No. 20 -

IN THE

Supreme Court of the United States

In Re: L. LIN WOOD, JR.,

Petitioner,

vs.

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,

Respondents.

EMERGENCY PETITION UNDER RULE 20 FOR EXTRAORDINARY WRIT OF MANDAMUS

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QUESTIONS PRESENTED FOR REVIEW

The Georgia Legislature has plenary authority to set the "Times, Places and Manner" of Federal Elections and has clearly set forth the procedures to be followed in verifying the identity of in-person voters as well as mail-in absentee ballot voters. The Georgia Secretary of State usurped that power by entering into a Settlement Agreement with the Democratic Party earlier this year and issuing an "Official Election Bulletin" that modified the Legislature's clear procedures for verifying the identity of mail-in voters. The effect of the Secretary of State's unauthorized procedure is to treat the class of voters who vote by mail different from the class of voters who vote in-person, like Petitioner. That procedure dilutes the votes of in-person voters by votes from persons whose identities are less likely to verified as required by the legislative scheme. The Secretary's unconstitutional modifications to the legislative scheme violated Petitioner's Equal Protection rights by infringing on his fundamental right to vote. The Eleventh Circuit has held that Petitioner does not have standing to challenge State action that dilutes his vote and infringes upon his constitutional right to Equal Protection. The questions presented are:

1. Whether the Petitioner/voter has standing to challenge state action based on the predicate act of vote dilution where the underlying wrong infringes upon a voter's right to vote.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is L. Lin Wood, Jr., individually, is a voter and donor to the Republican party. Petitioner was the Plaintiff at the trial court level. Petitioner is not a corporate entity.

Respondents are 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, et al. The Respondents were the Defendants at the trial court level.

The intervenors at the trial court level are the Democratic Party of Georgia, Inc., and the DSCC.

List of Directly Related Proceedings

Wood vs. Raffensperger, et al., Case No. 1:20-cv-046451-SDG (N.D. Ga.) - opinion and order dated November 20, 2020.

Wood vs. Raffensperger, et al. Case No. 20-14418 (11th Cir.) - opinion and judgment dated December 5, 2020.

Wood vs. Raffensperger, et al., Case No. 1:20-cv-0515-TCB (N.D. Ga.) - opinion and order dated December 28, 2020.

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INTRODUCTION

Petitioner respectfully requests an immediate, emergency writ of injunction to order the Respondents—the State of Georgia, Secretary of State and Chair of the Georgia Election Board, Brad Raffensperger, and the members of the Georgia State Election Board, David J. Worley, Rebecca N. Sullivan, Matthew Mashburn, and Anh Lee, each in their official capacities—to halt the January 5, 2021 senatorial runoff election until such time as the Respondents agree to comply with the Georgia Legislature's prescribed election procedures.

Alternatively, Petitioner requests that this Court enter a writ of mandamus to the Honorable Timothy C. Batten, Sr. of the United States District Court, Northern District of Georgia, Atlanta Division ("District Court") ordering him to (1) vacate the District Court's December 28, 2020 final judgment in Docket No. 1:20-cv-5155-TCB ("December 28 Order") dismissing Petitioner's December 18, 2020 complaint ("Complaint"); and (2) grant Petitioner's December 18, 2020 Emergency Motion for Injunctive Relief ("TRO Motion") in appropriate part.

The District Court erred when it summarily dismissed Petitioner's Complaint and TRO Motion based on the erroneous conclusion that Petitioner lacks standing to pursue his claims, and failed to conduct any analysis or consideration of the factual or legal issues raised in Petitioner's Complaint supported by numerous fact and expert witness declarations and affidavits.

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Time is short so Petitioner will get straight to the point: Petitioner's Complaint to the District Court is part of a larger effort to expose and reverse an unprecedent

conspiracy to steal the 2020 General Election, as well as the January 5, 2021 senatorial runoff election in the State of Georgia.

Petitioner and others like him seek to expose the massive, coordinated election fraud that occurred in the 2020 General Election, that will inevitably repeat itself in the January 5, 2021 runoff election. Petitioner and other pro–Trump supporters have been almost uniformly derided as "conspiracy theorists" or worse by Democrat politicians and activists and have been attacked or censored by their allies in the mainstream media and social media platforms – the modern public square. But nearly every day new evidence comes to light, new eyewitnesses and whistleblowers come forward, and expert statisticians confirm Petitioner's core allegation: **the 2020 General Election was tainted by unconstitutional election fraud on a scale that has never been seen before—at least not in America. Hundreds of thousands if not millions of illegal, fraudulent, ineligible or purely fictitious ballots were cast for Biden (along with hundreds of thousands of Trump votes that were intentionally destroyed, lost or switched to Biden), changing the outcome from a Biden loss to a Biden "win."**

Time is not on the fraudsters' side, as it becomes increasingly clear that the November 3rd election was stolen, and that Respondents' unconstitutional election procedures will once again permit these fraudsters from contravening the will of the electorate in Georgia, by allowing fraudulent ballots to be cast in the 2021 runoff election.

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Petitioner's Complaint – supported by numerous fact and expert witness declarations and affidavits – described how Georgia election officials, including Respondents, knowingly enabled, permitted, facilitated, or even collaborated with third parties in practices resulting in hundreds of thousands of illegal, ineligible or fictitious votes being cast in the State of Georgia. The rampant lawlessness witnessed in Georgia was part of a larger pattern of illegal conduct seen in several other states, including Arizona, Michigan, Pennsylvania, and Wisconsin. Georgia State officials – administrative, executive and judicial – adopted new rules or "guidance" that circumvented or nullified the election laws, enacted by the Georgia Legislature, to protect election integrity and prevent voter fraud, using COVID-19 and public safety as a pretext.

Respondents' responsibility for the chaos that now engulfs us is compounded by their abuses of office to prevent any meaningful investigation or judicial inquiry into their misconduct and to run out the clock to prevent the public from ever discovering the scale and scope of the fraud.

In the District Court, Respondents dismissed Petitioner's requested relief as "unprecedented" and hinted that granting it could undermine faith in our election system. But to use a phrase favored by the District Court in a similar complaint in Michigan: that "ship has sailed." *King v. Whitmer*, No. 20-cv-13134 at *13 (E.D. Mich. Dec. 7, 2020). According to a Rasmussen poll, 75% of Republicans and ***30% of Democrats*** believe that "fraud was likely" in the 2020 General Election.[1] Public

[1] https://pjmedia.com/news-and-politics/matt-margolis/2020/11/19/whoa-nearly-a-third-of-democrats-believe-the-election-was-stolen-from-trump-n1160882/amp?__twitter_impression=true Last visited December 10, 2020.

confidence is already shattered and will be destroyed beyond repair if an election widely perceived as fraudulent were ratified in the name of preserving confidence.

The entire nation was watching Election Night when President Trump led by hundreds of thousands of votes in five key swing states when, nearly simultaneously, counting was shut down for hours in key, Democrat–run cities in these five States. When counting resumed, Biden had somehow made up the difference and taken a narrow lead in Wisconsin and Michigan (and dramatically closed the gap in the others). Voters who went to bed with Trump having a nearly certain victory, awoke to see Biden overcoming Trump's lead (which experts for Petitioner have shown to be a statistical impossibility).

Now tens of millions have seen how this turnaround was achieved in Georgia. Election observers were told to leave the State Farm Arena in Fulton County on the pretext that counting was finished for the night. But election workers resumed scanning when no one (except security cameras) was watching – a clear violation of the "public view" requirement of O.C.G.A. § 21-2-483(b). There are dozens of eyewitnesses and whistleblowers who have testified to illegal conduct by election workers, Dominion Voting Systems ("Dominion") employees or contractors, as well as other conduct indicative of fraud such as USB sticks discovered with thousands of missing votes, vote switching uncovered only after manual recounts, etc., etc.). This is 2020, and what is casually dismissed as a "conspiracy theory" one day proves to be a conspiracy fact the next. Without this Court's intervention, this fraudulent conduct will inevitably repeat itself in the January 5, 2021 runoff election.

Further, the Georgia Secretary of State used a procedure regarding mail–in absentee voter identification that was different from and in conflict with those procedures promulgated by the Georgia Legislature. The Secretary's procedure treated the in–person voters different from the mail–in voters by loosening the standards for mail–in voters, as indicated by a sharp fall–off in ballots rejected for lack of signatures, oaths, or a signature mis–match.

The Georgia Legislature has plenary power to set the "Times, Places and Manner" of the Federal elections and these changes wrought by the Secretary of State, together with other changes not currently the subject of this suit, were not authorized by any act of the Georgia Legislature. During this election year, when mail–in balloting increased nearly seven times over the amount in the last general election, this dilution is particularly severe. The change by the Secretary denies all in–person voters their rights under the scheme authorized under the Elections Clause in violation with U.S. CONST., Art. I, Sec. 4.

The Respondents' official policies caused a substantial and unlawful erosion of statutory election integrity safeguards, permitted fraudulent schemes and artifices to flourish, resulting in tens to hundreds of thousands of illegal ballots being counted, which will inevitably re–occur during the January 5, 2021 runoff election.

Petitioner presented numerous sworn statements and expert reports that the District Court dismissed without examination or consideration. The District Court instead accepted at face value Respondents' denials of any wrongdoing and their inapposite legal defenses – the opposite of the 12(b)(6) standard of review. The

District Court did not acknowledge Petitioner's expert testimony showing that illegal ballots numbered well in excess of Biden's 11,779 post–recount vote margin. Evidence of illegal ballots in excess of the margin of victory are sufficient to place the outcome of the election in doubt and warrants injunctive relief. *Cf.* O.C.G.A. § 21-2-527(d).

Petitioners also showed strong evidence of election computer fraud through the declarations and affidavits of mathematical and cyber security experts. The forms of illegality present in this election put the results in doubt and warrants this Court enjoining the Respondents from conducting the January 5, 2020 runoff elections, until such time as the unconstitutional procedures are cured.

Closing closing down any inquiry into the merits of the unconstitutional and illegal conduct, which is likely to repeat, yet continue to evade judicial review, would be a slap in the face to many millions of Americans who believe it was a stolen election. Our common bonds require answers on the merits, not procedural evasion.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S. Code § 1254, Supreme Court Rule 11 (Certiorari to a United States Court of Appeals before Judgment) and Supreme Court Rule 20 (Procedure on Petition for an Extraordinary Writ). The district court entered its final judgment below on December 28, 2020. Petitioner filed a notice of appeal to the Eleventh Circuit later the same day. The case is therefore "pending in a United States court of appeals . . . ." Sup. Ct. R. 11. Petitioner plans to file a Petition for Certiorari as soon as humanly possible. Because the Senatorial runoff election is set to occur on January 5, 2021, the time for obtaining effective relief is extraordinarily short, it would be impossible to present the case to

the Eleventh Circuit and then await a decision from that court before seeking relief in this Court. Moreover, as demonstrated herein, "the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." *Id.*

A petition directly to this Court for a Writ before judgment in the Court of Appeals and a request for a Preliminary Injunction is an extraordinary request, but it has its foundation. *See Cheney v. U.S. Dist. Court*, 542 S.Ct. 367, 380–81 (2004). In *Ex Parte Peru*, 318 U.S. 578 (1943) the Court granted a similar extraordinary writ "where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this Court should be taken." *Id.* at 585.

DECISION UNDER REVIEW

The December 28, 2020, decision of the Northern District of Georgia dismissing Petitioner's Complaint and TRO Motion is attached as Appendix 1. *Wood v. Raffensperger*, Judgment, No. 1:20-cv-5155-TCB (NDGA Dec. 28, 2020) ("December 28 Order").

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

Petitioner, 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).

Respondent, Brad Raffensperger is named in his official capacity as Secretary of State of the State of Georgia and the Chief Election Official for the State of Georgia pursuant to Georgia's Election Code and O.G.C.A. § 21-2-50.

Respondents Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le are members of the Georgia State Election Board, which also includes Chairman Brad Raffensperger. The State Election Board is responsible for "formulating, adopting, and promulgating 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 acted under color of state law at all times relevant to this action and are sued in their official capacities for emergency declaratory and injunctive relief.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case is brought under the Elections Clause, U.S. Const. Art. I, § 4, clause 1; the Equal Protection and Due Process Clauses of U.S. Constitution Amendment XIV, § 1; and Georgia's election contest statutes, O.G.C.A § 21-2-520 et seq.

The full text of the following constitutional provisions, statutes and the Secretary of State's unconstitutional procedures are attached as Appendix A to this Petition:

1. Article I, Section 4, Clause 1, of the United States Constitution (Elections Clause);

2. Amendment XIV, Section 1, United States Constitution (Equal Protection);
3. O.C.G.A, Section 21-2-386; and
4. O.C.G.A., Section 21-2-417

STATEMENT OF THE CASE

The Northern District of Georgia had jurisdiction over Petitioner's claim in the first instance pursuant to 28 U.S.C. §§1331, 1343 and 42 U.S.C. §1983.

