obtain *any* relief. First, Plaintiff’s request to enjoin certification of the November election results is moot because they already have been certified. Second, the district court correctly held that Plaintiff lacks standing because he presents only the type of generalized grievance about government conduct that any citizen might have and has not suffered a cognizable injury. *Op.* at 12–19. Third, even if Plaintiff could satisfy the basic requirements of Article III, as Judge Grimberg held, Plaintiff’s claims are barred by laches because of his decision to delay filing suit until after the election results were known. *Op.* 16–23.

² Mr. Wood apparently also supports re-doing the election by means other than a court order. He has asserted publicly that President Trump “should declare martial law,” a statement he made in response to a call by Ohio-based political organization We the People Convention for the president to “exercise the Extraordinary Powers of his office and declare limited Martial Law to temporarily suspend the Constitution and civilian control of these federal elections *in order to have the military implement a national re-vote.*” Lin Wood (@LLinWood) Dec. 1, 2020 (10:00 am), <https://twitter.com/LLinWood/status/1333788036815937537> (disseminating link to <https://wethepeopleconvention.org/articles/WTPC-Urges-Limited-Martial-Law>) (emphasis added).

Additionally, Plaintiff's claims fail on the merits. As the district court correctly held, Plaintiff's Equal Protection claim fails as a matter of law because the state-wide procedures for handling absentee ballots did not subject Plaintiff to disparate treatment or limit in any way his ability to vote in person or to have his vote counted. Op. at 24–28. Plaintiff's Elections and Electors Clauses claim fails because, among other reasons, the absentee ballot procedures at issue are not contrary to Georgia law. Op. at 29–32.

Plaintiff's Emergency Motion for Relief is moot, baseless, and contrary to the bedrock values of our democracy. The district court properly rejected it in its thorough and well-reasoned opinion. *Amici curiae* respectfully urge this Court to affirm the district court's decision.

V. ARGUMENT

A. Plaintiff's Appeal Is Moot.

The only appeal properly before this Court is Plaintiff's request for interlocutory review of certain aspects of the district court's November 19 oral ruling and November 20 written Order (ECF 54) denying Plaintiff's Motion. That appeal is moot because the events Plaintiff sought to prevent have occurred. Accordingly, this Court does not have jurisdiction.

Plaintiff's "emergency" appeal is limited to his Equal Protection (Count I) and Electors and Elections Clauses (Count II) claims, both of which concern Plaintiff's

assertion that the procedures for processing absentee ballots set out in a settlement agreement between Defendants and the Democratic Defendant-Intervenors violate Georgia state law. Amended Complaint (ECF 5) (“Compl.”) at ¶¶ 73–80, 86–92; *see also* Motion at 15–20.³ Plaintiff’s Motion sought either of the same two injunctions as relief for each of these claims:

1. Prohibiting the certification of the results of the 2020 general election in Georgia on a statewide basis; or
2. Alternatively, prohibiting the certification of said results which include the tabulation of defective absentee ballots.

Motion at 24.

Pursuant to Georgia law, and after the district court denied Plaintiff’s Motion, Georgia officials certified the November election results. Br. at 38 (admitting Georgia certified the election results); Governor Kemp Formalizes Election Certification, Calls for Signature Audit, Endorses Voter ID for Mail-In Balloting (Nov. 23, 2020), <https://gov.georgia.gov/press-releases/2020-11-23/governor->

³ This appeal *does not* concern Plaintiff’s Due Process (Count III) claim, which rests on a different theory and seeks different relief. That claim is based entirely on assertions that the non-party Trump Campaign was denied “meaningful access to observe and monitor” the “hand recount” underway when Plaintiff filed suit. Compl. ¶¶ 101-104. On appeal, Plaintiff addresses only his Equal Protection and Electors and Elections Clauses theories, and the words “due process” do not appear in Plaintiff’s Brief. Thus, nothing about the counting or recounting of votes is properly before the Court.

[kemp-formalizes-election-certification-calls-signature-audit](#). Thus, Plaintiff's appeal from the district court's Order declining to enjoin certification is now moot.

Plaintiff's arguments against mootness confuse whether the entire *case* is moot with whether his request for emergency *injunctive relief* is moot. Br. at 38 (“The fact that the State has certified the Georgia purported election results does not moot the Plaintiff's lawsuit *because this litigation is ongoing*.”) (emphasis added). These are distinct issues. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 394 (1981) (regarding preliminary injunction that was mooted by subsequent events while on appeal: “This, then, is simply another instance in which one issue in a case has become moot, but the case as a whole remains alive because other issues have not become moot.”); *Ethredge v. Hail*, 996 F.2d 1173, 1174–76 (11th Cir. 1993) (plaintiff's “propensity to criticize Presidential policies” and likelihood of criticizing future presidents did not present a live controversy on appeal where Plaintiff had requested specific relief allowing him to criticize former President Bush).

Perhaps the best evidence of this appeal's mootness is that Plaintiff *does not ask this Court to order the relief* he sought in the district court. Rather, he seeks very different and much broader relief:

As a result, this Court should reverse the district court and enter, or direct that the district court enter, an injunction declaring that the election results are defective, and ordering the Defendants to cure their constitutional violations *by re-doing the election* in a manner consistent with the requirements of the United States Constitution.

Br. at 19 (emphasis added). This request is breathtaking and unprecedented in a presidential election and would disenfranchise millions of voters—and, importantly for present purposes, it is relief that Plaintiff *did not seek in the district court*. It is axiomatic that a plaintiff cannot seek relief on appeal that he never sought in the district court or claim the district court abused its discretion by denying injunctive relief that the plaintiff never sought. *Wakefield v. Church of Scientology of Cal.*, 938 F.2d 1226, 1229 n.1 (11th Cir.1991) (“Parties may make alternative claims, change claims, sometimes file inconsistent claims, but parties may not do so in the appellate court. This court reviews the case tried in the district court; it does not try ever-changing theories parties fashion during the appellate process.”). Nor can Plaintiff create subject matter jurisdiction or avoid mootness by seeking different injunctive relief on appeal than he sought below. *Ethredge*, 996 F.2d at 1174–76; *Cafe 207, Inc. v. St. Johns County*, 989 F.2d 1136, 1136–37 (11th Cir. 1993) (“The case reaches us ... as an interlocutory appeal from an order denying a preliminary injunction. Consequently, only the action on the preliminary injunction is presently reviewable.”); *Bayou Liberty Ass’n, Inc. v. U.S. Army Corps of Engineers*, 217 F.3d 393, 398 (5th Cir. 2000) (“this court may not fashion relief not requested below in order to keep a suit viable”).

As the Court recognized in its Jurisdictional Questions to the parties, this Court’s subject matter jurisdiction is limited: once a case or controversy becomes

moot, this Court lacks jurisdiction to decide it. *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011); *Brooks v. Ga. State Bd. of Elections*, 59 F.3d 1114, 1118 (11th Cir. 1995) (an appeal is moot where it is “impossible for the court to grant any effectual relief whatever to a prevailing party”). Importantly, that applies to requests for preliminary injunctive relief, regardless of whether the underlying dispute is ongoing or other forms of relief remain available in the district court. *Tropicana Product Sales, Inc. v. Phillips Brokerage Co.*, 874 F.2d 1581, 1583 (11th Cir. 1989) (plaintiff’s arguments “demonstrate that [plaintiff’s] claim on the merits is not mooted” but “do not save [plaintiff’s] appeal from its motion for a preliminary injunction from being dismissed as moot”); *Caddo Nation of Oklahoma v. Wichita and Affiliated Tribes*, 877 F.3d 1171, 1176 (10th Cir. 2017) (“But though a case may not be moot because partial relief is still possible, a specific request for an injunction may become moot.”). Here, Plaintiff’s claim is moot and, therefore, his appeal should be dismissed for lack of subject matter jurisdiction.

B. Standard of Review

This Court reviews a district court’s ruling on a motion for injunctive relief for abuse of discretion. *Sanders v. Dooly Cnty., Ga.*, 245 F.3d 1289, 1291 (11th Cir. 2001). “A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous.”

United States v. Estrada, 969 F.3d 1245, 1261 (11th Cir. 2020) (internal quotation omitted). This Court’s “review under this standard is very narrow and deferential.” *Gonzalez v. Governor of Ga.*, 978 F.3d 1266, 1270 (11th Cir. 2020) (internal quotation omitted).

C. Plaintiff Lacks Standing

“The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance.” *Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004). To avoid dismissal on standing grounds, a plaintiff must show (1) an “injury in fact,” meaning “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) a causal connection between the injury and the defendant’s conduct, and (3) a likelihood the injury will be redressed by a favorable decision. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)); accord *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). A “particularized” injury is one that “affect[s] the plaintiff in a personal and individual way.” *Lujan*, 504 U.S. at 561 n.1. Put another way, Plaintiff must demonstrate “a personal stake in the outcome of the controversy” presented because federal courts have a “properly limited” role “in a democratic society” and are “not a forum for generalized grievances.” *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (internal citations and quotations omitted).

Plaintiff cannot obtain preliminary relief—and cannot maintain suit—because his complaints about Defendants’ processing of absentee ballots do not show an injury in fact. His complaints are at most generalized grievances about government conduct, which are insufficient to confer standing.

1. Plaintiff’s Equal Protection Claim is Based on a Generalized Grievance that Does Not Give Him Standing

Before the district court, Plaintiff’s alleged injury rested solely on the unsupported assertion that alleged state law violations rendered (1) Georgia’s election results “improper and suspect”; (2) “resulting in Georgia’s electoral college votes going to Joseph R. Biden”; which is allegedly (3) “contrary to the votes of the majority of Georgia qualified electors.” Motion at 22. But Plaintiff did not provide any evidence, or even allege, that *his* vote was not tabulated appropriately. Nor did he offer anything more than speculation that other qualified electors’ votes might not have been tabulated appropriately, or that an unqualified elector’s vote was incorrectly tabulated. Op. at 27. Plaintiff’s disappointment in the election results is not a cognizable injury, much less one that a court may remedy.

