No. 20-799

In the Supreme Court of the United States

L. LIN WOOD, JR.,

Petitioner,

v.

BRAD RAFFENSPERGER, GEORGIA SECRETARY OF STATE, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF *CERTIORARI*
TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

AMICUS CURIAE BRIEF OF TODD C. BANK

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INTRODUCTION AND INTEREST OF THE *AMICUS CURIAE*

Amicus curiae, Todd C. Bank ("Bank"), is a citizen of the United States of America. Bank submits the instant brief in support of Petitioner.[1]

Supreme Court Rule 37.2(a) states: "The *amicus curiae* brief shall indicate that *counsel of record received timely notice* of the intent to file the brief under this Rule *and* shall *specify whether consent was granted*" (emphases added). As it appears that the clause "and shall specify whether consent was granted" is dependent upon the applicability of the preceding clause, Bank, having filed the instant brief "earlier than 10 days before the due date," *id.*, was not required to "ensure that the counsel of record for all parties receive . . .[,] at least 10 days prior to the due date for [the] brief . . .[,] notice of [Bank's] intention to file [the] . . . brief," *id.* (rearranged for clarity), and therefore could not be required, and thus was not required, to "indicate that counsel of record received timely notice of the intent to file the brief." *Id.* As a result, Bank was not required to "specify whether consent was granted." *Id.*

Supreme Court Rule 37.2(b) states: "When a party to the case has *withheld consent*, a motion for leave to file an *amicus curiae* brief before the Court's consideration of a petition for a writ of certiorari . . . may be presented to the Court" (emphasis added). The common understanding of the word "withhold" is to decline to provide, upon a request, something that the recipient of the request could have provided. However, Bank, as set forth above, was not required to "specify whether

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[1] No counsel for any party authored the instant brief in whole or in part, and neither any party nor any party's counsel made a monetary contribution to fund the preparation or submission of the instant brief. Bank declines to state whether any other person made such a monetary contribution, as non-disclosure of such information is protected by the First Amendment of the Constitution.

consent was granted," S. Ct. R. 37.2(a), and, therefore, was implicitly, yet obviously, not required to request consent. Accordingly, Bank did not request consent from any of the parties, whom, as a result, were not in a position to withhold consent. As none of the parties withheld consent, and as only the withholding of consent invokes the requirement to make "a motion for leave to file an *amicus curiae* brief," S. Ct. R. 37.2(b), Bank was not required to make such motion.

SUMMARY OF THE ARGUMENT

The Court of Appeals did not recognize that a person can sustain personal harm that is sufficient to give rise to Article III standing even though numerous other persons suffered the same type of harm.

ARGUMENT

THE FACT THAT A LARGE NUMBER OF PERSONS WERE HARMED IN THE SAME MANNER AS WAS PETITIONER DOES NOT CHANGE THE FACT THAT THE HARM SUFFERED BY PETITIONER WAS PERSONAL

The Eleventh Circuit, in the opinion that is the subject of the petition for a writ of *certiorari* at issue, stated that, "'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.'" Petitioner's Appendix T, *Wood v. Raffensperger* (11th Cir. Dec. 5, 2020) at 12, quoting *Bognet v. Sec'y Commonwealth of Penn.*, 980 F.3d 336, 356 (3d Cir. 2020), and, accordingly, "[v]ote dilution in this context is a 'paradigmatic generalized grievance that cannot support [Article III] standing.'" *Id.*, quoting *Bognet*, 980 F.3d at 356.

The Eleventh Circuit exhibited confusion between a *generalized* grievance with

a grievance that, *although* widely shared, is *personal* to each person who shares it. This Court has repeatedly sought to dispel this confusion, explaining, in *Spokeo v. Robbins*, 136 S. Ct. 1540 (2016), for instance: "[t]he fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance. The victims' injuries from a mass tort, for example, are widely shared, to be sure, but each individual suffers a particularized harm." *Id.* at 1548, n.7. As did *Spokeo*, this Court, in *FEC v. Akins*, 524 U.S. 11 (1998), recognized that one may have Article III standing where the "asserted harm . . . is one which is shared in substantially equal measure by *all or a large class of citizens*." *Id.* at 23 (emphasis added; citations and quotation marks omitted). The distinction that the *Akins* Court drew between cases in which a plaintiff did, versus did not, have Article III standing with respect to a widely shared injury is fully applicable in the present case:

> Whether styled as a constitutional or prudential limit on [Article III] standing, the Court has sometimes determined that where large numbers of Americans suffer alike, the political process, rather than the judicial process, may provide the more appropriate remedy for a widely shared grievance.
>
> The kind of judicial language to which the FEC points, however, [in arguing against Article III standing] invariably appears in cases where the harm at issue is not *only* widely shared, but is *also* of an *abstract and indefinite nature* -- for example, harm to the "common concern for obedience to law."
>
> ***
>
> *Often* the fact that an interest is *abstract* and the fact that it is *widely shared* go *hand in hand*. But their association is *not invariable*, and *where a harm is concrete, though widely shared, the Court has found "injury in fact."*

Id. at 23, 24 (emphases added; citations omitted).

Under the Eleventh Circuit's reasoning, the government could make an announcement that it is going to imprison every single person in the United States, and no one would have Article III standing to seek judicial relief against such edict, even though the Eleventh Circuit presumably would agree that a person would have Article III standing if he were the only person, or one of a small number of persons, that the government had targeted. However, as *Akins* recognized, the fact that a harm is widely shared is not relevant by itself; rather, a widely shared harm is *often* abstract, but, when it is, it is the *abstract nature* of the harm, rather than the fact that it is widely shared, that precludes Article III standing; thus, an abstract harm experienced by only one person would prelude such person from having Article III standing. In the present case, Petitioner's asserted harm is widely shared, but it is *not* abstract.

CONCLUSION

Petitioner was personally harmed and therefore had Article III standing.

December 14, 2020

Respectfully submitted,

s/ *Todd C. Bank*

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