Petitioner/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 (APP. B, the "Complaint", at 2). Plaintiff sought declaratory relief and an emergency injunction from the district court below, among other things, halting the certification of Georgia's January 5, 2021 senatorial runoff election until such time as the Respondents cure the unconstitutionally enacted procedures which differed from the election scheme established by the State Legislature and diminished the rights of the Petitioner pursuant to the Equal Protection Clause. As a result of the Respondents' violation of the United States Constitution, Plaintiff alleged below that Georgia's election tallies were created in an unconstitutional manner and must be cured.

On December 18, 2020, Plaintiff filed his original Verified Complaint for Declaratory and Injunctive Relief. 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* APP. B, Compl., at 3.) The Complaint alleges violations of the United States Constitution and the amendments thereto with regard to the November 3, 2020 general election, as well as the "full hand recount" of all ballots cast in that election, with those same violations certain 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, in particular for resolving questions as to the identity/signatures of mail–in voters. To the extent that there is any change in that process, that change must, under Article I, Section 4 of the Constitution, be prescribed only by the Georgia Legislature. (*See* APP. B Compl., at 4-5.)

Specifically, the unconstitutional procedure in this case involved the unlawful and improper processing of mail–in ballots. The Georgia Legislature set forth the manner for handling of signature/identification verification of mail–in votes by county registrars and clerks (the "County Officials"). O.C.G.A. §§ 21-2-386(a)(1)(B), 21-2-380.1. (*See* APP. B Compl., at 5.) Those individuals must follow a clear procedure for verifying signatures to verify the identity of mail–in voters in the manner prescribed by the Georgia Legislature:

> 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* APP. B Compl., at 5). O.C.G.A. § 21-2-417 establishes an equivalent procedure for a poll worker to verify the identity of an in-person voter.

The Georgia Legislature also established a clear and efficient process to be used by a poll worker if he/she determines that an elector has failed to sign the oath on the outside envelope enclosing the mail-in absentee 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); (APP. B Compl., at 6.) 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* APP. B Compl., at 6). The Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. (*See* APP. B Compl., at 6.) This was the legislatively set *manner* for the elections for Federal office in Georgia.

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 a poll worker processing absentee ballots in Georgia.* (*See* APP. B Compl., 6-8.) 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 (APP. C, 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* APP. B Compl., at 7).

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* APP. B Compl., at 7.) 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 legislative framework with respect to defective absentee ballots. (*See* APP. B, Compl., at 8-13.)

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 and 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* APP. B Compl.; *see* Litigation Settlement, p. 3-4, paragraph 3, "Signature Match" (emphasis added).)

Petitioner filed suit in the United States District Court for the Northern District of Georgia arguing, among other things, that the Settlement Agreement and Official Election Bulletin were unconstitutional and a usurpation of the Georgia Legislature's plenary authority to set the time, place and manner of elections; that the Secretary's procedure resulted in the disparate treatment of the Petitioner's vote and the dilution thereof; and the procedure violated Petitioner's rights to Equal Protection under the U.S. Constitution (APP. B). Petitioner sought injunctive relief including enjoining the January 5, 2021 runoff election until such time as the Respondents cure the constitutional violations, so that the unconstitutional procedures employed in the General Election would not be utilized in connection with the Senatorial runoff election in January of next year. (APP. B and C).

The District Court issued an Opinion and Order (APP. D) that denied Petitioner relief based on the flawed determination that he lacked standing as a voter to challenge the unconstitutional procedures adopted by the Secretary of State and the State Election Board.

Petitioner now seeks relief from this Court.

REASONS IN SUPPORT OF GRANTING EMERGENCY APPLICATION FOR EXTRAORDINARY WRIT OF INJUNCTION

ARGUMENT

In Section I, Petitioner demonstrates that the District Court erred in dismissing Petitioner's Complaint and TRO Motion, and that this Court has jurisdiction to grant this Application and the extraordinary relief requested.

In Section II, Petitioner sets forth the evidence presented in the Complaint, as well as additional evidence that has come to light since the filing of the Complaint, that justifies the relief requested.

I. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE COMPLAINT AND TRO MOTION.

The Framers famously gave us "a republic, if you can keep it." In the United States, voting is one of the sacraments by which we do so. Without public faith and confidence therein, all is lost.

In the Complaint, Petitioner submitted powerful evidence of widespread voter irregularities in Georgia. Other litigation shows similar or worse irregularities in four other States – Arizona, Michigan, Pennsylvania, and Wisconsin – that use Dominion voting machines. These states all show a common pattern of non-legislative State officials weakening statutory voter fraud safeguards, and strong evidence of voter fraud, from eyewitnesses and statistical analyses. Petitioner also submitted evidence that the 2020 General Election may have been subject to interference by hostile foreign governments including China and Iran. *See* Doc. 1-9 (Appdx. p. 525) and 1-10 (Appdx. p. 450).

The District Court without a hearing, summarily denied Petitioner's Complaint and TRO Motion. The Court's rationale rested on the erroneous and perfunctory conclusion that Petitioner lacks standing to bring any of his claims.

To be sure, this Court has held that the right to vote is a "fundamental political right," "preservative of all rights." *Yick Wo v. Hopkins*, 6 S. Ct. 1064 (1886); *see also United States v. Anderson*, 481 F.2d 685, 699 (4th Cir. 1973). This right extends not only to "the initial allocation of the franchise," but also to "the manner of its exercise." *Bush v. Gore*, 121 S. Ct. 525 (2000). Infringement of fundamental constitutional freedoms such as the right to vote "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 96 S. Ct. 2673 (1976); *see also Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). Respondents' ongoing violations of Petitioner's constitutional rights unlawfully infringe upon the Petitioner's fundamental right to vote. The constitutional violation is ongoing; Amendment XX of the Constitution sets forth a timeline for action in the Presidential contest that does not permit delay. Further, the same unconstitutional procedures will be used in the ongoing election for two U.S. Senators. The harm to Petitioner is immediate and cannot be remedied by monetary relief. Petitioner requests that the Respondents follow the legislative scheme enacted by the State Legislature to correct and prevent immediate and irreparable injury to Petitioner.

A. Petitioner, as the holder of the fundamental right to vote, has standing to maintain his Constitutional challenge to Respondents' signature verification procedures because they violate his constitutional right to Equal Protection.

This Court recognized in *Baker v. Carr*, 82 S. Ct. 691, 703-704 (1962) that a group of qualified voters had standing to challenge the constitutionality of a redistricting statute. An individual's "right of suffrage" is "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." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (abridgment of Equal Protection rights); see also C*rawford v. Marion Cty. Elec. Bd.*, 472 F.3d 949, 952 (7th Cir. 2007), aff'd, 553 U.S. 181 (2008); *Fla. State Conf. of the NAACP v. Browning*, 569 F. Supp. 2d 1237, 1251 (N.D. Fla. 2008). Voters therefore have a legally cognizable interest in preventing "dilution" of their vote through improper means. *Baker v. Reg'l High Sch. Dist.*, 520 F.2d 799, 800 n.6 (2d Cir. 1975) ("It is, however, the electors whose vote is being diluted and as such their interests are quite properly before the court.") This applies to prevent votes from being cast by persons whose signatures have not been verified in the manner prescribed by the Georgia Legislature.

Similarly, in *Gray v. Sanders*, 83 S. Ct. 801 (1963), this 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).

The 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 but 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. *Id.*

Further, in *Common Cause/Georgia v. Billups*, 554 F. 3d 1340, 1351 (11th Cir. 2009) the Eleventh Circuit 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, the Eleventh Circuit held 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.*

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.

Further, 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 in order to be counted. Notably, 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.*

In the instant case, the Eleventh Circuit, while denying that the Petitioner/voter had standing to challenge the Secretary's unauthorized procedures and the vote dilution they caused, it recognized that "a candidate or political party would have standing" to make the challenge (APP. T at 16). Most respectfully, the reasoning below gives less protection to a private voter's right to vote than to the rights of candidates and political parties who are not the holders of the fundamental right to vote. Only the voter holds this fundamental right. When the voter is treated in a disparate manner whereby his right to vote is impaired, he must be deemed to have standing to seek redress from the courts.

Indeed, the Petitioner 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 Respondents' 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).

To be sure, Petitioner Wood has standing in this case. As discussed below, the Respondents' procedure for verifying signatures and rejecting absentee ballots was unconstitutional. It valued absentee votes more than in person votes, and

impermissibly diluted the Petitioner's in person vote. Accordingly, the trial court and the Court of Appeals erred in concluding the Petitioner lacked standing.

II. RESPONDENTS VIOLATED THE U.S. CONSTIUTION AND GEORGIA STATE LAW.

A. The Secretary of State's actions through the Settlement Agreement and 2020 Official Election Bulletin violate the U.S. Constitution.

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* APP. B 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 Arizona St. Leg. v. Arizona Indep. Redistricting Comm 'n,* 576 U.S. 787, 807-08 (2015); *(see* APP. B Compl. at 13). In Georgia, the "legislature" is the General Assembly (the "Georgia Legislature"). *See* Ga. Const. Art. III, § I, Para. I; *(see* APP. B 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, 2020 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 times, places, and manner of holding federal elections, state executive officers have no authority to unilaterally exercise that power, much less flout or ignore existing legislation. (*See* APP. B 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. *Arizona 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 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 (M.D.N.C. 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 procedures for processing and rejecting ballots employed by the Respondents during the election 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 the identity/signature verification and rejection process for absentee ballots. *(See* APP. B Compl.) First, the Litigation Settlement overrides the clear statutory authority granted to s i n g u l a r County Officials and forces them to form a committee of three if any one official believes that an absentee ballot is a defective absentee ballot. *Id.* 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. *Id.*

Second, the Litigation Settlement allows a County Official to compare signatures in ways not permitted by the statutory structure created by the Georgia Legislature. *Id.* 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 at the clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417..."); *Id.* 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 information that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system. *Id.* The system for identifying absentee ballots was carefully constructed by the Georgia Legislature to ensure that electors were identified by one poll worker confirming acceptable identification, but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot. *Id.* Under the Litigation Settlement, any determination of a signature mismatch would lead to the cumbersome process described in the settlement and the Bulletin, which was not intended by the Georgia Legislature, which expressly authorized those decisions to be made by single election officials. *Id.* 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. *Id.*

Finally, under paragraph 4 of the Litigation Settlement, the Administrators delegated their responsibilities for determining when there was a signature mismatch by considering "additional guidance and training

materials" drafted by the "handwriting and signature review expert" of the Democrat Agencies. *(See* APP. B Compl.; *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* APP. B Compl.). In-person voter identity remains subject to verification by a single poll worker, not three like absentee ballots, hence the disparate treatment of Petitioner's vote and violation of his Equal Protection rights.

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

"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 decision below should be reversed and the injunction requested should be granted.

Moreover, the Litigation Settlement should be deemed invalid for the additional reason that on its face it was not signed by the parties themselves. (See APP. C TRO). 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.* However, the

signature page fails to contain any party's signature; instead, only the electronic signatures of counsel for the parties appear.

Finally, the new procedures created through the Litigation Settlement were illegally implemented by Respondents because, as conceded by the Respondents and Intervenors, the rules were not promulgated pursuant to official rule making procedures. Accordingly, the settlement parties, and Respondents 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, assuming arguendo the rule were constitutional. Therefore, the Litigation Settlement and the new rules for signature verification it generated are unconstitutional for these additional reasons. The Elections Clause of the Constitution expressly reserves this legislative domain to the elected representatives of the electoral and not to a single official. The fact that the wrong was committed by an official of one's own party is irrelevant. Thus, the court below erred in refusing to grant Petitioner relief.

A. The Respondents' change of the procedures for rejecting absentee ballots impermissibly diluted the Petitioner'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 Petitioner, 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 Section 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 Respondents and political party committee Intervenors 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.

The Respondents 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 three poll workers. Evidence has been presented that the Litigation Settlement led to a decrease in challenged signatures. Thus, the challenged procedure violates the Petitioner'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*, 121 S. Ct. 525 (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. This is unconstitutional.

B. The District Court's decision conflicts with the decisions of this Court and of other Circuit Courts of Appeals regarding voter standing.

As set forth more fully in point A of the Argument, *supra*, the Petitioner has standing as a voter to challenge voter dilution. The cases cited therein, including specific authority from this Court, was cast aside by the District Court in determining that Petitioner had no standing. Although the court recognizes in one breath "[t]o be sure,

vote dilution can be a basis for standing" (APP. D), in the next it goes on to deny Petitioner, a voter, standing to challenge an unconstitutional procedure that operates to violate, impair and interfere with his fundamental right to vote. This Court must clarify: does the voter have standing for a constitutional challenge to a procedure that dilutes his vote? Petitioner submits the answer, based on this Court's past decisions in *Baker,* 82 S. Ct., 691 and *Gray*, 83 S. Ct. 801, is a resounding "yes". Afterall, it is voters themselves who are the holders of the fundamental right to vote. It would be incongruent with Petitioner's rights to allow organizational standing to political parties and political organizations, to allow standing to candidates, but to deny it to the aggrieved voter whose rights have been violated. Certainly, that cannot be the law. The District Court's decision is inconsistent with this Court's above precedent. It is also inconsistent with or conflicts with precedent, *e.g. Roe,* 43 F. 3d, 574 and *Billups*, 554 F. 3d 1340. Cf. *Carson v. Simon*, 978 F. 3d 1051 (8th Cir. 2020)(electors had standing); *Bush*, 121 S. Ct. 525 (minimum requirement for non-arbitrary treatment of voters must be satisfied under Equal Protection clause).