On appeal, Plaintiff makes two new arguments. First, he claims that there were a variety of “irregularities” in the vote recount. Br. at 22–23. Even if Plaintiff had presented more than speculation on this point, supposed vote counting irregularities do not confer standing because they do not harm Plaintiff “in a personal and individual way.” *Lujan*, 504 U.S. at 561 n.1. Plaintiff’s claim that “the law ... has not

been followed ... is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past. It is quite different from the sorts of injuries alleged by plaintiffs in voting rights cases where we have found standing.” *Dillard v. Chilton County Comm’n*, 495 F.3d 1324, 1332–33 (11th Cir. 2007) (citing *Baker v. Carr*, 369 U.S. 186, 207–08 (1962)); *see also Lance v. Coffman*, 549 U.S. 437, 440–41 (2007) (“a generalized grievance that is plainly undifferentiated and common to all members of the public” is not sufficient to confer standing).⁴

Second, Plaintiff now asserts he suffered an injury because “he voted under one set of rules, and other voters, through the guidance in the unlawful [Settlement Agreement], were permitted to vote invalidly under a different and unequal set of rules.” Br. at 24. Here again is a speculative statement that other votes may have been counted improperly, not that Plaintiff’s vote was not counted. This too is merely a claim that the law has not been followed, which is insufficient to confer standing. *Dillard*, 495 F.3d at 1332–33.

⁴ In addition, Plaintiff’s claims about the recount and observers pertain to the Due Process claim (Count III) not before the Court, *see* Compl. ¶¶ 97–107, and cannot be the basis for standing to assert an Equal Protection claim. In any event, there is no constitutional right to observe vote counting.” *Donald J. Trump for President, Inc.*, 2020 WL 7012522, at *6.

2. Plaintiff Has No Standing to Bring a Claim Under the Electors and Elections Clauses

As a private citizen, Plaintiff has no standing to assert claims under the Electors and Elections Clauses asserting Georgia officials purportedly failed to follow state election law. Plaintiff asserts he has standing because he is a registered elector who “brings this suit in his capacity as a private citizen.” Compl. ¶ 8. But “private plaintiffs lack standing to sue for alleged injuries attributable to a state government’s violations of the Elections Clause.” *Bognet v. Sec’y of Commonwealth*, No. 20–3214, 2020 WL 6686120 at *6 (3d Cir. Nov. 13, 2020). In *Lance v. Coffman*, the Supreme Court rejected the standing of four private citizens to bring an Elections Clause claim. 549 U.S. 437, 442 (2007). The Court held: “The only injury plaintiffs allege is that the law—specifically the Elections Clause—has not been followed. This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past.” *Id.*⁵ The same is true here.

D. Plaintiff’s Claims Are Barred by Laches

Even if Plaintiff’s Equal Protection and Electors and Elections Clauses claims were otherwise viable—and Plaintiff never explains why they are—they would still

⁵ “Because the Elections Clause and the Electors Clause have considerable similarity,” they are properly interpreted in the same way. *Bognet*, 2020 WL 6686120 at *7; *Foster v. Love*, 522 U.S. 67, 69 (1997) (characterizing Electors Clause as Elections Clause’s “counterpart for the Executive Branch”).

be barred by laches. The equitable doctrine of laches applies in the context of elections to prevent gamesmanship and the very kind of mass disenfranchisement Plaintiff seeks.

Laches applies where a plaintiff has (1) “delay[ed] in asserting a right or a claim,” (2) without excuse, (3) that would result in undue prejudice. *AmBrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1545 (11th Cir. 1986). The doctrine applies in election cases as in other actions. *See, e.g., Sanders v. Dooly Cnty., Ga.*, 245 F.3d, 1291 (affirming laches finding); *Detroit Unity Fund v. Whitmer*, 819 F. App’x 421, 422 (6th Cir. 2020) (affirming denial of motion for injunctive relief made two hours before ballot initiative filing deadline as “barred by laches, considering the unreasonable delay on the part of [p]laintiffs and the consequent prejudice to [d]efendants”).

1. Plaintiff’s delay was unreasonable.

The settlement agreement Plaintiff objects to was executed and subject to extensive publicity in March 2020, eight months before the November general election.⁶ The regulations contemplated by the settlement agreement were adopted

⁶ *See, e.g.,* Mark Niesse, *Lawsuit settled, giving Georgia voters time to fix rejected ballots*, The Atlanta Journal-Constitution (Mar. 7, 2020), <https://www.ajc.com/news/state--regional-govt--politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/> (last visited Nov. 19, 2020).

after a public notice and comment period.⁷ Yet Plaintiff did nothing until his displeasure with the election *results* prompted him to challenge the *procedures* by which the election was conducted.

Had Plaintiff timely asserted these claims—however frivolous—Defendants or a court would have had the opportunity to address them. Instead, Plaintiff waited eight months, until after these procedures had been used in three different elections, millions of ballots had been processed under the procedures, and the outcome of the general election—which Plaintiff disliked—had been announced. Plaintiff still offers no coherent excuse for this delay. Challenges to election procedures are to be raised *before* the election is conducted. *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973) (“[T]he law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication.”).

2. An injunction would cause extreme prejudice.

The common-sense rule mandating pre-election challenges protects voters and the integrity of our system of government: it allows problems to be fixed *before* the election is held, without disrupting votes *after* they have been cast. *Southwest*

⁷ Georgia State Elections Board, Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing (Mar. 5, 2020), <https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf> (scheduling public hearing for Apr. 15, 2020).

Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 919 (9th Cir. 2003) (“Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented.”).

Overturning the results of an election is an extraordinary intervention by the judiciary into democratic processes; a challenge to election procedures should be brought when there is still time to correct those procedures. *Gwinnett Cty. NAACP v. Gwinnett Cty. Bd. of Registration and Elections*, 446 F. Supp. 3d 1111, 1126–27 (N.D. Ga. 2020) (“Plaintiffs were not faced with a binary choice and should have sought court intervention sooner.”); *Republican Party of Pa. v. Cortes*, 218 F. Supp. 3d 396, 404–05 (E.D. Pa. 2016) (declining to enjoin aspects of Pennsylvania’s poll-watcher statute in a case filed “eighteen days before the election” because “Plaintiffs unreasonably delayed filing their Complaint and Motion, something which weighs decidedly against granting the extraordinary relief they seek”).

Were the law otherwise, parties could “lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action.” *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973); *see also Carlson v. Ritchie*, 830 N.W.2d 887, 892 (Minn. 2013) (“[P]etitioners cannot wait until after elections are over to raise challenges that could have been addressed before the election.”); *Lewis v. Cayetano*, 823 P.2d 738, 741 (Haw. 1992) (laches barred post-election challenge where voters had constructive notice of ballot form

for a month prior to the election). “Courts have been wary lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs.” *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988).

Sandbagging is precisely what Plaintiff has done here. Indeed, he tacitly concedes that he delayed, acknowledging that delay is just one factor in the analysis. Br. at 39. But he offers no argument as to why his delay was excusable and not prejudicial. *Id.*

As the district court noted, Plaintiff’s requested relief “could disenfranchise a substantial portion of the electorate and erode the public’s confidence in the electoral process.” Op. at 23. To grant such relief would be extremely prejudicial to Georgia voters, including *amici*, who took all necessary steps to ensure that their votes were legally cast. Having failed to rebut any element of laches, Plaintiff cannot show the district court abused its discretion.

E. The District Court Correctly Denied Interim Injunctive Relief on the Merits.

The preliminary injunction standard is a familiar one. The movant “must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The balance of equities and public interest factors “merge when the Government is the opposing party.” *Nken v. Holder*,

556 U.S. 418, 435 (2009). Here, each factor weighs strongly against Plaintiff's request for relief.

1. Plaintiff Does Not Have a Valid Constitutional Claim Based on the Settlement Agreement.

a. Equal Protection

Plaintiff argues that the Settlement Agreement “created an arbitrary, disparate, and ad hoc process for processing defective absentee ballots, and for determining which such ballots should be ‘rejected,’ contrary to Georgia law.” Br. at 36. This theory does not and cannot support an Equal Protection claim.

Although Plaintiff asserted for the first time at the hearing on the Motion that he relied on a vote dilution theory, his objections to the Settlement Agreement in no way relate to the weighting of the votes of one group versus another. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1185 (11th Cir. 2008) (“When a state adopts an electoral system, the Equal Protection Clause of the Fourteenth Amendment guarantees qualified voters a substantive right to participate *equally* with other qualified voters in the electoral process.”) (citing *Reynolds*, 377 U.S. at 566) (finding unconstitutional voter matching system that differed across counties). Plaintiff does not allege that he has been disadvantaged contrary to the “one person, one vote” maxim. As the district court correctly observed:

At the starting gate, the additional safeguards on signature and identification match enacted by Defendants did not burden Wood's ability to cast his ballot at all. Wood, according to his legal counsel during oral argument, did not vote absentee during the General Election. And the "burden that [a state's] signature-match scheme imposes on the right to vote...falls on vote-by-mail and provisional voters' fundamental right to vote."

Op. at *9 (quoting *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1319 (11th Cir. 2019)).

Nor has Plaintiff articulated any way in which Georgia has allegedly "value[d] one person's vote over that of another" through "arbitrary and disparate treatment." See *Bush v. Gore*, 531 U.S. 98, 104–05 (2000). While he alludes to some sort of "disparate treatment," Br. at 36, he provides no explanation and, in fact, previously conceded that the regulations adopted in relation to the Settlement Agreement applied *uniformly* statewide. Compl. ¶ 25.

Plaintiff cannot shoehorn the processing of absentee ballots in alleged violation of Georgia elections law into a Fourteenth Amendment Equal Protection claim. *Donald J. Trump for President, Inc.*, 2020 WL at *6 (equal protection claims "require not violations of state law, but discrimination in applying it").

b. Electors and Elections Clauses

Plaintiff argues that "[t]he procedures for processing and rejecting ballots employed by the Defendants in this election ... constitute a usurpation of the legislator's plenary authority" because they allegedly conflict with O.C.G.A. § 21-

2-381(b)(1), which governs how absentee ballots are to be processed. In fact, there is no conflict.

Under the Settlement Agreement, Secretary Raffensperger agreed to issue an Official Election Bulletin to county officials on the procedures for reviewing signatures on absentee ballot envelopes. Pl’s Ex. A (ECF 6–1) ¶ 3. Per that Bulletin, if a registrar or clerk believed a signature did not match the elector’s signature on file, “two other registrars, deputy registrars, or absentee ballot clerks” evaluated the signature. *Id.* ¶ 3. If a majority of the reviewers determined the signature did not match, the absentee ballot was to be rejected. *Id.*

This straightforward process is consistent with the signature verification procedures provided under Georgia law, which reads in pertinent part: upon receiving an absentee ballot, “[t]he register or clerk shall compare the signature or mark on the oath with the signature or mark” on file, and “shall if the information and signature appear to be valid ... so certify by signing or initialing his or her name below the voter’s oath.” O.C.G.A. § 21-2-386(a)(1)(B). If, however, “the signature does not appear to be valid ... the registrar or clerk shall write across the face of the envelope ‘Rejected,’ giving the reason therefor.” O.C.G.A. § 21-2-386(a)(1)(C).

Plaintiff argues the Bulletin stripped county election officials of the authority to determine “individually” the validity of absentee ballot signatures and allowed officials to “compare signatures in a way not permitted” by statute. Br. at 30.

However, as the district court observed, Plaintiff's Motion "does not articulate how the Settlement Agreement is not 'consistent with law' other than it not being a verbatim recitation of the statutory code." Op. at 11.

Plaintiff's argument on appeal is equally flawed. The thrust of Plaintiff's argument appears to be that the Settlement Agreement provides for three people, not one, to be involved in the review of any potentially defective absentee ballot. Br. at 30–31. Although §§ 21-2-386(a)(1)(B)–(C) refer to "clerk and "register" in the singular, this does not prohibit more than one "clerk" or one "register" from being involved in evaluating the validity of a signature on an absentee ballot envelope. In interpreting a statute, "the singular or plural number each includes the other, unless the other is expressly excluded." O.C.G.A. § 1-3-1(d)(6); *see Reid v. Morris*, 309 Ga. 230, 236 n.3 (2020) (applying O.C.G.A. § 1-3-1(d)(6) to determine statutory use of the term "defendant" does not mean only one defendant may be liable for punitive damages). In drafting O.C.G.A. § 21-2-386 (a)(1)(B)–(C), the Legislature did not preclude registers, deputy registers, and clerks from working together to evaluate questionable signatures.

Plaintiff concedes, as he must, that the Georgia Legislature has authorized the State Election Board to issue election rules and regulations that are "conducive to the fair, legal, and orderly conduct of ...elections" and "consistent with law." Br. at 16 (quoting O.C.G.A. § 21-2-31(2)). This is exactly what the Settlement Agreement

achieved through provisions that are in no way contrary to Georgia law.

Plaintiff also asserts that Defendants violated Georgia law by allowing a single political party to “write rules for reviewing signatures.” Br. at 32. The Settlement Agreement itself refutes his claim. The State Defendants agreed to “consider” providing county registers and absentee ballot clerks training materials on evaluating voter signatures that a handwriting expert retained by the plaintiffs in the underlying litigation had prepared. *See* Settlement Agreement (ECF 6-1) ¶ 4. The Settlement Agreement did not identify the materials nor did it impose any requirement on distributing those materials. Further, Plaintiff does not allege what, if any, materials were distributed; nor does he explain how they would have constituted “rules for reviewing signatures.” Thus, Plaintiff has not established that the Settlement Agreement violated Georgia election law.

2. Plaintiff Will Not Suffer Irreparable Injury, or Any Injury At All, in the Absence of Injunctive Relief.

For the same reasons that Plaintiff lacks standing to sue, *see supra* § IV(B), he also fails to make the more substantial showing of irreparable injury required for injunctive relief.

3. Plaintiff’s Requested Election Do-Over is Inequitable and Contrary to the Public Interest.

Plaintiff’s previous request to enjoin certification of the election results, and current request for an election do-over, are wildly disproportionate to any purported

injury he allegedly suffered and would violate the rights of millions of Georgia voters. No court has ever granted relief of the nature and scope that Plaintiff requests under any set of facts, let alone that averred in the Motion. This is a glaring example of “the cure [being] worse than the alleged disease, at least insofar as the professed concern is with the right of voters to cast effective ballots in a fair election.” *Baber v. Dunlap*, 349 F. Supp. 3d 68, 76 (D. Me. 2018).

Even if Plaintiff’s allegations could support a finding of error in election administration—which the district court roundly rejected (Op. at 28-31)—tossing out millions of votes in the presidential election would violate established law. Courts have refused to “believe that the framers of our Constitution were so hypersensitive to ordinary human frailties as to lay down an unrealistic requirement that elections be free of any error.” *Powell v. Power*, 436 F.2d 84, 88 (2d Cir. 1970). A finding that “the election process itself reaches the point of patent and fundamental unfairness ... must go well beyond the ordinary dispute over the counting and marking of ballots.” *Duncan v. Poythress*, 657 F.2d 691, 703 (5th Cir. 1981) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)). The Eleventh Circuit has observed that, “[i]n most cases, irregularities in state elections are properly addressed at the state level, whether through state courts or review by state election officials.” *Burton v. State of Ga.*, 953 F.2d 1266, 1268 (11th Cir. 1992). Only the most egregious election misconduct could justify the mass disenfranchisement

Plaintiff seeks. *McMichael v. Napa County*, 709 F.2d 1268, 1273–94 (9th Cir. 1983) (Kennedy, J., concurring) (invalidation of election results “has been reserved for instances of willful or severe violations of established constitutional norms”). Plaintiff’s allegations fall woefully short of that standard.

The Georgia Supreme Court similarly has stated that “[i]t is not sufficient to show irregularities which simply erode confidence in the outcome of the election. ***Elections cannot be overturned on the basis of mere speculation.***” *Meade v. Williamson*, 745 S.E.2d 279, 285 (Ga. 2013) (emphasis added) (quoting *Middleton v. Smith*, 539 S.E.2d 163 (Ga. 2000)). In this vein, in a case where Atlanta voters registered to vote at locations that were not authorized by state law and voted in the 1981 Atlanta mayoral election, that Court held “the remedy of disenfranchisement of voters registered in violation of the statute is so severe as to be unpalatable where the good faith of the registrars is not disputed.” *Malone v. Tison*, 282 S.E.2d 84, 89 (Ga. 1981).

Moreover, a judicial order nullifying Georgia’s election results and “re-doing” the election would be grossly inequitable and would effectively deprive Georgia of *any* role in selecting the 46th president of the United States. The presidential election results must be determined by December 8, 2020 to benefit from the safe-harbor provision of the federal election code and in any event no later than December 14, 2020, the day that the Electoral College electors meet to cast their votes. 3 U.S.C.

§§ 5, 7; O.C.G.A. § 21-2-11 (electors must meet at noon the day directed by Congress); *see also Bush v. Gore*, 531 U.S. at 110–111 (ordering remedy in light of deadline for selection of electors). The briefing on this “emergency” appeal will be complete on December 3, 2020. Even if this Court were to rule the next day and grant Plaintiff the do-over he seeks, there would be no time for a second presidential election in Georgia in the ten days left to seat a slate of presidential electors. As a consequence, Georgia would not participate in the Electoral College vote and the president would be chosen by the other 49 states and the District of Columbia. To disenfranchise every Georgia voter would be unprecedented and unjust, and would gravely undermine public confidence in the conduct of the presidential election and in the rightful winner.

As a matter of law, the Motion—which does not demonstrate any specific instances of fraud, systemic or otherwise—cannot support the extreme relief requested. Even if Plaintiff had shown that a few isolated *election workers* violated certain election laws, that could not justify the wide-scale disenfranchisement of *Georgia voters*. Rather than curing any constitutional violation, Plaintiff’s requested injunction would *create* grave constitutional violations by invalidating the legal and valid votes of millions of Georgia citizens. *See Northeast Ohio Coalition for Homeless v. Husted*, 696 F.3d 580, 595, 597–98 (6th Cir. 2012) (holding that rejecting ballots invalidly cast due to poll worker error likely violates due process).

Because Plaintiff's attempt to circumvent the will of the Georgia electorate "has no essential or important relationship to the claim for relief," his requested relief must be denied. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993).

VI. CONCLUSION

For these reasons, *Amici Curiae* respectfully suggest that the Court affirm the district court's order.

Dated: December 1, 2020

Respectfully submitted,

Kristen Clarke
Jon M. Greenbaum
Ezra D. Rosenberg
Julie M. Houk
John Powers
**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW**
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: 202.662.8300

By: /s/ Bryan L. Sells

Susan Baker Manning
Jeremy P. Blumenfeld
Martha B. Stolley
Catherine North Hounfodji
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: 202.739.3000
Facsimile: 202.739.3001
susan.manning@morganlewis.com

Bryan L. Sells (Bar No. 635562)
**LAW OFFICE OF
BRYAN L. SELLS, LLC**
P.O. Box 5493
Atlanta, GA 31107-0493
404.480.4212 (voice/fax)
bryan@bryansellslaw.com

*Attorneys for Amici Curiae Georgia State
Conference of the NAACP, et al.*

FED. R. APP. P. 29(A)(4)(E) STATEMENT

No party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel contributed money intended to fund the preparation of this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae certify that *amici curiae* the Georgia State Conference of the NAACP and the Georgia Coalition for the People's Agenda are nonprofit organizations, neither of which has a parent corporation or issues public stock.

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 6,043 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft Office 365 in Times New Roman 14-point font.