The District Court has confused dicta in *Bognet* v. *Sec'y of Commonweath of Pa.*, 980 F. 3d 336 (3rd Cir. 2020) (hereinafter "*Bognet*") from the facts at issue in Petitioner's case. It is worth noting that the Third Circuit's discussion in *Bognet* begins with an acknowledgment from Alexander Hamilton that "voting at elections ... ought to stand foremost in the estimation of the law." The Court below, as with other recent court decisions, ignores that prioritization by straining the concept of standing to bar standing to any person – a voter, a candidate, a political party, or

even a State – to challenge the blatantly unconstitutional acts evident in the record. Petitioner believes that this is a serious misreading of *Bognet* and prevailing Supreme Court precedent.

All these cases – including *Bognet* – do not appear to dispute the constitutional imperatives around voting – a single voter can claim harm as a result of an unconstitutional deviation from state law, as is the case here. The Court below acknowledges that standing exists if a voter's vote is diluted. Slip op. at 9. But the Court incorrectly views Petitioner's harm as a "generalized grievance" – one that is "undifferentiated and common to all members of the public." *See U.S.* v. *Richardson*, 418 U.S. 166, 173-75 (1974).

However, Petitioner is not alleging a speculative harm based on mere timing of the receipt of the vote, as was the case in *Bognet*. The Bognet court considered the timing of receipt of the ballots a "violation of state law that does not cause unequal treatment," deciding whether ballots postmarked on election day but received later should be counted. There was no allegation in *Bognet* that the inclusion of ballots postmarked on election day but received after would cause harm to plaintiffs – just that it varied from state law. *Bognet* held that such harm was speculative and generalized, and therefore non-justiciable.[2]

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[2] The *Bognet* court, citing both *Baker v. Carr*, 369 U.S. 186 (1962) and *Reynolds v. Sims*, 377 U.S. 533 (1964) ("*Reynolds*"), also confirmed the standing of a plaintiff that could show "injury ... that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality *vis-à-vis* voters in irrationally favored counties." *Baker, id.* at 207-08.

In Petitioner's case, the harm alleged is not just a matter of timing but the claim by a voter that his vote – and the vote of all persons who go through the rigorous process of in-person voting – will be diluted by the inclusion of votes from unverified mail-in ballots. Defendants have not disputed – nor could they – that *unverified* mail-in ballots are more likely to contain fraudulent votes than *verified* in-person ballots. The harm of dilution is palpable, particularized, and personal.

Even *Bognet* confirmed that, under the Equal Protection Clause, a state may not "dilute . . . the *weight* of the votes of certain . . . voters" *Reynolds*, 377 U.S. at 557 (emphasis added):

> "The Court then explained that a voter's right to vote encompasses both the right to cast that vote and the right to have that vote counted without "debasement or dilution":
>
> > The right to vote can neither be denied outright, *Guinn v. United States*, 238 U.S. 347 [(1915)], *Lane v. Wilson*, 307 U.S. 268 [(1939)], nor destroyed by alteration of ballots, see *United States v. Classic*, 313 U.S. 299, 315 [(1941)], nor diluted by ballot-box stuffing, *Ex parte Siebold*, 100 U.S. 371 [(1880)], *United States v. Saylor*, 322 U.S. 385 [(1944)]. As the Court stated in *Classic*, "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted . . . ." 313 U.S., at 315.
>
> > "The right to vote includes the right to have the ballot counted. . . . It also includes the right to have the vote counted at full value without dilution or discount. . . . That federally protected right suffers substantial dilution . . . [where a] favored group has full voting strength . . . [and] [t]he groups not in favor have their votes discounted."

Reynolds, 377 U.S. at 555.

Bognet confirmed that the rights could be "personal" based on a constitutional claim, *citing Ala. Legis. Black Caucus* v. *Alabama*, 575 U.S. 254, 263 (2015) or voter dilution though gerrymandering where "the favored group has full voting strength and the groups not in favor have their votes discounted," *Reynolds* at 555 n.29. The Third Circuit concluded:

> In other words, "voters who allege facts *showing disadvantage to themselves*" have standing to bring suit to remedy that disadvantage, *Baker*, 369 U.S. at 206 (emphasis added), but a disadvantage to the plaintiff exists only when the plaintiff is part of a group of voters whose votes will be weighed differently compared to another group."

Bognet at 40.

But the violations of state law at issue in *Bognet* did not cause the kind of particularized harm that is alleged by Petitioner – dilution and different treatments of different voters. *Bognet* even notes that "ballot-box stuffing" was sufficient evidence of harm to a voter whose vote was diluted, *Bognet* op. at 42, citing *Reynolds* at 555 (and citations therein included). The Court below does not refute the valid Supreme Court precedents that contradict its holding.

The Court also oddly finds that Petitioner has lost standing to complain because the Court alleges that Petitioner could have voted by mail if he so chose, so therefore cannot allege that he suffered harm. Under the Court's logic, all voters who want to preserve their rights should no longer show up at the polls on Election Day, but should cast mail-in ballots. But the Georgia Legislature has not deprived the voters of the right and privilege to vote in-person by making mail-in balloting available – the Legislature has expanded the rights of Georgia voters – including the

Petitioner. Petitioner's efforts to protect that right are met with a standing decision that would prevent any voter from challenging unconstitutional action. That is not the protection of a right that is "foremost in the estimation of the law."

CONCLUSION

WHEREFORE, the Petitioner respectfully request this Honorable Court grant this Emergency Petition Under Rule 20 For Extraordinary Writ Of Mandamus To Vacate the December 28 Judgment of the United States District Court for the Northern District of Georgia.

Petitioner seeks an emergency order instructing Respondents to halt the January 5, 2021 senatorial runoff election until such time as the Respondents agree to comply with the Georgia Legislature's prescribed election procedures.

Petitioners further request that this Court direct the District Court to order production of all registration data, ballots, envelopes, etc. required to be maintained by Georgia state and federal law, to refrain from wiping or otherwise tampering with the data on all voting machines used in the November 2020 election, and to produce one such machine from each Georgia county for forensic examination by Petitioners' experts.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Petition complies with the word limitations under Rule 33. The word count of the Petition totals 8,941, according to Microsoft Word.

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 30th, 2020:

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Appendix A

Appendix- A

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

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>

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.

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KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedValidity 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 TreatmentProposed 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.

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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.

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

Appendix B

UNITED STATES DISTRICT COURT NORTHERN
DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR., individually; 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.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff L. LIN WOOD, JR., ("Plaintiff"), by and through the undersigned counsel, file his Verified Complaint for Declaratory and Injunctive Relief (the "Complaint"), and sue the above-captioned Defendants, respectfully showing this Honorable Court as follows:

JURISDICTION, VENUE AND THE PARTIES

1. This action arises under 42 U.S.C. §1983 and 1988, Articles I, II, III and IV of the United States Constitution and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction over Plaintiff's claim pursuant to 28 U.S.C. §§1331 and 1343 because it involves a federal constitution question in regard to the Senatorial runoff election for the two United States Senates seats from Georgia. This Court would have supplemental jurisdiction over any State law claims pursuant to 28 U.S. C. §1367.

2. 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. All Defendants reside in this State.

3. Plaintiff L. LIN WOOD, JR. is *sui juris* and a resident of Fulton County, Georgia. He is a qualified, registered "elector" who possesses all of the qualifications for voting in the State of Georgia. Plaintiff voted in person during the Presidential Election and has or will vote in the runoff election in-person.

4. Plaintiff has standing under Article III, section 2 of the U.S. Constitution because he has suffered an actual or imminent injury in fact. The injury is traceable to the challenged action of the Defendants. Plaintiff's injuries would be redressed

by a favorable decision in this Court. Additionally, or alternatively, the Plaintiff has standing under Article IV, section 4 of the Constitution.

5. Defendant, BRAD RAFFENSPERGER ("SOS"), is *sui juris* and a resident of Fulton County, Georgia. Said Defendant is named in his official capacity as Secretary of State of the State of Georgia. Said Defendant is charged with the responsibility to enforce and administer election laws, including State laws affecting voting and absentee voting. Defendant is the Chair of the State Election Board. At all times material hereto, the SOS acted under color of State law.

6. Defendants, REBECCA N. SULLIVAN, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE are, together with SOS, the remaining members of the State Election Board (the "SEB"), are *sui juris,* and residents of this State. Said Defendants are named in their official capacities as members of the SEB. The SEB is responsible for adopting such rules and regulations that are conducive to the fair, legal and orderly conduct of elections, but they must be consistent with and may not conflict with the state election law.

INTRODUCTION

7. Article I, section 4 of the United States Constitution provides that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but Congress may at any

time by Law make or alter such regulations, except as to the Places of chusing Senators."

8. In Georgia the "legislature" is the General Assembly. It is General Assembly's plenary power to set the "manner" of the upcoming senatorial runoff election.

9. Plaintiff seeks declaratory relief and an emergency injunction halting Georgia's senatorial runoff election because the Defendants are conducting it in a "Manner" that differs from and conflicts with the election scheme established by the State Legislature, infringes on Plaintiff's fundamental right to vote and diminishes the rights of the Plaintiff to Equal Protection.

10. As a result of the Defendants' violations of the U.S. Constitution and the Georgia legislature's election scheme, the runoff election is and will proceed in an unconstitutional manner and must be cured in a constitutional manner.

11. The Georgia Legislature established a clear and efficient process for handling absentee ballots, and in particular, for resolving questions as to the identity/signatures of mail-in voters and determining how, when and where absentee ballots shall be delivered and opened. To the extent that there is any change in that process, it must, under Article I, section 4 of the Constitution, be prescribed only by the Georgia Legislature. There are four specific unconstitutional procedures challenged in this case.

The Defendants' unlawful abrogation of the Georgia legislature's statutory mail-in absentee ballot signature verification procedure

12. The first unconstitutional procedure at issue in this case involves the unlawful and improper processing of mail-in ballots. The Georgia Legislature set forth the manner for handling signature/identification verification of mail-in votes by individual county registrars and clerks. O.C.G.A. §§ 21-2-386(a)(l)(B), 21-2-380.1. Those individuals must follow a clear procedure for checking signatures to verify the identity of mail-in voters in the manner prescribed by the Georgia Legislature:

> 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)(l)(B) (emphasis added).

13. Further, O.C.G.A. § 21-2-417 establishes an equivalent procedure for a poll worker to verify the identity of an in-person voter. One poll worker verifies the identity of in-person voters.

14. The Georgia Legislature also established a clear and efficient process to be used by a poll worker if he/she determines that an elector has failed to sign the oath on the outside envelope enclosing the mail-in absentee 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)(l)(C). 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)(l)(C) (emphasis added). The Georgia Legislature clearly contemplated the use of written notification by the county registrar or clerk in notifying the elector of the rejection. This was the legislatively set *manner* of verifying voter identity for absentee mail in ballots for the elections for Federal office in Georgia, including the runoff.

15. In or about 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") of litigation the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (the "Democrat Agencies") initiated against, enacting *totally different standards to be followed a poll worker processing*

absentee ballots in Georgia. 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.

16. Although the SOS 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). Rules may not conflict with election statutes.

17. Notwithstanding, 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. Particularly, 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 conflicts with the legislative framework with respect to voter identity verification and defective absentee ballots.

18. Under the Litigation Settlement, the following language will add and has already added to the pressures and complexity of processing defective absentee ballots, making it less likely that they will 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)(l)(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. I f a determination is made that the elector's signature on the mail-in absentee ballot envelope does not match and 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 0 . C.G.A. § 21-2-386(a)(l)(C). Then, the registrar or absentee ballot clerk shall commence the notification procedure set forth in O.C.G.A. § 21-2-386(a)(l)(C) and State Election Board Rule 183-1-14-.13.

19. As shown on their face, the procedures applicable to voter identification verification in connection with the actual voting process treat in-person voters like Plaintiff, 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).

20. Similarly, the voter identification procedure provided by OCGA Section 21-2-386 provides that absentee ballots would be received and reviewed by "a registrar or clerk." 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).

21. As such, before the Defendants 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.

22. The Defendants thus 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 is charged with confirming that absentee ballot signatures are defective before rejecting a ballot.

23. Further, this new procedure treats 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 in the runoff, one poll worker resolves it for an in-person voter, but any questions regarding mail-in absentee voter identification is resolved by three poll workers.

24. This unconstitutional change in Georgia election law made it more likely that ballots without matching signatures would be counted and had a material impact on the Defendants' final vote count, diluting Plaintiff's right to vote, to the detriment of the Republican candidates. Indeed, the Litigation Settlement led to a marked decrease in challenged signatures and the rate of rejection of absentee ballots dropped dramatically in the presidential election, and the same will occur in the United States Senate election runoff unless this Court intervenes.

25. The Settlement Agreement and Official Election Bulletin are unconstitutional and represent a usurpation of the Georgia Legislature's plenary authority to set the manner of elections. The Defendants, without legislative approval have indeed unliterally and intentionally abrogated Georgia's Statute governing the signature verification process for absentee ballots.

26. The Defendants' procedure has resulted and will result in the disparate treatment of the Plaintiff's vote and the dilution thereof, and thus, violates their constitutional rights. As a result, the procedure must be enjoined.

The Defendants' unlawful abrogation of the Georgia Legislature's statutory prohibition on opening absentee ballots before Election Day

27. The second unconstitutional procedure at issue in this case relates to the unlawful opening and/or viewing of absentee ballots (mail-in ballots) in advance of the statutory date set for such opening. As with the identity verification procedures described above, the Defendants have also usurped the Georgia General Assembly's plenary power over the manner of conducting elections by impermissibly changing the laws regarding the time for opening and/or viewing of those ballots.

28. Particularly, the Legislature promulgated O.C.G.A. §21-2-386(a)(1)(A) which provides "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*." (emphasis added).

29. Pursuant to the Georgia Legislature's clear directives, "*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 a mail-in absentee ballot. *Id.* at (a)(2) (emphasis added). Additionally, "*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 beginning tabulating the absentee ballots [after following certain notice procedures]." *Id.* at (a)(3). In short, mail-in

absentee ballots may not be opened before election day under the Georgia Legislative framework for federal elections.

30. Nonetheless, Defendants usurped the Legislature's power by enacting Rule 183-1-14-0.7-.15 (1). The Defendants adopted that Rule on an emergency basis on or about May 18, 2020. In direct conflict with the General Assembly's above procedures, it provides that "beginning at 8:00 a.m. *on the second Monday prior to election day, county election superintendents shall be authorized to open the outer envelope of accepted absentee ballots*, remove the contents including the absentee ballots, and scan the absentee ballots using one or more ballot scanners, in accordance with this Rule, and may continue until all accepted absentee ballots are processed." (emphasis added). This emergency rule was enacted for the June 2020 election, but was then extended on or about August 10, 2020 for use in the General Election. Thereafter, on less than 24-hour notice and with no time for meaningful public comment, the Defendants amended the rule to allow absentee ballots to be opened even earlier - three weeks before the election. This rule is in effect and is already being implemented for the January 5, 2021 senatorial runoff election.

31. This emergency rule is in direct contravention of the acts of the Georgia Legislature in its plenary power to direct the manner of the runoff election – the Legislature established its purpose for preventing early opening in the statute – to "prevent tampering and unauthorized access." The Georgia Election Code expressly

prohibits the opening of absentee ballots before election day. In contrast, the Defendants' Rule expressly allows the opening of absentee ballots three-weeks before election day. The Code and the Rule are inconsistent and mutually exclusive. The Rule must be declared invalid and stricken and/or the Defendant should be in enjoined from employing the Rule.

32. Electors will be adversely affected if mailed in ballots are opened in advance of election day. In the November 3, 2020 election, many voters went to the polls in early voting and on election day and were told they had already voted – a fraudulent mail-in ballot had been cast in their name. See Hearings of the Election Law Study Subcommittee of the Standing Senate Judiciary Committee, December 3, 2020, available at https://livestream.com/accounts/26021522/events/8730585/videos/214364915. At that point, the fraudulent votes cast in their name were already included in the pool of opened ballots, unable to be segregated and the valid elector was deprived of his or her right to vote. This was inconsistent with the procedures mandated by the Georgia Legislature in the Election Code.

The Defendants' unlawful installation of unauthorized ballot drop boxes are not permitted under the Georgia Legislature's election law framework

33. The third unconstitutional procedure in this case involves the Defendants' establishment of an unlawful method of delivering absentee ballots to election officials.

34. The Georgia Legislature established a clear procedure for voters to deliver absentee ballots to election officials. O.C.G.A. § 21-2-382 specifies how and where absentee ballots may be delivered to county election officials. Further, O.C.G.A. § 21-2-385(a) requires electors or certain authorized representatives of electors to "personally mail or personally deliver [their absentee ballots] to the board of registrars or absentee ballot clerk."

35. These statutes, which codify a specific and detailed procedure for requesting, delivering, processing, verifying and monitoring the tabulation of absentee ballots, are designed to protect Georgians from the universally acknowledged dangers of ballot harvesting through widespread mail-in absentee voting, which carries a significant risk of election irregularities and vote fraud[1].

36. Specifically, mail-in absentee voting creates opportunities to obscure the true identities of persons fraudulently claiming to be legitimate electors and facilitates the collection of large quantities of purportedly valid absentee ballots by third-parties– commonly called "ballot harvesting" – that results in an extraordinary

[1] Former President Jimmy Carter and Secretary of State James A. Baker, III, Co-chairs, *Building Confidence in U.S. Elections*, COMMISSION ON FEDERAL ELECTION at p.46, *available online at* https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf.

increase in the number of absentee ballots received by county election officials, including many that are not received and verified in accordance with the procedure required by applicable Georgia statutes. In fact, the Georgia Legislature set forth the very specific circumstances for returning an absentee ballot, and only authorizes those to be returned by caregivers or close family members. O.C.G.A. §21-2-385(a).

37. In contravention of the Election Code, Defendants SOS and the SEB adopted Rule 183-1-14-0.6-.14 authorizing the use of drop boxes in order to provide, as the rule states, "a means for absentee by mail electors to deliver their ballots to the county registrars."

38. By this rule, Defendant SEB permitted and encouraged the installation and use of unattended drop boxes within Georgia's counties as a means for delivery of absentee ballots. There is no mechanism to ensure that a person who uses a drop box meets the requirements of the Election Code.

39. SEB Rule 183-1-14-0.6-.14 claims that a drop box "shall be deemed delivery pursuant to O.C.G.A. § 21-2-385."

40. This rule's definition of delivery is in direct conflict with the language of O.C.G.A. § 21-2-385, which the Georgia General Assembly amended in 2019 specifically to prohibit ballot harvesting.

41. O.C.G.A. § 21-2-385 now specifies only two options for the submission of an absentee ballot: "the elector shall then personally mail or personally deliver the same to the board of registrars or absentee ballot clerk . . . ."

42. O.C.G.A. § 21-2-382(a) establishes the precise locations where an election official may receive an absentee ballot from the individual voter or their caregivers or family member. These sites are defined as "additional registrar's offices or places of registration."

> Any other provisions of this chapter to the contrary notwithstanding, the board of registrars may establish additional sites as additional registrar's offices or places of registration for the purpose of receiving absentee ballots under Code Section 21-2-381 and for the purpose of voting absentee ballots under Code Section 21-2-385, provided that any such site is a branch of the county courthouse, a courthouse annex, a government service center providing general government services, another government building generally accessible to the public, or a location that is used as an election day polling place, notwithstanding that such location is not a government building.

43. O.C.G.A. § 21-2-2(27) defines a "polling place" to mean "the room provided in each precinct for voting at a primary or election."

44. O.C.G.A. § 21-2-382(b) provides that in larger population areas, such as Fulton, DeKalb, Gwinnett, and Cobb counties, the following sites would automatically serve as additional receiving locations for absentee ballots:

> any branch of the county courthouse or courthouse annex established within any such county shall be an additional registrar's or absentee ballot clerk's office or place of registration for the purpose of receiving absentee ballots . . . under Code Section 21-2-385.

45. A drop box, however, is not included in the list of additional reception sites described in the exercise in O.C.G.A. § 21-2-382(a) and (b) and is not within the meaning of a "registrar's office or places of registration" in O.C.G.A. § 21-2-386.

46. A "registrar's office or places of registration" contemplates a building with staff capable of receiving absentee ballots and verifying the signature as required by the procedures prescribed in § 21-2-386.

47. A drop box cannot be deemed a location to apply for an absentee ballot "in person in the registrar's or absentee ballot clerk's office" as prescribed by § 21-2-381 nor can it be a location for an elector to appear "in person" to present the absentee ballot to the "board of registrars or absentee ballot clerk," as prescribed by § 21-2-385.

48. Pursuant to O.C.G.A. § 21-2-380.1, only the absentee ballot clerk can perform the functions or duties prescribed in the Election Code. The absentee ballot clerk "may be the county registrar or any other designated official who shall perform the duties set forth in this article."

49. Throughout the Georgia Election Code, the Legislature clearly contemplated a staffed office or building for voter registration, receipt of absentee ballot applications, and receipt of absentee ballots so that the voter can deliver the ballot "in person" or through their designated statutory agent. *E.g.,* O.C.G.A. § 21-2-385.

50. Drop boxes make it easier for political activists to conduct ballot harvesting to gather votes. When they are used there is a break in the chain of custody of those authorized by statute to collect and deliver absentee ballots, which produces opportunities for political activists to submit fraudulent absentee ballots, and the opportunity for illicit votes to be counted is significantly increased.

51. The break in the chain of custody caused by the use of drop boxes increases the chances that an absentee voter will cast his or her vote under the improper influence of another individual and enhances opportunities for ballot theft or submission of illicitly generated absentee ballots.

52. The procedures outlined above dilute the Plaintiff's fundamental right to vote, treat their vote in a disparate manner and violate their constitutional rights to Equal Protection, Due Process and the Guarantee of a Republican form of Government under the U.S. Constitution.

53. Because the Constitution reserves for State Legislatures the power to set the times, places, and manner of holding federal elections, state executive officers acting under color of law, like Defendants in this case, have no authority to unilaterally exercise that power, much less flout or ignore the Election Code, as was done in this case.

54. Georgia's Legislature has not ratified the above material changes to statutory law mandated by the Defendants.

The Defendants' use of the unreliable and compromised Dominion Voting Systems' hardware and software

55. The fourth unconstitutional procedure in this case involves the use of Dominion

Voting Systems Corporation's ("Dominion") voting machines, including hardware and software. These machines are unreliable, compromised, problematic and subject to outside manipulation of voting results. They are going to be utilized in connection with the runoff unless this Court intervenes. "Plaintiffs are seeking relief to address a particular voting system which, as currently implemented, is allegedly recognized on a national level to be unsecure and susceptible to manipulation by advanced persistent threats through nation state or non-state actors." *Curling v. Kemp*, 344 F.Supp.3d 1303, 1318-1319 (N.D. Ga. 2018) (Totenberg). The election software and hardware from Dominion used by the Defendants is tailor made for fraud. The Dominion systems derive from the software designed by Smartmatic Corporation.

56. Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. Notably, Chavez "won" every election thereafter.

57. As set forth in a Dominion Whistleblower Report[2], the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez:

> 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. 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. 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.
> . . .
>
> 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. Whistleblower report ¶¶ 10 & 14.

58. A core requirement of the Smartmatic software design ultimately adopted by Dominion for Georgia's elections was the software's ability to hide its manipulation of votes from any audit. As the whistleblower explains:

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[2] Reports, declarations and/or affidavits referred to herein shall be filed with the Plaintiffs' upcoming Emergency Motion for Injunctive Relief.

> 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 be 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. *Id.* ¶15.

59. The design and features of the Dominion software do not permit a simple audit to reveal its misallocation, redistribution, or deletion of votes. First, the 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 unauthorized user the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events that do not reflect actual voting tabulations—or more specifically, do not reflect the actual votes of or the will of the people.

60. Indeed, under the professional standards within the industry in auditing and forensic analysis, when a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log. There is incontrovertible physical evidence that the standards of physical security of the voting machines and the software were

breached, and machines were connected to the internet in violation of professional standards, which violates federal election law on the preservation of evidence.

61. In deciding to award Dominion a multi-million-dollar, long term contract, and then certifying Dominion software, Georgia officials disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of elections in 2020 because it was deemed vulnerable to undetected and non-auditable manipulation. An industry expert, Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has recently 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 a screwdriver."

62. Another expert, Russell James Ramsland, Jr., has concluded that Dominion alone was responsible for the injection, or fabrication, of 289,866 illegal votes in Michigan.

63. Indeed, a forensic report dated December 13, 2020 by Allied Security Operations Group audited and tested the integrity of the Dominion Voting System performance in Antrim County, Michigan and concluded that:

> "the Dominion Voting System is intentionally and purposefully designed with inherent errors to created systemic fraud and influence election

> results. The system intentionally generates an enormously high number of ballot errors. The electronic ballots are then transferred for adjudication. The intentional errors lead to bulk adjudication of ballots with no oversight, no transparency, and no audit trial. This leads to voter or election fraud. Based on our study, we conclude that the Dominion Voting System should not be used [ ]."