Dated: December 1, 2020

/s/ Bryan L. Sells
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on December 1, 2020. I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: December 1, 2020

/s/ Bryan L. Sells
Attorney for *Amici Curiae*

UNITED STATES DISTRICT COURT OF APPEALS
ELEVENTH CIRCUIT

CASE NO. 20-14418

L. LIN WOOD, JR.,

Appellant,

vs.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia, et al.,

Appellees.

CONSOLIDATED REPLY BRIEF OF APPELLANT¹

On appeal from the United States District Court, Northern District of Georgia

Ray S. Smith, III
SMITH & LISS, LLC
Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
Attorney for Appellant
rsmith@smithliss.com

¹ Although this brief principally replies to Appellees' answer brief, it also addresses the arguments raised in the Intervenor's response brief and the *amicai curiae* brief. The latter two briefs make substantially the same and overlapping arguments as the Appellees.

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Appellant, L. LIN WOOD, JR., pursuant to Fed.Ed. R. Civ. P. 26.1, and 11th Cir. R. 26.1-3, hereby submit this Certificate of Interested Persons and Corporate Disclosure Statement, as follows:

Beane, Amanda J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Blumenfeld, Jeremy P. - Counsel for Proposed Intervenor Woodhall, et al.

Brailey, Emily R. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Callais, Amanda R. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Carr, Christopher – Counsel for Appellee

Clarke, Kristen- Counsel for Proposed Intervenor Woodhall, et al.

Coppedge, Susan P. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Elias, Marc E. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Greenbaum, Jon M. - Counsel for Proposed Intervenor Woodhall, et al.

Grimberg, Steven D. – United States Northern District Court Judge

Hamilton, Kevin J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Houk, Julie M. - Counsel for Proposed Intervenor Woodhall, et al.

Hounfodji, Catherine North- Appellee

Knapp, Jr., Halsey G. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Krevolin and Horst, LLC- Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Kuhlmann, Gillian C. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Law Office of Bryan L. Sells, LLC - Counsel for Proposed Intervenor Woodhall, et al.

Lawyers' Committee for Civil Rights Under Law- Counsel for Proposed Intervenor Woodhall, et al.

Le, Anh - Appellee

Lewis, Joyce Gist- Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Manning, Susan Baker- Counsel for Proposed Intervenor Woodhall, et al.

Mashburn, Matthew- Appellee

McGowan, Charlene S. - Counsel for Appellee

Mertens, Matthew J. - Counsel for Intervenor-Defendants, Democratic Party of Georgia, et al.

Morgan, Lewis & Bockius LLP - Counsel for Proposed Intervenors
Woodhall, et al.

Office of Attorney General of Georgia- Counsel for Appellee

Perkins Coie LLP - Counsel for Intervenor-Defendants, Democratic Party of
Georgia, et al.

Powers, John- Counsel for Proposed Intervenors Woodhall, et al.

Raffensperger, Brad - Appellant

Rosenberg, Ezra D. - Counsel for Proposed Intervenors Woodhall, et al.

Sells, Bryan L. - Counsel for Proposed Intervenors Woodhall, et al.

Smith, III, Ray - Counsel for Appellant

Sparks , Adam M. - Counsel for Intervenor-Defendants, Democratic Party
of Georgia, et al.

Sullivan, Rebecca N. – Appellant

Velez, Alexi M. - Counsel for Intervenor-Defendants, Democratic Party of
Georgia, et al.

Webb, Bryan K. - Counsel for Appellee

Willard, Russell D. - Counsel for Appellee

Wood, Jr., L. Lin. – Appellant

Worley, David J. – Appellee

TABLE OF CONTENTS

	<u>PAGE</u>
CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.....	2
TABLE OF CONTENTS.....	5
TABLE OF CITATIONS.....	7
ARGUMENT.....	10

- A. Appellant has standing to maintain his Constitutional challenge to Appellee’s signature verification procedures because they violate his constitutional right to Equal Protection.
- B. The Appellees’ change to the procedures for rejecting absentee ballots conflicts with the state’s legislative framework for the presidential election was beyond their legal authority and is otherwise invalid, and therefore its unconstitutional.
- C. The Appellees’ change of the procedures for rejecting absentee ballots impermissibly diluted the Appellant’s vote and resulted in mail-in absentee ballots being valued more than in person ballots in violation of his Equal Protection rights.
- D. Laches does not bar Appellant’s claims and in any event is inapplicable to cases seeking to redress ongoing constitutional violations.
- E. Appellant’s claims are not Moot.
- F. The trial court’s finding that the rejection rate of absentee ballots was the same in 2018 and 2020 was clearly erroneous.

G. The State should be required to cure the constitutional deficiencies in the 2020 presidential election.

CONCLUSION.....	24
CERTIFICATE OF COMPLIANCE	25
CERTIFICATE OF SERVICE.....	25
SERVICE LIST.....	26

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Baker v. Carr</u> , 369 U.S. 186 (1962)	10
<u>Bush v. Gore</u> , 531 U.S. 98 (2000)	17
<u>Chatfield v. League of Women Voters of Michigan</u> , 140 S. Ct. 2019.....	19
<u>Citizens for Legislative Choice v. Miller</u> , 993 F. Supp. 1041 (E.D. Mich.1998)	13
<u>Common Cause/Georgia v. Billups</u> , 554 F. 3d 1340 (11th Cir. 2009)	11, 12
<u>Democratic Exec. Comm. of Fla. v. Lee</u> , 915 F.3d 1312 (11th Cir. 2019)	18
<u>Democratic Party of Georgia v. Crittenden</u> , 347 F. Supp. 3d 1324 (N.D. Ga. 2018)	18
<u>Feminist Women’s Health Center v. Burgess</u> , 282 Ga. 433 (Ga. 2007)	18
<u>George v. Haslam</u> , 112 F. Supp. 3d 700 (M.D. Tenn. 2015).....	12
<u>Gray v. Sanders</u> , 372 U.S. 83 (1963)	10
<u>League of Women Voters of Michigan v. Benson</u> , 373 F. Supp 3rd 867 908-909 (E.D. Mich. 2019)	19

<u>Martin v. Kemp,</u> 341 F. Supp. 3d 1326 (N.D. Ga. 2018)	10
<u>McLain v. Mier,</u> 851 F. 2d 1045 (8 th Cir. 1988)	10
<u>Middleton v. Andino,</u> 2020 WL 5591590 (D.S.C. September 22, 2020)	13
<u>New Ga. Project v. Raffensperger,</u> 2020 WL 5200930 (N.D. Ga. Aug. 31, 2020)	12
<u>Nielsen v. DeSantis,</u> 2020 WL 5552873 at *2 (N.D. Fla. June 30, 2020)	12
<u>Obama for Am. v. Husted,</u> 697 F.3d 423 (6 th Cir. 2012)	17
<u>Public Citizen, Inc. v. Miller,</u> 813 F. Supp. 821, 827 (N.D. Ga. 1993)	18
<u>Roe v. Alabama,</u> 43 F. 3d 574 (11th Cir. 1995)	11
<u>Siegel v. Lepore,</u> 254 Fed. 3d 1163 (11th Cir. 2000)	20
<u>Smith v. Clinton,</u> 687 F. Supp. 1310 (E.D. Ark. 1988)	19
<u>Warth v. Seldin,</u> 95. S. Ct. 2197, 2205 (1975)	17, 18

STATUTES

O.C.G.A. § 21-2-386	15
O.C.G.A. § 21-2-417(a)	15
O.C.G.A. §21-2-386(a)(1)(B)	16
O.C.G.A § 21-2-386(a)(1)(C)	16

ARGUMENT

A. Appellant has standing to maintain his Constitutional challenge to Appellee's signature verification procedures because they violate his constitutional right to Equal Protection.

The Supreme Court of the United States recognized in *Baker v. Carr*, 359 U.S. 691, 703-704 (1962) that a group of qualified voters had standing to challenge the constitutionality of a redistricting statute. The voter plaintiffs alleged it deprived them of Equal Protection. The Supreme Court recognized that a citizen's right to vote, free of arbitrary impairment by state action is a right secured under the Federal Constitution if such impairment results from, among other things, vote dilution by false tally. *Id.* Similarly, in *Gray v. Sanders*, 372 U.S. 83 (1963), the Supreme Court observed that any person whose right to vote was impaired by election procedures had standing to sue on the ground the system used in counting votes violated the Equal Protection Clause. Indeed, every voter's vote is entitled to be correctly counted once and reported, and to be protected from the diluting effect of illegal ballots. *Id.* at 380. See also, *McLain v. Mier*, 851 F. 2d 1045, 1048 (8th Cir. 1988)(voter had standing to challenge constitutionality of North Dakota ballot access laws); *Martin v. Kemp*, 341 F. Supp. 3d 1326, 1333 (N.D. Ga. 2018)(individual voters whose absentee ballots were rejected on the basis of signature mismatch had standing to assert constitutional challenge to absentee voting statute).

This Court in *Roe v. Alabama*, 43 F. 3d 574, 580, 581 (11th Cir. 1995) held that a voter sufficiently alleged the violation of a right secured by the constitution to support a section 1983 claim based on the counting of improperly completed absentee ballots. In *Roe*, the voter and two candidates for office sought injunctive relief preventing enforcement of an Alabama circuit court order requiring that improperly completed absentee ballots be counted. This Court stated that failing to exclude these defective absentee ballots constituted a departure from previous practice in Alabama and that counting them would dilute the votes of other voters. *Id.* 581. Recognizing that “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise, “this court modified affirmed the preliminary injunction issued by the district court in that case and enjoined the inclusion in the vote count of the defective absentee ballots.

Further, in *Common Cause/Georgia v. Billups*, 554 F. 3d 1340, 1351 (11th Cir. 2009) this Court held that voters had standing to challenge the requirement of presenting government issued photo identification as a condition of being allowed to vote. The plaintiff voters in that case did not have photo identification, and consequently, would be required to make a special trip to the county registrar’s office that was not required of voters who had identification. *Id.* 1351. There was no

impediment to the plaintiff's ability to obtain a free voter identification card. Although the burden on the plaintiff voters was slight in having to obtain identification, this Court found that a small injury, even "an identifiable trifle" was sufficient to confer them standing to challenge the election procedure. *Id.*

In *George v. Haslam*, 112 F. Supp. 3d 700, 709 (M.D. Tenn. 2015), registered voters were found to have standing to sue the state governor and others based on the allegation that the method by which votes cast in the election were counted violated their rights to Equal Protection. That court observed that citizens have a constitutionally protected right to participate in elections on an equal basis with other citizens, and the equal protection clause prohibited the state from valuing one person's vote over that of another. *Id. Accord. Nielsen v. DeSantis*, 2020 WL 5552873 at *2 (N.D. Fla. June 30, 2020)(voters had standing to challenge state voting procedures including the requirement to pay postage on their mail-in ballots, the election date deadline for the supervisor of elections to receive a mailed ballot, and a restriction on delivery of remote ballots cast by others.)

In *New Ga. Project v. Raffensperger*, 2020 WL 5200930 (N.D. Ga. August 31, 2020), registered voters had standing to sue the Georgia Secretary of State and the State Election Board challenging policies governing Georgia's absentee voting process in light of dangers presented by Covid-19.

The district court in *Middleton v. Andino*, 2020 WL 5591590 at *12 (D.S.C. September 22, 2020) ruled that a voter had standing to challenge an absentee ballot signature requirement and a requirement that absentee ballots be received on election day to be counted. The court observed that the fact that an injury may be suffered by a large number of people does not by itself make that injury a non-justiciable generalized grievance as long as each individual suffers particularized harm, and voters who allege facts showing disadvantage to them have standing to sue. *Id.*

Similarly, in the present case, the Appellant has shown below that as a voter and as a financial supporter of the Republican Party, he has legal standing to maintain the challenge to the Appellees' unconstitutional signature verification requirements implemented and used in the 2020 election. *Accord. Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1044-1045 (E.D. Mich. 1998)(voters who wished to vote for specific candidates in an election had standing to challenge constitutionality of a state constitutional amendment establishing term limits for state legislators).

Accordingly, Appellant Wood has standing. As discussed below, the Appellees' procedure for verifying signatures and rejecting absentee ballots was unconstitutional. It valued absentee votes more than in person votes, and

impermissibly diluted the Appellant's in person vote. Accordingly, the trial court erred in concluding the Appellant lacked standing.

B. The Appellees' change to the procedures for rejecting absentee ballots conflicts with the state's legislative framework for the presidential election was beyond their legal authority and is otherwise invalid, and therefore its unconstitutional.

The initial brief contains detailed discussion of the terms of the Appellee's and political party committee Intervenor's settlement agreement. (Initial Brief at p. 16-18, 27-28) including the reasons why the procedures it created for mail-in absentee ballot signature verification are unconstitutional. The Appellant's brief at p. 6, as well as the political party committee intervenors' motion to intervene below (DE 8 at p. 4-8) also discuss the litigation and settlement in detail.

The settlement agreement should be deemed invalid for the additional reason that on its face it was not signed by the parties themselves. See DE 6-1 at p. 6. By its very terms, the agreement was to take effect "when each and every party has signed it, as of the date of the last signature." *Id.* at p.1. However, the signature page fails to contain any party's signature; instead, only the electronic signatures of counsel for the parties appear.

Additionally, the new procedures created through the settlement agreement were illegally implemented by Appellee because, as conceded by the Appellee and

Intervenors, the rules were not promulgated pursuant to official rule making procedures. Accordingly, the settlement parties, and Appellees in particular, took it upon themselves to bypass the customary requirement for public notice and comment that is attendant to official rulemaking. Rather, this new and different procedure, which changed the clear legislative framework for elections, was disseminated under the guise of an “official election bulletin.” However, such bulletins are not a substitute for formal rulemaking. Therefore, the settlement agreement and the new rules for signature verification it generated are unconstitutional for these additional reasons. Thus, the lower court erred in refusing to grant Appellant relief.

C. The Appellees’ change of the procedures for rejecting absentee ballots impermissibly diluted the Appellant’s vote and resulted in mail-in absentee ballots being valued more than in person ballots in violation of his Equal Protection rights.

As shown on their face, the procedures applicable to voter identification verification in connection with the actual voting process treat in-person voters like Appellant, different from mail-in absentee voters. Pursuant to O.C.G.A. § 21-2-417(a), an in-person voter must “present proper identification to a poll worker” before their vote may be cast. (emphasis added). Similarly, the voter identification procedure provided by OCGA § 21-2-386 provides that absentee ballots would be

received and reviewed by “a registrar or clerk.” (emphasis added). *See* O.C.G.A. § 21-2-386(a)(1)(B). If the signature does not appear to be valid or does not conform with the signature on file, “the registrar or clerk shall write across the face of the envelope “Rejected” giving the reason therefore.” *See* O.C.G.A. § 21-2-386(a)(1)(C). As such, before the Appellees and political party committee Intervenor entered into the unconstitutional settlement agreement, one poll worker was charged with verifying the voter’s identity before their ballot was cast regardless of whether the vote was in person or by mail-in absentee ballot.

As set forth more fully in the initial brief, the Appellees and political party committee intervenors changed the clear statutory procedure for confirming voter identity at the time of voting, so that rather than one poll worker reviewing signatures, a committee of three poll workers was charged with confirming that absentee ballot signatures were defective before rejecting a ballot.

This new procedure treated in-person voter identification verification different from mail-in absentee voter identification verification at the time of casting the vote. By designating a committee of three to check mail-in absentee voter identification but having a single poll worker check in person voter identification, the challenged procedure favors the absentee ballots, treats the absentee voters differently from in-person voters and values absentee votes more than the ballots of

in-person voters. Indeed, when a question of voter identity arises, one poll worker resolves it for an in-person voter, but any questions regarding mail-in absentee voter identification is resolved by 3 poll workers. Thus, the challenged procedure violates the Appellant's rights to equal protection and cannot be allowed to stand.

It is well established that a state may not arbitrarily value one person's vote over that of another. *Obama For America v. Husted*, 697 F. 3d 423 428 (6th Cir. 2012). The Equal Protection Clause prohibits a state from treating voters in disparate ways. *Id.* 428. *See also Bush v. Gore*, 121 S. Ct. 525 (2000)(having granted the right to vote on equal terms, the state may not later arbitrarily value one person's vote over another, such disparate treatment is a violation and a dilution of a citizen's vote). Before the settlement agreement one poll worker resolved questions of voter identification regardless of whether the vote was in-person or by mail-in absentee ballot. The settlement agreement resulted in a later arbitrary change that improperly treated the in person votes differently than the mail-in absentee ballots.

D. Laches does not bar Appellant's claims and in any event is inapplicable to cases seeking to redress ongoing constitutional violations.

The Appellee's legal action accrued after he suffered harm following the presidential election. A federal court's jurisdiction can be invoked only when the plaintiff himself has suffered some threatened or actual injury. *Warth v. Seldin*, 95.

S. Ct. 2197, 2205 (1975). A litigant has standing to challenge the constitutionality of a law only if the law has an adverse impact on the litigant's own rights. *Feminist Women's Health Center v. Burgess*, 282 Ga. 433 (Ga. 2007). It was not until the election occurred that Appellant's vote was diluted, which gave rise to his cause of action. Very shortly thereafter, he instituted the district court action. Under these circumstances, courts including in the Eleventh Circuit, have recognized laches does not bar a constitutional challenge. *Democratic Executive Committee of Florida v. Lee*, 915 F. 3d 1312, 1326 (11th Cir. 2019)(laches did not bar claims challenging Florida's vote by mail ballot rejection rules where action was initiated about one year after the state's rule was adopted); *Democratic Party of Georgia v. Crittenden*, 347 F. Supp. 3d 1324 1338-1339 (N.D. Ga. 2018)(organization's constitutional claims challenging rejection of absentee ballots in pending general election and statutory framework for curing and counting provisional ballots were not barred by doctrine of laches as many issues regarding voter's experiences did not arise until after election day); *Public Citizen, Inc. v. Miller*, 813 F. Supp. 821, 827 (N.D. Ga. 1993)(claims by plaintiff voters who voted for senatorial candidate who received plurality vote but lost runoff election were not barred by laches, despite being brought four weeks after runoff election because they were not ripe prior to the runoff.) Accordingly, Appellant's claims and request for injunctive relief were not

ripe until the election and are not barred by laches. The lower court erred in ruling that they were. As such, the district court should be reversed.

Indeed, the Appellees' violations of the Appellant's constitutional right to Equal Protection is an ongoing violation. Since same procedures challenged herein are to be employed in the January Senatorial runoff election, the constitutional violation can only be characterized as ongoing. Federal courts have recognized that laches is inapplicable to cases where the injury is continuing. *League of Women Voters of Michigan v. Benson*, 373 F. Supp 3d 867, 908-909 (E.D. Mich. 2019) (recognizing laches does not apply to ongoing or recurring harms), vacated on other grounds, *Chatfield v. League of Women Voters of Michigan*, 140 S. Ct. 2019; *Smith v. Clinton*, 687 F. Supp. 1310, 1312-1313 (E.D. Ark. 1988)(laches did not bar challenge by black registered voters in dual member state legislative district despite being filed 7 years after the apportionment plan because constitutional injury was a continuing injury).

Had the Appellant filed suit when the settlement agreement was publicly filed, the Appellee no doubt would have then argued Wood lacked standing because any injury he could have claimed at that time was merely hypothetical and/or not ripe. As such, Appellants claims are not barred by laches.

E. Appellant's claims are not Moot

The Appellees and intervenors' argument that Appellant's claims and request for injunctive relief are moot should be rejected. First, this Court in *Siegel v. Lepore*, 234 F.2d 1172-1173, 1139 (11th Cir. 2000), held that a suit challenging the vote tabulation procedure in a presidential election was not rendered moot when the manual recounts were completed and the vote tabulations certified. In that case, as in the present controversy, the presidential candidate and others were contesting the election results in various lawsuits in numerous courts. *Id.* at 1173. Based on the complex and ever shifting circumstances in *Siegel*, this Court found laches did not apply. The reasoning in *Siegel* squarely applies in this case. As such, the lower court erred in finding laches barred Appellant's requested relief.