The report further stated "we conclude that the errors are so significant that they call into question the integrity and legitimacy of the results in the Antrim County 2020 election to the point that the results are not certifiable. Because the same machines and software are used in 48 other counties in Michigan, **this casts doubt on the integrity of the entire election** in the state of Michigan." Emphasis added.

64. Additionally, Garland Favorito, an information technology professional with over 40 years' experience has presented a sworn affidavit documenting thousands of votes being flipped from President Trump to the Democratic Candidate in the November 3, 2020 election. He has concluded "it is more likely that vote-swapping malware existed on both, the Michigan and Georgia County election management servers." And explained the necessity of forensic examination of the Dominion system in Georgia. A press release dated September 17, 2020 from VoterGa reported that "Secretary of State (SOS) **Brad Raffensperger is blocking its calls for forensic reports of faulty Dominion voting systems** in Coffee and Ware counties." Emphasis in original.

65. These same voting machines and software are and will be implemented for use in the Georgia U.S. Senate runoff election, absent this Court's intervention.

66. Notably, The Honorable District Court Judge Amy Totenberg issued a 174-page detailed order on October 11, 2020 that foreshadowed the dangers presented by Georgia's use of these machines. Particularly, she observed that "the substantial risks posed by Georgia's BMD system, at least as currently configured and implemented, are evident." *See Curling v. Raffensperger*, 2020 WL 5994029 *37 (N.D. Ga. October 11, 2020). Judge Totenberg went on to observe that her "Order has delved deep into the true risks posed by the new BMD voting system as well as its manner of implantation. **These risks are neither hypothetical nor remote under the current circumstances.** " Id. at *58. Emphasis added.

67. Adopting the Plaintiff's cyber security expert's testimony, Judge Totenberg observed that "this is not a question of 'might this actually ever happen?' – but 'when it will happen,' especially if further protected measures are not taken. Given the masking nature of malware and the current systems described here, if the state and Dominion simply stand by and say, 'we have never seen it,' the future does not bode well." *Id.*

68. To be sure, the use of the Dominion voting machines is known to have manipulated the election results to favor one candidate over another in contravention of the expressed will of the voters. There is actual harm imminent to the Plaintiff because these voting machines are and will be used in the runoff, thereby diluting the Plaintiff's vote.

69. Indeed, the Chairman's report of the election law study subcommittee of the Standing Senate Judiciary Committee issued a report based on testimony from a hearing held December 3, 2020 wherein it was concluded that the "November 3, 2020 general election (the "election") was chaotic and any reported results must be viewed as untrustworthy."

70. Importantly, the presidential candidates were separated by only approximately 13,000 votes. The number of votes affected by the above constitutional violations exceeds the margin of votes dividing the presidential candidates. There is an imminent harm to the Plaintiff in that said constitutional violations will occur in the runoff election.

71. Plaintiff seeks injunctive relief including enjoining the runoff election for the two United States Senate seats from Georgia from proceeding while the unconstitutional procedures described herein are in place.

COUNT I: EQUAL PROTECTION VIOLATION

72. The Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 71.

73. A citizen's right to vote in a State election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment to the Constitution, which prohibits a State from denying to any person within its jurisdiction the Equal Protection of the laws.

74. The Equal Protection clause prohibits States from arbitrary and disparate treatment of voters. Thus, each citizen has the constitutional right to participate in elections, including the runoff portion of any election, on an equal basis with other citizens in Georgia. The State may not value one person's vote over that of another. Treating voters differently violates the right to Equal Protection.

75. Defendants' procedures described above regarding mail-in absentee ballot voter identity verification, early opening of absentee ballots delivery of absentee ballots, illegal drop boxes, and the use of Dominion voting machines have the effect of diluting the Plaintiff's vote. This happened in connection with the 2020 Presidential Election, and unless the Court intervenes it is and will occur in the runoff.

76. As a result of the Defendants' unauthorized actions and disparate treatment of Plaintiff's vote, this Court should enter an order declaration under 28 U.S.C. §§2201(a) and 2202 and/or injunction that prohibits Defendants from utilizing in the runoff election the unconstitutional procedures set forth above. Defendants actions will diminish and dilute the weight of the lawful votes casted in the runoff election, including Plaintiff.

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

78. The Plaintiff has had to engage the undersigned law firm to represent him in this action and is obligated to pay same a reasonable fee.

WHEREFORE, for the foregoing reasons, the Plaintiff demands an order, preliminary and permanent injunction, and declaratory judgment in their favor and against Defendants declaring that that 2020 Senatorial runoff election procedures of the Defendants violate Plaintiff's constitutional right to equal protection; enjoining the use of said unconstitutional procedures in the runoff; declaring the runoff election procedures described herein defective and requiring Defendants to cure their violation; awarding nominal damages if applicable; granting such other relief as the Court deems just and proper; and awarding Plaintiff's attorney's fees and costs.

COUNT II: DUE PROCESS VIOLATION

79. The Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 78.

80. The procedures utilized in the runoff election violate the Plaintiff's right to due process. The abrogation of the absentee ballot signature verification statute, of the requirement that absentee ballots not be opened before election day, the installation of unauthorized ballot drop boxes, and the use of the compromised Dominion voting machines, when considered singularly and certainly when considered collectively, render the election procedure for the runoff so defective

and unlawful as to constitute a violation of procedural due process under the Fourteenth Amendment to the Constitution.

81. The United States Supreme Court and other federal courts have repeatedly recognized that when election practices reach the point of patent and fundamental unfairness, the integrity of the election itself violates Plaintiff's substantive due process rights.

82. The Defendants unconstitutional rule making discussed above represents an intentional failure to follow election law as enacted by the Georgia Legislature. These unauthorized acts violate Plaintiff's procedural due process rights.

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

84. The Plaintiff has had to engage the undersigned law firm to represent them in this action and are obligated to pay same a reasonable fee.

WHEREFORE, for the foregoing reasons, the Plaintiff demands an order, preliminary and permanent injunction, and declaratory judgment in their favor and against Defendants declaring that that 2020 Senatorial runoff election procedures of the Defendants violate Plaintiff's constitutional right to due process; enjoining the use of said unconstitutional procedures in the runoff; declaring the runoff election procedures described herein defective and requiring Defendants to cure their violation; awarding nominal damages if applicable; granting such other relief

as the Court deems just and proper; and awarding Plaintiffs attorney's fees and costs.

COUNT III: VIOLATION OF GUARANTEE CLAUSE OF ARTICLE IV, SECTION 4 OF THE CONSTITUTION

85. The Plaintiff hereby incorporates by reference the allegations in paragraphs 1 through 84.

86. Article IV, Section 4 of the U.S. Constitution provides that "the United States shall guarantee to every State in this Union a Republican Form of Government." ("Guarantee Clause")

87. This Court and other federal courts are institutions of the United States that are constitutionally compelled to enforce the Guarantee Clause.

88. The Defendants' implementation of the above unauthorized Rules directly conflict with the Georgia Election Code; but an election system that does not provide for the certainty of a free and fair election is not providing a democratic or republican form of government. Indeed, when State action, like the Defendants actions in this case, causes election fraud, loss and/or dilution of the fundamental right to vote, Plaintiff's complaint is elevated into a Guarantee Clause claim, mandating judicial protection of the right to vote. The Supreme Court has recognized that the right to vote is inherent in the republican form of government envisioned by the Guarantee Clause.

89. Using unreliable and comprised Dominion voting machines is contrary to the root philosophy of providing for an accountable government – the fundamental feature of a republican form of government. This this Court should not countenance any unfairness in the election rules, particularly if that unfairness is not in accordance with the will of the State Legislature. This Court should enforce the Guarantee Clause and enjoin the use of the irrational and unpredictable Dominion machines in the runoff. The Michigan Audit by allied Security Operations Group dated December 13, 2020 establishes the unreliable nature of the Dominion machines.

90. The Defendants' interference with the right to vote calls for no less than active judicial protection. When, as here, as a result of fraud and unconstitutional actions, state election procedures result in the election of illegitimate office holders, not only are voter interests diluted, but the republican form of government is undermined.

91. This Court is compelled under the circumstances of this case to invoke the guarantee clause and actively protect the Plaintiff's fundamental right to vote.

92. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the relief requested herein is granted.

93. The Plaintiff has had to engage the undersigned law firm to represent them in this action and are obligated to pay same a reasonable fee.

WHEREFORE, for the foregoing reasons, the Plaintiff demands an order, preliminary and permanent injunction, and declaratory judgment in their favor and against Defendants declaring that that 2020 Senatorial runoff election procedures of the Defendants violate the guarantee clause; enjoining the use of said unconstitutional procedures in the runoff; declaring the runoff election procedures described herein defective and requiring Defendants to cure their violation; awarding nominal damages if applicable; granting such other relief as the Court deems just and proper; and awarding Plaintiff's attorney's fees and costs.

VERIFICATION

Pursuant to 28 U.S.C. §1746, I declare and verify under plenty of perjury that the facts contained in the foregoing Verified Complaint for Declaratory and Injunctive Relief are true and correct.

Dated: December 18, 2020

_____

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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 18, 2020:

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[3] The Service List is derived from the case of *Wood v. Raffensperger, et al.*, Case No. 20-cv-04651-SDG, which involved the same Defendants herein. This Service List is used in an abundance of caution to ensure that the Defendants receive immediate actual notice of this filing through their current counsel.

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Appendix C

UNITED STATES DISTRICT COURT NORTHERN
DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR., individually; 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.

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

The Plaintiff, pursuant to the Federal Rules of Civil Procedure, including Rule 65, and Local Rules 7.1, 7.2(B), 65, 65.1, and 65.2, moves this Court for injunctive relief, as follows:

I. Statement of Facts

1. The facts relevant to this motion are set forth in detail in the Plaintiff's Verified Complaint for Declaratory and Injunctive Relief, which is hereby incorporated by reference and will not be repeated verbatim.

2. Additionally, the Plaintiff offers the following facts contained in the attached affidavit,

declaration, and documentary evidence in support of this application for injunctive relief:

- Expert witness report and declaration attesting to the fact that 20,312 non-residents voted illegally. William. M. Briggs, Ph.D., a statistician, estimated based on survey data rigorously collected by Matt Braynard and the Voting Integrity Project, that 20,311 absentee or *early* voters voted in Georgia despite having moved out of state – sufficient in itself to put the outcome of the 2020 Presidential Election in doubt and demonstrate the imminent harm that will ensue if these procedures are permitted to be utilized in the runoff election. (See Briggs Declaration and Report attached hereto as Exhibit "A").

- A massive number of unrequested absentee ballots were sent in violation of the legislative scheme, estimated to a 95% confidence interval to be between 16,938 and 22,771 ballots – sufficient in itself to put the outcome of the 2020 Presidential Election in doubt and demonstrate the imminent harm that will ensue if these procedures are permitted to be utilized in the runoff election. (See Exhibit A and Expert Report of Matthew Braynard attached hereto as Exhibit "B").

- A massive number of absentee ballots were returned by the voters but never counted, estimated to a 95% confidence interval to be between 31,559 to 38,886. (See Exhibits "A" and "B").

- A declaration from Dr. Quinnell and S. Stanley Young, Ph.D., a member of the American Association for the Advancement of Science in the area of statistics, analyzed Fulton County absentee ballots and found glaring statistical anomalies that are so extreme as to be mathematically impossible to co-exist in the absentee ballot data. (See Quinnell & Young Declarations attached hereto as Exhibit "C").

- An analysis by Russell Ramsland of absentee ballot statistics showed that 5,990 absentee ballots had impossibly short intervals between the dates they were mailed out and the dates they were returned, and that at least 96,000 absentee ballots were voted but are not reflected as having been returned. (See Ramsland's Declaration attached hereto as Exhibit "D").

- The Spider Affidavit details cyber security testing and analysis, penetration testing, and network connection tracing and analysis with respect to Dominion Voting Systems servers and networks. The Affiant is formerly of the 305th Military Intelligence Battalion with substantial expertise and experience in cyber security. In testing conducted November 8, 2020, he found shocking vulnerabilities in the Dominion networks, with unencrypted passwords, network connections to IP addresses in Belgrade, Serbia, and reliable records

of Dominion networks being accessed from China. Doc. 1-2, ¶¶ 7-10. The Spider affidavit also finds that Edison Research, an election reporting affiliate of Dominion, has a directly connected Iranian server, which is in turn tied to a server in the Netherlands which correlates to known Iranian use of the Netherlands as a remote server. *Id.* at ¶¶ 10-11. The Spider affidavit identifies a series of other Iranian and Chinese connections into Dominion's networks and systems. The affidavit concludes in ¶ 21:

> In my professional opinion, this affidavit presents unambiguous evidence that Dominion Voter Systems and Edison Research have been accessible and were certainly compromised by rogue actors, such as Iran and China. By using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, these organizations neglectfully allowed foreign adversaries to access data and intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. This represents a complete failure of their duty to provide basic cyber security. (See Spider Affidavit attached hereto as Exhibit "E").