Separately, Appellant brought this action before the Appellee certified the state election results. Appellee nonetheless certified the election, with full awareness that this litigation was ongoing. By insisting on certifying the election results in the face of an ongoing constitutional challenge, on which appellate remedies had not been exhausted, Appellee did so at their peril. Appellee cannot thereby cure the constitutional violations at issue in this case.

Finally, there is a runoff election scheduled in January 2021 for two U.S. senatorial seats in Georgia, and if the challenged procedures are employed, it will

further aggravate the Appellant's continuing constitutional injury. Accordingly, this controversy is not moot.

F. The trial court's finding that the rejection rate of absentee ballots was the same in 2018 and 2020 was clearly erroneous.

At the hearing on the Appellant's motion for injunctive relief, evidence was presented by way of affidavit concerning the rejection rates for absentee ballots. Appellant submitted an attorney declaration (DE 30-1), which based on data publicly available from Georgia Secretary of State's website, established that the rejection rate of absentee ballots was 3.06% in the 2016 general election and 3.58% in the 2018 general election, but reduced dramatically to 0.32% in the 2020 general election. The 2020 rejection rate represents approximately a 90% decrease in the rate of mail-in ballot rejections compared to the prior two general elections evidencing that defective ballots were not detected. (DE 30-1 at p. 3).

Had the historical mail-in ballot rejection rate of 2016 and 2018 been applied to the 2020 mail-in ballot numbers, it would have been anticipated that over 40,000 ballots would have been rejected. Given the margin of votes separating the presidential candidates is under 14,000 votes, these ballots potentially made the difference in the outcome. *Id.* at p. 4.

Notably, the Appellant's attorney affidavit states that the total number of rejected ballots was used to formulate the rate of rejection calculation because the Secretary of State does not provide data publicly that tabulates the number of mail-in absentee ballot rejections based solely on a missing or mismatched signature. *Id.* at p. 5. The Appellants' calculations are explained in detail in the attorney affidavit, and their factual basis and the methodology for the calculations is included in the affidavit.

In opposition, the Appellee filed the affidavit of Chris Harvey (DE 34-1). At p. 5 of the Harvey affidavit, paragraph 7 makes the claim that the rejection rates in 2018 and 2020 of absentee ballots for missing or non-matching signatures was identical, 0.15%. However, the statement is made in a conclusory manner and entirely lacks any foundation. Indeed, Harvey affidavit is devoid of any reference to the source of the data used for this calculation and it conflicts with the information that is publicly available on the Secretary of State's website. The Harvey affidavit lacks any tables, detailed calculations, or specificity regarding the raw data utilized. Nonetheless, the district court found that the absentee ballot rejection rate in 2018 and 2020 was identical (DE 54 at p. 28), apparently adopting the figures in the Harvey affidavit. Since the Harvey calculations lacked any foundation, however, the

court's decision in this regard was clearly erroneous and not based on substantial, competent evidence. As such, the trial court should be reversed.

G. The State should be required to cure the constitutional deficiencies in the 2020 Presidential election.

Appellant's action below sought an injunction, not just preventing certification, but also declaring the election results defective and requiring Appellees to cure the violations. *See* (DE 5 Verified Amended Complaint at p. 28-29); (DE 6 Plaintiff's Emergency Motion for Injunctive Relief at p. 24-25). Now, on appeal, the remedy sought would be for the Appellee to be required to de-certify the election results and cure the constitutional violations, including doing the election over. Only legal votes may be counted, and with all voters given the opportunity to vote anew, none would be disenfranchised. There is, at present, still time to accomplish this. The constitution demands nothing less. Although Appellees and Intervenors would be satisfied just to get this election done, Appellant and the constitution demand that they get it done correctly. Appellant satisfied the legal criteria for entry of the requested injunction.

CONCLUSION

For the reasons stated above, as well as in Appellant's initial brief, the District Court's order should be reversed and this Court should grant or instruct the lower court to grant the Appellant an injunction determining that the results of the 2020 general election in Georgia are defective as a result of the above described constitutional violations and requiring the Appellees de-certify the results and to cure said deficiencies in a manner consistent with Federal and Georgia law, and not in accordance with the improper procedures established in the litigation settlement. Further, this Court should enjoin, or instruct the lower court to enjoin the Defendants from employing the constitutionally defective in the upcoming Senatorial runoff election. This relief will ensure that the election process is conducted in a manner consistent with the United States Constitution. Further, it would promote public confidence in the results of the election.

Respectfully submitted this 3rd day of December, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the within and foregoing submission does not exceed the word count limit imposed by Rule 24 complies with the requirements of FRAP 32(g).

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been electronically filed with this Court via CM/ECF and was furnished to all counsel on the attached service list by e-mail on December 3, 2020.

SMITH & LISS, LLC

/s/ Ray S. Smith, III
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Appellant

Five Concourse Parkway
Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

SERVICE LIST

Wood v. Raffensperger, et al.
Case No. 1:20-cv-04651-SDG

CHRISTOPHER M. CARR
Deputy Attorney General
BRYAN K. WEBB
Deputy Attorney General
Russell D. Willard
Senior Assistant Attorney General
Charlene S. McGowan
Assistant Attorney General
40 Capitol Square SW
Atlanta, GA 30334
cmcgowan@law.ga.gov
404-458-3658 (tel)
Attorneys for State Defendants

Adam M. Sparks
Halsey G. Knapp, Jr.
Joyce Gist Lewis
Susan P. Coppedge
Adam M. Sparks
KREVOLIN AND HORST, LLC
One Atlantic Center
1201 W. Peachtree Street, NW, Ste. 3250
Atlanta, GA 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
hknapp@khlawfirm.com
jlewis@khlawfirm.com
coppedge@khlawfirm.com
sparks@khlawfirm.com

Marc E. Elias*
Amanda R. Callais*
Alexi M. Velez*
Emily R. Brailey*
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 800
Washington, DC 20005
Telephone: (202) 654-6200
melias@perkinscoie.com
acallais@perkinscoie.com
avelez@perkinscoie.com
ebrailey@perkinscoie.com

Kevin J. Hamilton*
Amanda J. Beane*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
Telephone: (206) 359-8000
khamilton@perkinscoie.com
abeane@perkinscoie.com

Gillian C. Kuhlmann*
PERKINS COIE LLP
1888 Century Park East, Suite 1700
Los Angeles, California 90067
Telephone: (310) 788-3900
gkuhlmann@perkinscoie.com

Matthew J. Mertens*
Georgia Bar No: 870320
PERKINS COIE LLP
1120 NW Couch Street, 10th Floor
Portland, Oregon 97209
Telephone: (503) 727-2000

**Pro Hac Vice Application Pending*

*Counsel for Intervenor-Defendants, Democratic Party of Georgia (“DPG”),
DSCC, and DCCC (“Political Party Committees”)*

Bryan L. Sells
Law Office of Bryan L. Sells, LLC
P.O. Box 5493
Atlanta, GA 31107-0493
(404) 480-4212 (voice/fax)
bryan@bryansellslaw.com

John Powers*
jpowers@lawyerscommittee.org
Kristen Clarke
kclarke@lawyerscommittee.org
Jon M. Greenbaum*
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg*
erosenberg@lawyerscommittee.org
Julie M. Houk*
jhouk@lawyerscommittee.org
LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: (202) 662-8300

Susan Baker Manning^
Jeremy P. Blumenfeld^
Catherine North Hounfodji^
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: +1.202.739.3000
Facsimile: +1.202.739.3001
susan.manning@morganlewis.com
jeremy.blumenfeld@morganlewis.com
catherine.hounfodji@morganlewis.com

william.childress@moreganlewis.com

chris.miller@morganlewis.com

benjamin.hand@morganlewis.com

** admitted pro hac vice*

^ Pro hac vice admission pending

*Counsel for Proposed Intervenors James Woodhall, Helen Butler, Melvin Ivey,
Members of the Proposed Intervenors the Georgia State Conference of the
NAACP, and the Georgia Coalition for the People's Agenda*

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-14418

D.C. Docket No. 1:20-cv-04651-SDG

L. LIN WOOD, JR.,

Plaintiff-Appellant,

versus

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the
State of Georgia,
REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia
State Election Board, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(December 5, 2020)

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR and LAGOA, Circuit
Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether we have jurisdiction over an appeal from the denial of a request for emergency relief in a post-election lawsuit. Ten days after the presidential election, L. Lin Wood Jr., a Georgia voter, sued state election officials to enjoin certification of the general election results, to secure a new recount under different rules, and to establish new rules for an upcoming runoff election. Wood alleged that the extant absentee-ballot and recount procedures violated Georgia law and, as a result, his federal constitutional rights. After Wood moved for emergency relief, the district court denied his motion. We agree with the district court that Wood lacks standing to sue because he fails to allege a particularized injury. And because Georgia has already certified its election results and its slate of presidential electors, Wood's requests for emergency relief are moot to the extent they concern the 2020 election. The Constitution makes clear that federal courts are courts of limited jurisdiction, U.S. Const. art. III; we may not entertain post-election contests about garden-variety issues of vote counting and misconduct that may properly be filed in state courts. We affirm.

I. BACKGROUND

Secretary of State Brad Raffensperger is the “chief election official” of Georgia. Ga. Code Ann. § 21-2-50(b). He manages the state system of elections and chairs the State Election Board. *Id.* § 21-2-30(a), (d). The Board has the

authority to promulgate rules and regulations to ensure uniformity in the practices of county election officials and, “consistent with law,” to aid “the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(1)–(2). The Board may also publish and distribute to county election officials a compilation of Georgia’s election laws and regulations. *Id.* § 21-2-31(3). Many of these laws and regulations govern absentee voting.

Any voter in Georgia may vote by absentee ballot. *Id.* § 21-2-380(b). State law prescribes the procedures by which a voter may request and submit an absentee ballot. *Id.* §§ 21-2-381; 21-2-384; 21-2-385. The ballot comes with an oath, which the voter must sign and return with his ballot. *Id.* § 21-2-385(a). State law also prescribes the procedures for how county election officials must certify and count absentee ballots. *Id.* § 21-2-386(a). It directs the official to “compare the identifying information on the oath with the information on file” and “compare the signature or mark on the oath with the signature or mark” on file. *Id.*

§ 21-2-386(a)(1)(B). If everything appears correct, the official certifies the ballot. *Id.* But if there is a problem, such as a signature that does not match, the official is to “write across the face of the envelope ‘Rejected.’” *Id.* § 21-2-386(a)(1)(C). The government must then notify the voter of this rejection, and the voter may cure the problem. *Id.*

In November 2019, the Democratic Party of Georgia, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee challenged Georgia's absentee ballot procedures as unconstitutional under the First and Fourteenth Amendments. They sued Secretary Raffensperger and members of the Board for declaratory and injunctive relief. Secretary Raffensperger and the Board maintained that the procedures were constitutional, but they agreed to promulgate regulations to ensure uniform practices across counties. In March 2020, the parties entered into a settlement agreement and dismissed the suit.

In the settlement agreement, Secretary Raffensperger and the Board agreed to issue an Official Election Bulletin regarding the review of signatures on absentee ballots. The Bulletin instructed officials to review the voter's signature with the following process:

If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file . . . , the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file

Secretary Raffensperger and the Board also agreed to train county election officials to follow this process.

This procedure has been in place for at least three elections since March, including the general election on November 3, 2020. Over one million Georgians voted by absentee ballot in the general election. No one challenged the settlement agreement until the filing of this action. By then, the general election returns had been tallied and a statewide hand recount of the presidential election results was underway.

On November 13, L. Lin Wood Jr. sued Secretary Raffensperger and the members of the Board in the district court. Wood alleged that he sued “in his capacity as a private citizen.” He is a registered voter in Fulton County, Georgia, and a donor to various 2020 Republican candidates. His amended complaint alleged that the settlement agreement violates state law. As a result, he contends, it violates the Election Clause of Article I; the Electors Clause of Article II; and the Equal Protection Clause of the Fourteenth Amendment. *See* U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 2; *id.* amend. XIV, § 1. Wood also alleged that irregularities in the hand recount violated his rights under the Due Process Clause of the Fourteenth Amendment. *Id.* amend. XIV, § 1.

State law requires that such recounts be done in public view, and it permits the Board to promulgate policies that facilitate recounting. Ga. Code Ann. § 21-2-498(c)(4), (d). Secretary Raffensperger directed county election officials to designate viewing areas for members of the public and the news media to observe

the recount. He also permitted the Democratic and Republican Parties to designate special recount monitors.

Wood alleged that officials ignored their own rules and denied Wood and President Donald Trump's campaign "meaningful access to observe and monitor the electoral process." Although Wood did not personally attempt to observe or monitor the recount, he alleged that Secretary Raffensperger and the Board violated his "vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered . . . and . . . otherwise free, fair, and transparent."

Wood submitted two affidavits from volunteer monitors. One monitor stated that she was not allowed to enter the counting area because there were too many monitors already present, and she could not be sure from a distance whether the recount was accurate. The other explained that the counting was hard for her to follow and described what she thought were possible tabulation errors.

Wood moved for extraordinary relief. He asked that the district court take one of three steps: prohibit Georgia from certifying the results of the November election; prevent it from certifying results that include "defective absentee ballots, regardless of whether said ballots were cured"; or declare the entire election defective and order the state to fix the problems caused by the settlement agreement. He also sought greater access for Republican election monitors, both at

a new hand recount of the November election and in a runoff election scheduled for January 5, 2021.

Wood's lawsuit faced a quickly approaching obstacle: Georgia law requires the Secretary of State to certify its general election results by 5:00 p.m. on the seventeenth day after Election Day. Ga. Code Ann. § 21-2-499(b). And it requires the Governor to certify Georgia's slate of presidential electors by 5:00 p.m. on the eighteenth day after Election Day. *Id.* Secretary Raffensperger's deadline was November 20, and Governor Brian Kemp had a deadline of November 21.

To avoid these deadlines, Wood moved to bar officials from certifying the election results until a court could consider his lawsuit. His emergency motion reiterated many of the requests from his amended complaint, including requests for changes to the procedures for the January runoff. He also submitted additional affidavits and declarations in support of his motion.

The district court held a hearing on November 19 to consider whether it should issue a temporary restraining order. It heard from Wood, state officials, and two groups of intervenors. Wood also introduced testimony from Susan Voyles, a poll manager who participated in the hand recount. Voyles described her experience during the recount. She recalled that one batch of absentee ballots felt different from the rest, and that that batch favored Joe Biden to an unusual extent. At the end of the hearing, the district court orally denied Wood's motion.

On November 20, the district court issued a written opinion and order that explained its denial. It first ruled that Wood lacked standing because he had alleged only generalized grievances, instead of injuries that affected him in a personal and individual way. It next explained that, even if Wood had standing, the doctrine of laches prevented him from challenging the settlement agreement now: he could have sued eight months earlier, yet he waited until two weeks after the election. Finally, it explained why Wood would not be entitled to a temporary restraining order even if the district court could reach the merits of his claims. On the same day, Secretary Raffensperger certified the results of the general election and Governor Kemp certified a slate of presidential electors.

II. STANDARD OF REVIEW

“We are required to examine our jurisdiction *sua sponte*, and we review jurisdictional issues *de novo*.” *United States v. Lopez*, 562 F.3d 1309, 1311 (11th Cir. 2009) (citation omitted).

III. DISCUSSION

This appeal turns on one of the most fundamental principles of the federal courts: our limited jurisdiction. Federal courts are not “constituted as free-wheeling enforcers of the Constitution and laws.” *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1087 (10th Cir. 2006) (en banc). As the Supreme Court “ha[s] often explained,” we are instead “courts of limited jurisdiction.” *Home Depot*

U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1746 (2019) (internal quotation marks omitted). Article III of the Constitution establishes that our jurisdiction—that is, our judicial power—reaches only “Cases” and “Controversies.” U.S. Const. art. III, § 2. Absent a justiciable case or controversy between interested parties, we lack the “power to declare the law.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998).

When someone sues in federal court, he bears the burden of proving that his suit falls within our jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Wood had the choice to sue in state or federal court. Georgia law makes clear that post-election litigation may proceed in a state court. Ga. Code Ann. §§ 21-2-499(b), 21-2-524(a). But Wood chose to sue in federal court. In doing so, he had to prove that his suit presents a justiciable controversy under Article III of the Constitution. *See Flast v. Cohen*, 392 U.S. 83, 95 (1968) (listing examples of problems that preclude our jurisdiction). He failed to satisfy this burden.

We divide our discussion in two parts. We first explain why Wood lacks standing to sue. We then explain that, even if he had standing, his requests to recount and delay certification of the November election results are moot. Because this case is not justiciable, we lack jurisdiction. *Id.* And because we lack the power to entertain this appeal, we will not address the other issues the parties raise.

A. Wood Lacks Standing Because He Has Not Been Injured in a Particularized Way.

Standing is a threshold jurisdictional inquiry: the elements of standing are “an indispensable part of the plaintiff’s case.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). To prove standing, Wood “must prove (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision.” *Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). If he cannot satisfy these requirements, then we may not decide the merits of his appeal. *Steel Co.*, 523 U.S. at 94.

Wood lacks standing because he fails to allege the “first and foremost of standing’s three elements”: an injury in fact. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (alteration adopted) (internal quotation marks omitted). An injury in fact is “an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (internal quotation marks omitted). Wood’s injury is not particularized.

Wood asserts only a generalized grievance. A particularized injury is one that “affect[s] the plaintiff in a personal and individual way.” *Spokeo*, 136 S. Ct. at 1548 (internal quotation marks omitted). For example, if Wood were a political candidate harmed by the recount, he would satisfy this requirement because he could assert a personal, distinct injury. *Cf. Roe v. Alabama ex rel. Evans*, 43 F.3d

574, 579 (11th Cir. 1995). But Wood bases his standing on his interest in “ensur[ing that] . . . only lawful ballots are counted.” An injury to the right “to require that the government be administered according to the law” is a generalized grievance. *Chiles v. Thornburgh*, 865 F.2d 1197, 1205–06 (11th Cir. 1989) (alteration adopted) (internal quotation marks omitted). And the Supreme Court has made clear that a generalized grievance, “no matter how sincere,” cannot support standing. *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013).

A generalized grievance is “undifferentiated and common to all members of the public.” *Lujan*, 504 U.S. at 575 (internal quotation marks omitted). Wood cannot explain how his interest in compliance with state election laws is different from that of any other person. Indeed, he admits that any Georgia voter could bring an identical suit. But the logic of his argument sweeps past even that boundary. All Americans, whether they voted in this election or whether they reside in Georgia, could be said to share Wood’s interest in “ensur[ing] that [a presidential election] is properly administered.”

Wood argues that he has two bases for standing, but neither satisfies the requirement of a distinct, personal injury. He first asserts that the inclusion of unlawfully processed absentee ballots diluted the weight of his vote. To be sure, vote dilution can be a basis for standing. *Cf. Jacobson*, 974 F.3d at 1247–48. But it requires a point of comparison. For example, in the racial gerrymandering and

malapportionment contexts, vote dilution occurs when voters are harmed compared to “irrationally favored” voters from other districts. *See Baker v. Carr*, 369 U.S. 186, 207–08 (1962). By contrast, “no single voter is specifically disadvantaged” if a vote is counted improperly, even if the error might have a “mathematical impact on the final tally and thus on the proportional effect of every vote.” *Bognet v. Sec’y Commonwealth of Pa.*, __ F.3d __, 2020 WL 6686120, at *12 (3d Cir. Nov. 13, 2020) (internal quotation marks omitted). Vote dilution in this context is a “paradigmatic generalized grievance that cannot support standing.” *Id.* (internal quotation marks omitted).