- The Declaration of Russell Ramsland (See Exhibit "D"), finds similar shocking vulnerabilities in the Dominion networks and systems, and confirms the findings of the Spider affidavit. He further shows that malware on SCTYL's servers can capture log in credentials used in the Dominion networks. *Id.* at ¶¶ 4-5. Ramsland finds that Dominion's source code is available on the Dark Web, and that Dominions election systems use unprotected logs, making undetectable hacking by sophisticated hackers possible. *Id.* at 6-7. This latter point confirms Judge Totenberg's findings about the vulnerabilities in the Dominion system in *Curling v. Raffensperger*, 2020 WL 5994029 (N.D. Ga. 10/11/20).

  In further analysis, Ramsland finds through sophisticated mathematical techniques that there was a distinct political bias in favor of Joe Biden and against Donald Trump in the results reported from Dominion machines vs. those reported on other systems. *Id.* at ¶¶ 8-10. Biden averaged 5% higher on Dominion and Hart systems than on other systems. *Id.* Looking at counties where Biden overperformed Ramsland's predictive model, where other machines were used Biden overperformed only 46% of the time, indicating machine neutrality. However, in the Dominion/Hart system counties, Biden overperformed the model 78% of the time, an anomalous or unnatural result to the 99.99% confidence level. *Id.* at 10-12. This analysis was confirmed by checking it by another machine learning method. *Id.* at ¶ 12. See also ¶13

("**This indicates the fraud was widespread** and impacted vote counts in a systematic method **across many machines and counties.**") (Emphasis in original). This demonstrates the imminent harm that will ensue if these procedures are permitted to be utilized in the runoff election.

In the above-mentioned affidavit, Ramsland adds the following:

> Based on the foregoing, we believe this presents unambiguous evidence that using multiple statistical tools and techniques to examine if the use of voting machines manufactured by different companies affected 2020 U.S. election results, we found the use of the Dominion X/ICE BMD (Ballot Marking Device) machine, manufactured by Dominion Voting Systems, and machines from Hart InterCivic, appear to have abnormally influenced election results and **fraudulently and erroneously attributed from 13,725 to 136,908 votes to Biden in Georgia.** (Emphasis in original).
> *Id.* at 11-12.

The absentee ballot signature rejection rate announced by the Secretary of State was .15%. Only 30 absentee ballot *applications* were rejected statewide for signature mismatch, with nine in tiny Hancock County, population 8,348, eight in Fulton County and *zero* in any other metropolitan county. Under the faulty consent decree, signatures could be matched (if there was any matching done at all) with the applications alone – allowing unfettered injection of bootstrapped signatures into the valid absentee ballot pool. Plaintiff alleges that these facts represent the de facto abolition of the statutory signature match requirement of O.C.G.A. § 21-2-386 in violation of state statute, the Elections and Electors Clause, and the Equal Protection and Due Process Clauses. This demonstrates the imminent harm that will ensue if these procedures are permitted to be utilized in the runoff election.

- An analysis by expert Benjamin Overholt calculates that the signature rejection rate in Georgia for absentee ballots in the 2020 election was .15%, and that the Secretary of State has used inconsistent methodologies in calculating the 2016, 2018 and 2020 rejection rates to make the 2020 rejection rate seem better by comparison. Overholt affirms that the Secretary of State's press release is "misleading" and uses inconsistent methodologies and faulty comparisons. (See Overholt Affidavit attached hereto as Exhibit "F"). This demonstrates the imminent harm that will ensue if these procedures are permitted to be utilized in the runoff election.

- The Dominion voting system ballots marked by Ballot Marking Devices are not voter-verifiable or auditable in a software- independent way. This issue has been litigated and decided against the State Defendants in *Curling v. Raffensperger*, 2020 WL 5994029 (N.D. Ga. 10/11/20), giving rise to issue preclusion against the Defendants on this point.

- The electronic security of the Dominion system is so lax as to present a "extreme security risk" of undetectable hacking and does not include properly auditable system logs. (See Hursti Declarations ¶¶ 37, 39, 45-48; Doc. 1-5, at p. 29, ¶ 28 attached hereto as Exhibit "G"). Judge Totenberg's decision in *Curling v. Raffensperger*, 2020 WL 5994029 (N.D. Ga. 10/11/20) also gives rise to issue preclusion on this point.

- The process of uploading data from memory cards to the Dominion servers is fraught with serious bugs, frequently fails and is a serious security risk. (See Exhibit "G" at ¶¶ 41-46).

  There has been no inventory control over USB sticks, which were regularly taken back and forth from the Dominion server to the Fulton County managers' offices, another extreme security risk. *Id.* at ¶ 47

  "The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access, are extreme and destroy the credibility of the tabulations and output of the reports coming from a voting system." *Id.* at ¶ 49.

- A forensic report conducted by Russell James Ramsland Jr. dated December 13, 2020 by Allied Security Operations Group audited and tested the integrity of the Dominion Voting System performance in Antrim County, Michigan and concluded that:

  > "the Dominion Voting System is intentionally and purposefully designed with inherent errors to created systemic fraud and influence election results. The system intentionally generates an enormously high number of ballot errors. The electronic ballots are then transferred for adjudication. The intentional errors lead to bulk adjudication of ballots with no oversight, no transparency, and no audit trial. This leads to voter or election fraud. Based on our study, we conclude that the Dominion Voting System should not be used [ ]."

The report further stated "we conclude that the errors are so significant that they call into question the integrity and legitimacy of the results in the Antrim County 2020 election to the point that the results are not certifiable. Because the same machines and software are used in 48 other counties in Michigan, **this casts doubt on the integrity of the entire election** in the state of Michigan." Emphasis added. These same voting machines and software are and will be implemented for use in the Georgia U.S. Senate runoff election, absent this Court's intervention. (See Allied Security Operations Group Report attached hereto as Exhibit "H").

- Professor Appel, Professor DeMillo, Professor Stark's article pointing to the several fatalities of the integrity of the BMDs voting system. Specifically, "ballot making 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 systems to print out votes that differ from what the voter entered and verified electronically." Andrew W. Appel, Richard A. DeMillo, Phillip B. Stark, *"Ballot-Marking Devices (BMDs) Cannot Assure the Will of the Voters"* (December 27, 2019). Further, there is no assurance that a voter can express their intent by using BMDs because "[w]hen computers are used to record votes, the original transaction (the voter's expression of the votes) is not documented in a verifiable way." But elections conducted on current BMDs cannot be confirmed by audits. (See Appel, DeMillo and Stark article attached hereto as Exhibit "I").

- Professor Stark's and Professor Halderman's Declarations also point to the insecurity of BDMs, specifically noting that "BMDs, like any computers, can be hacked (by alteration of their software program to cheat); if hacked, they can systematically change votes from what the voter indicated on the touchscreen when printed on the paper ballot; few voters will notice, and those that notice have only the mitigation that they might be able to correct their own ballots, not their neighbors; and finally, recounts or audits will see only the fraudulently marked paper." (See Stark Supplemental Declaration attached hereto as Exhibit "J" and Halderman Declaration attached as Exhibit "K").

- Professor Halderman's Declaration also focusing on the how the Dominion Voting Systems BMDs expand the types and magnitude of attacks because they (needlessly) inject computer software between the voter and the expression of her vote on the ballot. (See Exhibit "K" at ¶ 39; Exhibit "J" at ¶ 30).

3. The above described evidence demonstrates the failure of the Dominion Voting

machine's hardware and software and the reality that the votes tallied by the Dominion system do not represent the votes as cast by the voters nor their with regard to the results of the 2020 Presidential Election. It is clear that the runoff election is doomed to repeat this failure unless this Court intervenes. To be sure, the Plaintiff's proofs demonstrate that the output from Dominion Voting Machines are not accurate and their reported results cannot be trusted.

4. Assuming *arguendo* this Court is not satisfied that Plaintiff has presented conclusive proof, at a very minimum, the Plaintiff has presented a *prima facie* showing that their assertions are correct, and accordingly, this Court should employ a burden shifting analysis whereby it should be the Defendants' burden to come forth with evidence satisfactory to this Court to conclusively disproof in rebut the Plaintiff's claims. *Accord* McDonnell Douglas Corp. v. Green, 93 S. Ct. 1817 (1973).

II. Argument

5. Although the Plaintiff has submitted service copies of all filings in this action to counsel known to currently represent the Defendants herein, so as to afford them immediate actual notice of this matter, efforts are nonetheless underway to formally serve Defendants with process.

6. To the extent at the time of the hearing on this emergency motion, the Defendants are deemed not to have notice, then the Plaintiff requests a temporary restraining order in accordance with Federal Rule 65(b)(1), which provides for the issuance of temporary restraining orders without notice. Based on the Verified Complaint and the affidavits and documents attached hereto, Plaintiff has shown that immediate and irreparable harm will result unless relief is afforded

before the Defendants can be heard in opposition. This is particularly so, as here every effort has been made to give the Defendants notice.

7. If, however, at the time of this emergency hearing, it is established that the Defendants have notice and an opportunity to be heard, then the Plaintiffs request that this Court issue a preliminary injunction pursuant to Federal Rule 65(a).

8. Because of the emergency nature of this motion and the relief requested, the Plaintiff submits that an immediate order and waiver of the usual procedures under Local Rule 7.1 is appropriate pursuant to Local Rules 65.1 and 65.2.

A. Plaintiff Has Standing

9. "A significant departure from the [State's] legislative scheme for appointing Presidential electors" or for electing members of the Federal Congress "presents a Federal Constitutional question." *Bush v. Gore*, 431 U.S. 98, 113 (2000)(Rehnquist, C.J., concurring).

10. The Plaintiff, as holder of the fundamental right to vote has standing to seek redress when unconstitutional state actions infringe upon, dilute, or deny the right to vote. The Supreme Court recognized in *Baker v. Carr*, 82 S. Ct. 691, 703-704 (1962) that a group of qualified voters had standing to challenge the constitutionality of a redistricting statute. An individual's "right of suffrage" is "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." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (abridgment of Equal Protection rights); see also C*rawford v. Marion Cty. Elec. Bd.*, 472 F.3d 949, 952 (7th Cir. 2007), aff'd, 553 U.S. 181 (2008); *Fla. State Conf. of the NAACP v. Browning*, 569 F. Supp. 2d 1237, 1251 (N.D. Fla. 2008). Voters therefore

have a legally cognizable interest in preventing "dilution" of their vote through improper means. *Baker v. Reg'l High Sch. Dist.*, 520 F.2d 799, 800 n.6 (2d Cir. 1975) ("It is, however, the electors whose vote is being diluted and as such their interests are quite properly before the court.") This applies to prevent votes from being cast by persons whose signatures have not been verified in the manner prescribed by the Georgia Legislature, whose ballots have been opened early, whose ballots have been dropped in unauthorized ballot boxes, and whose votes have been diluted through use of unreliable and compromised Dominion Voting System hardware and software.

11. Similarly, in *Gray v. Sanders*, 83 S. Ct. 801 (1963), the Supreme Court observed that any person whose right to vote was impaired by election procedures had standing to sue on the grounds that 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).

12. The 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. The Eleventh Circuit 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", the court modified but 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. *Id.*

13. Further, in *Common Cause/Georgia v. Billups*, 554 F. 3d 1340, 1351 (11th Cir. 2009) the Eleventh Circuit 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, the Eleventh Circuit held that a small injury, even "an identifiable trifle" was sufficient to confer them standing to challenge the election procedure. *Id.*

14. 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.*

15. 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.

16. Further, 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 in order to be counted. **Notably, 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.*

17. Indeed, the voter Plaintiff has shown that as a voter he has legal standing to maintain the challenge to the Defendants' unconstitutional procedures implemented for the January 5, 2021 Senatorial Runoff Election in Georgia. *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).

B. <u>The Standard for Relief</u>

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

19. "[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." *University 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").

20. 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 ***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 shows that the Defendants are and will administer the runoff election for the two U.S. Senate seats from Georgia in a

manner different from which was expressly prescribed by the Georgia Legislature, and also that Defendants violated Plaintiff's equal protection rights, due process rights, and the Guarantee of a Republican form of government. Unless the runoff election is halted and the Defendants are enjoined from their ongoing constitutional violations, 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 on the merits

21. Plaintiff has made a credible showing that Defendants' intentional actions jeopardized the rights of the Plaintiff to select his leaders under the process set out by the Georgia Legislature. Defendants' conduct violated Plaintiff s constitutional rights in multiple ways as described in the Verified Complaint and herein.

22. "Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States,* 417 U.S. 211, 227 (1974); *see also Baker v. Carr,* 369 U.S. 186, 208 (1962). Invalid or fraudulent votes "debase" and "dilute" the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

23. The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States."

Anderson, 417 U.S. at 226 (*quoting Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd due to absence of quorum*, 339 U.S. 974 (1950)).

24. Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. *See Reynolds*, 377 U.S. at 555 ("[T]he 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.").

a. Defendants violated the Equal Protection Clause

25. 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).

26. "To establish an undue burden on the right to vote under the *Anderson- Burdick* test, Plaintiff need not demonstrate discriminatory intent behind the signature-match scheme, or the early opening of ballots, or the use of unauthorized ballot drop boxes, or the use of the

Dominion Voting machines because the Court is considering the constitutionality of a generalized burden on the fundamental right to vote, on which the Court is to apply the *Anderson-Burdick* balancing test." *Lee,* 915 F.3d at 1319.

27. 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").

28. "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.

29. Defendants are not the Georgia Legislature and cannot exercise legislative power to enact rules or regulations regarding the handling of defective absentee ballots, early opening of ballots, or the delivery of ballots that are contrary to the Georgia Election Statutes. 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.

30. 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. 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.

31. For the same reasons, the Defendants are not authorized and cannot permissibly

change the law relative to the opening and delivery of absentee ballots. Georgia statues prohibit opening absentee ballots before Election Day. Defendants' unauthorized rule changed the law by providing for absentee ballots to be opened three weeks before Election Day. The statute and the rule are an irreconcilable conflict.

32. Additionally, Georgia State Law does not authorize the use of unattended drop boxes for the delivery of absentee ballots to election officials. The Defendants' rule illegally establishes and implements the use of exactly such ballot drop boxes. Again, the rule is irreconcilable with the statute. Under these circumstances, the rule must yield to the statue or be stricken. The Defendants are not permitted under the Constitution to change State Law. As such, there is a substantial likelihood that Plaintiff will be successful in demonstrating that he has been harmed by Defendants' violations of their equal protection rights, and an injunction should be issued to halt the runoff election and require Defendants to cure their violations in a constitutional manner.

b. The Defendants Violated the Due Process Clause

33. The procedures utilized in the runoff election as described in the Verified Complaint violate the Plaintiff's right to due process. The abrogation of the absentee ballot signature verification statute, of the requirement that absentee ballots not be opened before election day, the installation of unauthorized ballot drop boxes, and the use of the compromised Dominion voting machines, when considered singularly and certainly when considered collectively, render the election procedures for the runoff so defective and unlawful as to constitute a violation of Plaintiff's right to procedural due process under the Fourteenth Amendment to the Constitution.

34. The United States Supreme Court and other federal courts have repeatedly recognized

that when election practices reach the point of patent and fundamental unfairness, the integrity of the election itself violates Plaintiff's substantive due process right. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F. 3d 873, 878 (3rd Cir. 1994).

35. The Defendants' unconstitutional rule making discussed above represents an intentional failure to follow election law as enacted by the Georgia legislature. These unauthorized acts violate Plaintiff's procedural due process rights. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), overruled in part on other grounds by *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984).

c. Defendants Violated the Guarantee Clause

36. The Constitution provides that "the United States shall guarantee to every State in this Union a Republican Form of Government." *See* Article IV, § 4, United States Constitution.

37. This Court and other federal courts are institutions of the United States that are constitutionally compelled to enforce this guarantee. Indeed, the Supreme Court has recognized that not all claims under the Guarantee clause present nonjusticiable political questions, and the courts should address the merits of such claims, at least in some circumstances. See *New York v. United States*, 112 S. Ct. 2408, 2432- 2433. This case merits the Court's invocation of the Guarantee clause.

38. The Defendants' implementation of the above unauthorized Rules that directly

conflict with the Georgia election statutory scheme, in and of themselves, or certainly in combination with the use of the unreliable and comprised Dominion voting machines is so contrary to the root philosophy of a Republican form of government that this Court should enforce the guarantee clause and enjoin their use in the runoff. *Mountain States Legal Foundation v. Denver School District #1*, 459 F. Supp. 357, 361 (D. Colo. 1978).

39. Indeed, when State action, like the Defendants actions in this case, causes election fraud, loss and/or dilution of the fundamental right to vote, Plaintiff's Complaint is elevated into an Article IV, section 4 claim, mandating judicial protection of the right to vote. The Supreme Court has recognized that the right to vote is inherent in the republican form of government envisioned by the Guarantee clause. *Baker v. Carr*, 369 U.S. 186, 242 (1962).

40. The Defendants' interference with the right to vote calls for no less than active judicial protection. When, as here, as a result of fraud and unconstitutional actions, state election procedures result in the election of illegitimate office holders, not only are voter interests diluted, but the republican form of government is undermined.

41. This Court is compelled under the circumstances of this case to invoke the guarantee clause and actively protect the Plaintiff's fundamental right to vote.

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

2. Plaintiff will suffer irreparable harm

43. 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." *L. Rod v. Burns*, 427 U.S. 347, 373 (1976)(plurality opinion); *Martin v. Kemp*, 341 F. Supp. 3d 1326,

1340 (N.D. Ga. 2018)(a violation of the right to vote cannot be undone through monetary relief, and thus, the violation of the right to vote amounts to irreparable harm.) *New Ga. Project v. Raffensperger,* 2020 WL 5200930, at *26 (N.D. Ga. Aug. 31, 2020)(where plaintiff has alleged her fundamental right to vote has been infringed, irreparable injury is generally presumed). If the runoff election is not halted and the unconstitutional procedures are not enjoined, the Plaintiff's right to vote will be infringed upon, burdened, or denied. The results of the runoff election, if the unconstitutional procedures are allowed to stand, will be improper. There is no adequate remedy at law if this transpires. As such, this Court should issue the requested injunction.

3. The Balance of Harms and Public Interest

44. 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 WL 5200930, at *26 *(quoting Nken v. Holder*, 556 U.S. 418, 435 (2009)) (alterations and punctuation omitted).

45. Plaintiff (and the citizens of Georgia) may lose the opportunity for meaningful relief entirely if runoff election is not halted, and the constitutional violations cured because there may be no remedies that would remain after that point. *New Ga. Project, 2020 WL 5200930, at *26* (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 high level of harm to the Plaintiff and comparatively low costs to the Defendants make this a case with substantial net harm to Plaintiff an injunction can prevent. *See Reilly v. City of Harrisburg,* 858 F.3d 173, 179 (3d Cir. 2017).

46. 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-not pursuant to the Defendant's unconstitutional rule making. *Obama for Am. v. Husted,* 697 F. 3d 423, 436-37 (6th Cir. 2012) (citations and quotations omitted).

WHEREFORE, Plaintiff prays that this Court enter an emergency temporary restraining order and/or preliminary injunction as follows:

1. Declaring that that 2020 Senatorial runoff election procedures of the Defendants violate Plaintiff constitutional rights to equal protection, due process, and the guarantee to a Republican form of government enjoining the use of said unconstitutional procedures in the runoff;

2. Declaring the runoff election procedures described herein defective and requiring Defendants to cure their violation; *and*

3. Granting such other relief as the Court deems just and proper, including without limitation ordering Plaintiff to have access to the absentee ballot mail-in envelopes received and/or processed so far in the Senatorial Runoff Election and allowing them to view and verify the signatures against those on file.

Dated: December ___, 2020

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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 _____, 2020:

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Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, REBECCA N. SULLIVAN, DAVID J. WORLEY, MATTHEW MASHBURN, and ANH LE,

Defendants,

and

DEMOCRATIC PARTY OF GEORGIA, INC. and DSCC,

Intervenor-Defendants.

CIVIL ACTION FILE

NO. 1:20-cv-5155-TCB

ORDER

This case comes before the Court on Plaintiff L. Lin Wood, Jr.'s motion for a temporary restraining order ("TRO").

I. Background

This is the latest in a series of cases associated with Wood that seek to challenge aspects of the 2020 election cycle.

Wood is a registered voter in Fulton County who plans to vote in the January 5, 2021 runoff election in-person.[1] He seeks to prevent the runoff from proceeding, arguing that "Defendants are conducting it in a 'Manner' that differs from and conflicts with the election scheme established by the State Legislature." [1] ¶ 9. He contends that three aspects of Defendants' election scheme unconstitutionally contravene the Georgia legislature's prescribed election procedures:

1. signature verification for absentee ballots;[2]
2. processing of absentee ballots prior to January 5;[3] and
3. installation of ballot drop boxes.[4]

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[1] Wood swears in his amended verification that his averments are true and correct, [5-1] at 1, and the Court will presume the veracity of his statements for purposes of this motion.

[2] Pursuant to a March 6, 2020 settlement agreement, a signature-matching bulletin issued by Defendants requires two-person review of any allegedly mismatched signatures on absentee ballots.

[3] State Election Board ("SEB") Rule 183-1-14-0.9-.15, the "Ballot Processing Rule," permits the processing—*but not tabulation*—of ballots prior to the runoff.

[4] SEB Rule 183-1-14-0.8-.14, the "Drop Box Rule," permits the use of ballot drop boxes for voters to mail absentee ballots.

Wood argues that the election board's promulgation of these rules—together with the use of Dominion voting machines—violates his rights to equal protection (Count I), due process (Count II), and a republican form of government (Count III).

In his motion for a TRO, Wood seeks the following emergency relief:

1. a declaration that Defendants' senatorial runoff election procedures violate his rights to due process, equal protection, and the guarantee of a republican form of government;
2. a preliminary and permanent injunction prohibiting Defendants' election procedures in the runoff;
3. an order requiring Defendants to "cure their violation"; and
4. an order that Wood have access to absentee ballot mail-in envelopes received and/or processed thus far and access to view and verify the signatures against those on file.

[2] at 29–30.

Subsequent to Wood's motion for a TRO, the Democratic Party of Georgia and the DSCC moved [13] to intervene as Defendants and dismiss this action. This Court granted [14] the motion to intervene and directed the Clerk to docket the intervenor-Defendants' motion [16] to dismiss.

The state Defendants also moved [26] to dismiss the complaint. They, like the intervenor-Defendants, contend that this Court lacks jurisdiction to hear this case and that Wood fails to state a claim for relief. Both the intervenor-Defendants and the state Defendants also responded [24, 25] in opposition to Wood's motion for a TRO. Wood later replied [33].

For the following reasons, Wood lacks standing to pursue his claims. Accordingly, the Court need not reach the merits of Wood's TRO argument, and this case will be dismissed.

II. Legal Standard

The standards for issuing a temporary restraining order and a preliminary injunction are identical. *Windsor v. United States*, 379 F. App'x 912, 916–17 (11th Cir. 2010). To obtain either, Wood must demonstrate that (1) his claims have a substantial likelihood of success on the merits; (2) he will suffer irreparable harm in the absence of an injunction; (3) the harm he will suffer in the absence of an injunction would exceed the harm suffered by Defendants if the injunction is issued; and (4) an injunction would not disserve the public interest.

Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246–47 (11th Cir. 2002). The likelihood of success on the merits is generally considered the most important of the four factors. *Garcia-Mir v. Meese*, 781 F.2d 1450, 1453 (11th Cir. 1986).

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." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000).

III. Discussion

Article III of the Constitution restricts federal courts' jurisdiction to "Cases" and "Controversies." U.S. CONST. art. III, § 2, cl. 1. "The purpose of the standing requirement is to ensure that the parties have 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.'" *McLain v. Meier*, 851 F.2d 1045, 1048 (8th Cir. 1988) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

Wood must have standing "for each claim he seeks to press and for each form of relief that is sought." *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017).

Standing requires Wood to show "(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 v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

The injury-in-fact component requires "an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Trichell v. Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (internal quotation omitted).

Thus, the injury must "affect [Wood] in a personal and individual way." *Lujan*, 504 U.S. at 561 n.1. Claims that are "plainly undifferentiated and common to all members of the public" are generalized grievances that do not confer standing. *Lance v. Coffman*, 549 U.S. 437, 441–42 (2007) (internal citation omitted).

And where, as here, a plaintiff seeks prospective relief to prevent a future injury, the plaintiff must also demonstrate that the future injury is "certainly impending." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quotation marks and citation omitted); *see also Indep. Party of Fla. v. Sec'y of the State of Fla.*, 967 F.3d 1277, 1280 (11th Cir. 2020). A "possible future injury" does not confer standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

A. Standing Under the Equal Protection Clause[5]

Throughout much of his complaint, Wood repeats that he suffered an injury from Defendants' purported violations of Georgia law.

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[5] Though the Court will dismiss Wood's claims for lack of standing, his equal protection claim is also barred in part by the doctrine of collateral estoppel because this Court and the Eleventh Circuit recently concluded that Wood lacked standing to bring almost identical equal protection claims. *See Wood v. Raffensperger et al.*, No. 1:20-cv-4651-SDG, 2020 WL 6817513, at *1 (N.D. Ga. Nov. 20, 2020), *aff'd*, No. 20-14418, 2020 WL 7094866, at *1 (11th Cir. Dec. 5, 2020). And while

> dismissal of a complaint for lack of jurisdiction does not adjudicate on the merits so as to make the case res judicata on the substance of the asserted claim, it does adjudicate the court's jurisdiction, and a second complaint cannot command a second consideration of the same jurisdictional claims.