Wood’s second theory—that Georgia “value[d] one person’s vote over that of another” through “arbitrary and disparate treatment”—fares no better. He argues that Georgia treats absentee voters as a “preferred class” compared to those who vote in person, both by the terms of the settlement agreement and in practice. In his view, all voters were bound by law before the settlement agreement, but the rules for absentee voting now run afoul of the law, while in-person voters remain bound by the law. And he asserts that in practice Georgia has favored absentee voters because there were “numerous irregularities” in the processing and recounting of absentee ballots. Setting aside the fact that “[i]t is an individual voter’s *choice* whether to vote by mail or in person,” *Bognet*, 2020 WL 6686120, at *15, these complaints are generalized grievances. Even if we assume that absentee voters are

favorable over in-person voters, that harm does not affect Wood as an individual—it is instead shared identically by the four million or so Georgians who voted in person this November. “[W]hen the asserted harm is . . . shared in substantially equal measure by . . . a large class of citizens,” it is not a particularized injury. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). And irregularities in the tabulation of election results do not affect Wood differently from any other person. His allegation, at bottom, remains “that the law . . . has not been followed.” *Dillard v. Chilton Cnty. Comm’n*, 495 F.3d 1324, 1332 (11th Cir. 2007) (quoting *Lance v. Coffman*, 549 U.S. 437, 442 (2007)).

Wood’s attempts to liken his injury to those we have found sufficient in other appeals fall short. In *Common Cause/Georgia v. Billups*, we ruled that “[r]equiring a registered voter either to produce photo identification to vote in person or to cast an absentee or provisional ballot is an injury sufficient for standing.” 554 F.3d 1340, 1351–52 (11th Cir. 2009). But the injury there was the burden of producing photo identification, not the existence of separate rules for in-person and absentee voters. *Id.* And the burden to produce photo identification affected each voter in a personal way. For example, some plaintiffs in *Common Cause* alleged that they “would be required to make a special trip” to obtain valid identification “that is not required of voters who have driver’s licenses or passports.” *Id.* at 1351 (internal quotation marks omitted). By contrast, even Wood

agrees that he is affected by Georgia’s alleged violations of the law in the same way as every other Georgia voter. “This injury is precisely the kind of undifferentiated, generalized grievance that the Supreme Court has warned must not be countenanced.” *Dillard*, 495 F.3d at 1335 (internal quotation marks omitted).

Roe v. Alabama ex rel. Evans, 43 F.3d 574, also does not support Wood’s argument for standing. In *Roe*, we ruled that the post-election inclusion of previously excluded absentee ballots would violate the substantive-due-process rights of Alabama voters and two political candidates. *Id.* at 579–81. But no party raised and we did not address standing in *Roe*, so that precedent provides no basis for Wood to establish standing. *Cf. Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996) (noting that in cases where “standing was neither challenged nor discussed . . . the existence of unaddressed jurisdictional defects has no precedential effect”). And Wood’s purported injury is far more general than the voters’ injury in *Roe*. The voters in *Roe* bore individual burdens—to obtain notarization or witness signatures if they wanted to vote absentee—that state courts post-election retroactively permitted other voters to ignore. *Roe*, 43 F.3d at 580–81. In contrast, Georgia applied uniform rules, established before the election, to all voters, who could choose between voting in person or by absentee ballot, and Wood asserts that the

effect of those rules harmed the electorate collectively. That alleged harm is not a particularized injury.

Wood suggested in his amended complaint that his status as a donor contributed to standing and aligned his interests with those of the Georgia Republican Party. But he forfeited this argument when he failed to raise it in his opening brief. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1335 (11th Cir. 2004); *see also Nat'l All. for the Mentally Ill v. Bd. of Cnty. Comm'rs*, 376 F.3d 1292, 1296 (11th Cir. 2004) (ruling standing claims forfeited for failure to comply with the Federal Rules of Appellate Procedure). And the donor argument fails on its own terms. True, a donor can establish standing based on injuries that flow from his status as a donor. *See, e.g., Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1125 (11th Cir. 2019). But donors, like voters, “have no judicially enforceable interest in the *outcome* of an election.” *Jacobson*, 974 F.3d at 1246. Nor does a donation give the donor a legally cognizable interest in the proper administration of elections. Any injury to Wood based on election irregularities must flow from his status as a voter, unrelated to his donations. And that fact returns him to the stumbling block of particularization.

“[T]he ‘injury in fact’ test requires . . . that the party seeking review be himself among the injured.” *Lujan*, 504 U.S. at 563 (internal quotation marks omitted). Wood’s allegations suggest that various nonparties might have a

particularized injury. For example, perhaps a candidate or political party would have standing to challenge the settlement agreement or other alleged irregularities. Or perhaps election monitors would have standing to sue if they were denied access to the recount. But Wood cannot place himself in the stead of these groups, even if he supports them. *Cf. Glanton ex rel. ALCOA Prescription Drug Plan v. AdvancePCS Inc.*, 465 F.3d 1123, 1127 (9th Cir. 2006) (explaining that “associational standing . . . does not operate in reverse,” so a member cannot represent an association). He is at most a “concerned bystander.” *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004) (internal quotation marks omitted). So he is not “entitled to have the court[s] decide the merits of [his] dispute.” *Warth*, 422 U.S. at 498.

B. Wood’s Requested Relief Concerning the 2020 General Election Is Moot.

Even if Wood had standing, several of his requests for relief are barred by another jurisdictional defect: mootness. We are “not empowered to decide moot questions.” *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (internal quotation marks omitted). “An issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief.” *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (alteration rejected) (internal quotation marks omitted). And an issue can become moot at any

stage of litigation, even if there was a live case or controversy when the lawsuit began. *Id.* at 1189–90.

Wood asked for several kinds of relief in his emergency motion, but most of his requests pertained to the 2020 election results. He moved the district court to prohibit either the certification of the election results or certification that included the disputed absentee ballots. He also asked the district court to order a new hand recount and to grant Republican election monitors greater access during both the recount and the January runoff election. But after the district court denied Wood’s motion, Secretary Raffensperger certified the election results on November 20. And Governor Kemp certified the slate of presidential electors later that day.

Because Georgia has already certified its results, Wood’s requests to delay certification and commence a new recount are moot. “We cannot turn back the clock and create a world in which” the 2020 election results are not certified. *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015). And it is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified. *Cf. Tropicana Prods. Sales, Inc. v. Phillips Brokerage Co.*, 874 F.2d 1581, 1582 (11th Cir. 1989) (“[A]n appeal from the denial of a motion for preliminary injunction is mooted when the requested effective end-date for the preliminary injunction has passed.”). Nor can we reconstrue Wood’s previous request that we temporarily prohibit certification into a new request that

we undo the certification. A district court “must first have the opportunity to pass upon [every] issue,” so we may not consider requests for relief made for the first time on appeal. *S.F. Residence Club, Inc. v. 7027 Old Madison Pike, LLC*, 583 F.3d 750, 755 (11th Cir. 2009).

Wood’s arguments reflect a basic misunderstanding of what mootness is. He argues that the certification does not moot anything “because this litigation is ongoing” and he remains injured. But mootness concerns the availability of relief, not the existence of a lawsuit or an injury. *Fla. Wildlife Fed’n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1304 (11th Cir. 2011). So even if post-election litigation is not always mooted by certification, *see, e.g., Siegel v. LePore*, 234 F.3d 1163, 1172–73 (11th Cir. 2000) (en banc), Wood’s particular requests are moot. Wood is right that certification does not moot his requests for relief concerning the 2021 runoff—although Wood’s lack of standing still forecloses our consideration of those requests—but the pendency of other claims for relief cannot rescue the otherwise moot claims. *See, e.g., Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1478–79, 1481 (11th Cir. 1997) (instructing the district court to dismiss moot claims but resolving other claims on the merits). Wood finally tells us that President Trump has also requested a recount, but that fact is irrelevant to whether Wood’s requests remain live.

Nor does any exception to mootness apply. True, we often review otherwise-moot election appeals because they are “capable of repetition yet evading review.” *ACLU v. The Fla. Bar*, 999 F.2d 1486, 1496 (11th Cir. 1993) (internal quotation marks omitted). We may apply this exception when “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Nat’l Broad. Co. v. Commc’ns Workers of Am.*, 860 F.2d 1022, 1023 (11th Cir. 1988) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). But we will not apply this exception if there is “some alternative vehicle through which a particular policy may effectively be subject to” complete review. *Bourgeois v. Peters*, 387 F.3d 1303, 1308 (11th Cir. 2004).

The “capable of repetition yet evading review” exception does not save Wood’s appeal because there is no “reasonable expectation” that Wood will again face the issues in this appeal. Based on the posture of this appeal, the challenged action is the denial of an emergency injunction against the certification of election results. *See Fleming*, 785 F.3d at 446 (explaining that whether the issues in an interlocutory appeal are “capable of repetition, yet evading review” is a separate question from whether the issues in the overall lawsuit are capable of doing so). That denial is the decision we would review but for the jurisdictional problems. But Wood cannot satisfy the requirement that there be a “reasonable expectation”

that he will again seek to delay certification. Wood does not suggest that this situation might recur. *Cf. FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463–64 (2007). And we have no reason to think it would: he is a private citizen, so the possibility of a recurrence is purely theoretical. *Cf. Hall v. Sec’y, Ala.*, 902 F.3d 1294, 1305 (11th Cir. 2018).

IV. CONCLUSION

We **AFFIRM** the denial of Wood’s motion for emergency relief.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

December 05, 2020

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-14418-RR
Case Style: L. Lin Wood, Jr. v. Brad Raffensperger, et al
District Court Docket No: 1:20-cv-04651-SDG

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Pursuant to Fed.R.App.P. 39, costs taxed against appellant.

Please use the most recent version of the Bill of Costs form available on the court's website at www.ca11.uscourts.gov.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Regina A. Veals-Gillis, RR at (404) 335-6163.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1A Issuance of Opinion With Costs