N. Ga. Elec. Membership Corp. v. City of Calhoun, 989 F.2d 429, 433 (11th Cir. 1993).

However, as this Court has previously pointed out *to Wood*, "[c]laims 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.'" *Wood*, 2020 WL 6817513, at *14–15 (quoting *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1332–33 (11th Cir. 2007)) (alterations in original); *see also Bognet v. Sec'y of Commonwealth of Pa.*, 980 F.3d 336, 355 (3d Cir. 2020) (citing *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) ("Violation of state election laws by state officials or other unidentified third parties is not always amenable to a federal constitutional claim.")); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992) ("[R]aising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.").

In an attempt to show a particularized injury for purposes of his equal protection claim, Wood alleges that he has standing as a "holder of the fundamental right to vote" because voters have "a legally cognizable interest in preventing 'dilution' of their vote through improper means." [2] ¶ 10 (quoting *Baker v. Reg'l High Sch. Dist. No. 5*, 520 F.2d 799, 800 n.6 (2d Cir. 1975)).

It is true that vote dilution can be a basis for standing. *See United States v. Hays*, 515 U.S. 737, 744–45 (1995) ("Where a plaintiff resides in a racially gerrymandered district . . . the plaintiff has been denied equal treatment because of the legislature's reliance on racial criteria.").

However, "vote dilution under the Equal Protection Clause is concerned with votes being *weighed differently*." *Bognet*, 980 F.3d at 360 (emphasis added) (citing *Rucho v. Common Cause*, __ U.S. __, 139 S. Ct. 2484, 2501 (2019) ("'[V]ote dilution' in the one-person, one-vote cases refers to the idea that each vote must carry equal weight.")).

Courts have consistently found that a plaintiff lacks standing where he claims that his vote will be diluted by unlawful or invalid ballots. *See Moore v. Circosta*, Nos. 1:20cv911, 1:20cv912, __ F. Supp. 3d

__, 2020 WL 6063332, at *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."); *Donald Trump for President, Inc. v. Cegavske*, No. 2:20-cv-1445 JCM (VCF), __ F. Supp. 3d __, 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) ("[P]laintiffs' claims of a substantial risk of vote dilution 'amount to general grievances that cannot support a finding of particularized injury . . . .'"); *Martel v. Condos*, No. 5:20-cv-131, __ F. Supp. 3d __, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) (rejecting vote-dilution theory as conferring standing because it constituted a generalized grievance); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926–27 (D. Nev. 2020) (pointing out that because "ostensible election fraud may conceivably be raised by any Nevada voter," the plaintiffs' "purported injury of having their votes diluted" does not "state a concrete and particularized injury"); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015).

This is because unlawful or invalid ballots dilute the lawful vote of *every* Georgia citizen. *See Bognet,* 980 F.3d at 356 ("'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.'" (quoting *Martel*, 2020 WL 5755289, at *4)). And where a plaintiff cannot show a "threatened concrete interest of his own," there is no Article III case or controversy. *Lujan*, 504 U.S. at 573.

Accordingly, Wood's allegation of vote dilution does not demonstrate that he has standing to bring an equal protection claim.

Wood also appears to contend that he will be injured as a member of a class of in-person voters suffering from disparate treatment.

To demonstrate standing based upon a theory of disparate treatment, Wood must show that "a vote cast by a voter in the so-called 'favored' group counts . . . more than the same vote cast by the 'disfavored' group." *Bognet*, 980 F.3d at 359. He fails to do so.

First, Wood has not shown the existence of a favored or preferred class of voters. Georgia law permits all eligible voters to *choose* whether to cast an absentee ballot, without reason or explanation. O.C.G.A. § 21-2-380(b). And "[a]n equal protection claim will not lie by 'conflating all

persons not injured into a preferred class receiving better treatment.'" *Bognet*, 980 F.3d at 360 (quoting *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005)). Instead, the "relevant prerequisite is unlawful discrimination, not whether the plaintiff is part of a victimized class." *Id.* (citing *Batra v. Bd. of Regents of Univ. of Neb.*, 79 F.3d 717, 721 (8th Cir. 1996)).

Wood does not show that he suffered from discrimination or other harm as a result of his classification as an in-person voter. The fact that the process for voting by absentee ballot is different from voting in-person does not establish an injury in fact. Courts have sanctioned the use of distinct voting processes for absentee and in-person ballots, acknowledging that "[a]bsentee voting is a fundamentally different process from in-person voting, and is governed by procedures entirely distinct." *Am. Civil Liberties Union of N.M. v. Santillanes*, 546 F.3d 1313, 1320 (10th Cir. 2008).

And to the extent Wood argues that he will be harmed if his in-person vote counts less as a result of an illegally-cast absentee ballot, the Court reminds him that "a plaintiff lacks standing to complain

about his inability to commit crimes because no one has a right to commit a crime." *Bognet,* 980 F.3d at 362 (quoting *Citizen Ctr. v. Gessler*, 770 F.3d 900, 910 (10th Cir. 2014)). Accordingly, his theory of disparate treatment does not demonstrate that he suffered an injury in fact.

Even if Wood could demonstrate a particularized injury through either his theory of vote dilution or disparate treatment, his claims are far too conclusive and speculative to satisfy Article III's "concreteness" requirement.

As previously noted, sufficiently pleading a non-speculative future injury requires Wood to show either that the threatened injury is "certainly impending" or that there is a "'substantial risk' that the harm will occur." *Susan B. Anthony List*, 573 U.S. at 158 (citing *Clapper*, 568 U.S. at 414 n.5). Allegations that harm is certainly impending or substantially likely must be "based on well-pleaded facts" because courts "do not credit bald assertions that rest on mere supposition." *Bognet*, 980 F.3d at 362 (citing *Finkelman v. NFL*, 810 F.3d 187, 201–02 (3d Cir. 2016)).

Here, Wood presumes that a chain of events—including the manipulation of signature-comparison procedures, abuse of ballot drop boxes, intentional mishandling of absentee ballots, and exploitation of Dominion's voting machines—will occur.

However, even taking his statements as true, Wood's allegations show only the "'possibility of future injury' based on a series of events—which falls short of the requirement to establish a concrete injury." *Donald J. Trump for President, Inc. v. Boockvar*, __ F. Supp. 3d __, 2020 WL 5997680, at *33 (W.D. Pa. Oct. 10, 2020) (rejecting a theory of future harm where "th[e] increased susceptibility to fraud and ballot destruction . . . [is] based solely on a chain of unknown events that may never come to pass"); *see also Clapper*, 568 U.S. at 409 (concluding that "allegations of *possible* future injury are not sufficient").

Wood attempts to show that fraud is certain to occur during the runoff by arguing that the November 3 general election was rife with fraud. However, even if that were the case, the alleged presence of harm during the general election does not increase the likelihood of harm during the runoff. *See Boockvar*, 2020 WL 5997680, at *33 ("It is

difficult—and ultimately speculative—to predict future injury from evidence of past injury.").

And claims of election fraud are especially speculative where they rely upon the future activity of independent actors. *See id.* at *33 (rejecting as speculative claims "that unknown individuals will utilize drop boxes to commit fraud . . . [and] for signature comparison, that fraudsters will submit forged ballots by mail") (citing *Clapper*, 568 U.S. at 414 (declining to "endorse standing theories that rest on speculation about the decisions of independent actors")). This is even more so the case where a plaintiff speculates that an "independent actor[] [will] make decisions to act *unlawfully*." *Bognet,* 980 F.3d at 362 (citing *City of L.A. v. Lyons*, 461 U.S. 95, 105–06 (1983)).

Here, Wood's theory of harm rests on speculation about the future illegal activity of independent actors. He alleges that use of ballot drop boxes "*produces opportunities* for political activists to submit fraudulent absentee ballots," [1] ¶ 50 (emphasis added); that enhanced signature review would "*ma[k]e it more likely* that ballots without matching signatures would be counted," *id.* ¶ 24 (emphasis added); and that

permitting the processing of absentee ballots prior to January 5 will facilitate the counting of "fraudulent mail-in ballots . . . cast in the[] name" of would-be in-person voters," *id.* ¶ 32. These allegations plainly contemplate only the *possibility* of future harm and do not conclusively demonstrate a future injury.

Wood's claims regarding ongoing "systemic fraud" through use of the Dominion voting machines fare no better. He hazards that "there is actual harm imminent to [him]" because "Dominion w[as] founded by foreign oligarchs and dictators . . . to make sure [that] Venezuelan dictator Hugo Chavez never lost another election." *Id.* ¶ 63.

Not only is this allegation astonishingly speculative, but it also presumes that because independent bad actors allegedly fixed the election of a now-deceased Venezuelan president, fraud will recur during Georgia's runoff. Again, past harm does not sufficiently show a risk of future harm to confer standing. *Boockvar*, 2020 WL 5997680, at *33. Even if Wood's alleged fraudulent events were to ultimately occur, he has not shown more than a *possible* future injury. This is insufficient to confer standing. *See id.* at *35.

Thus, Wood's claims are both too generalized and too speculative to demonstrate an injury in fact. Accordingly, he lacks standing to pursue his equal protection claim, and Count I will be dismissed.[6]

B. Standing Under the Due Process Clause

Although Wood does not argue in his motion for a TRO that he has standing to pursue his due process claim, he contends that Defendants' failure to act in a manner consistent with the Georgia Election Code and use of the Dominion machines "render the election procedures for the runoff so defective and unlawful as to constitute a violation of [his] right to procedural due process." [2] ¶ 80. He also argues that his substantive due process rights will be violated because Defendants'

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[6] Although it need not reach the separate elements of traceability and redressability, the Court also points out that standing requires that any injury be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party." *Lujan*, 504 U.S. at 560. Wood does not allege that Defendants—the Secretary of State and members of the election board—control the election processes which he seeks to enjoin. Accordingly, his alleged injury is not traceable to them and Defendants cannot provide him any redress. *See Ga. Republican Party Inc. et al. v. Sec'y of State for the State of Ga. et al.*, No. 20-14741, at *6 (11th Cir. Dec. 21, 2020) (affirming dismissal of claims challenging election procedures based on lack of standing where the plaintiffs did not demonstrate either traceability or redressability).

implementation of election procedures in violation of state law "reach the point of patent and fundamental unfairness." *Id.* ¶ 81.

However, as noted above, these alleged injuries are paradigmatic generalized grievances unconnected to Wood's individual vote. *See Lance*, 549 U.S. at 440–41; *see also Nolles v. State Comm. for Reorg. of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (concluding that voters lacked standing to pursue substantive due process claim based on alleged violation of right to a free and fair election because they did not demonstrate a particularized injury).

For Wood to demonstrate that he has standing to pursue his due process claims, he would need to show an "individual burden[]" on his right to due process. *Wood*, 2020 WL 7094866, at *14. He fails to do so. Accordingly, he lacks standing to pursue his due process claim and Count II will be dismissed.

C. Standing Under the Guarantee Clause

Wood also fails to raise the issue of standing under the Guarantee Clause, but in any event, his Guarantee Clause claim is not only nonjusticiable, but he also lacks standing to pursue it.

Article IV, § 4 of the constitution provides that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government . . . ." U.S. Const. art. IV, § 4.

The Supreme Court has historically held—point blank—that "the Guarantee Clause does not provide the basis for a justiciable claim." *City of Rome v. United States*, 446 U.S. 156, 182 n.17 (1980); *Baker v. Carr*, 369 U.S. at 217–19; *Pac. States Tel. & Tel. Co. v. Oregon*, 223 U.S. 118, 147–51 (1912); *Luther v. Borden*, 48 U.S. 7 (1849). On this basis alone Wood is barred from asserting a claim under the Guarantee Clause.

More recently, the Supreme Court has expressed some doubt that *all* challenges to the Guarantee Clause are nonjusticiable. *See New York v. United States,* 505 U.S. 144, 185 (1992); *see also Reynolds v. Sims*, 377 U.S. 533, 582 (1964) (concluding that "*some* questions raised under the Guaranty Clause are nonjusticiable") (emphasis added).

However, even if this were one of those elusive justiciable claims, Wood lacks standing to pursue it. "[F]or purposes of the standing inquiry . . . the Guarantee Clause makes the guarantee of a republican

form of government *to the states*; the bare language of the Clause does not directly confer any rights on individuals vis-à-vis the states." *Largess v. Supreme Jud. Ct. for the State of Mass.*, 373 F.3d 219, 224 n.5 (1st Cir. 2004) (per curiam). Accordingly, Count III alleging violation of the Guarantee Clause is due to be dismissed.

IV. Conclusion

Based on the foregoing, the Court lacks jurisdiction to hear this case. Accordingly, Wood's motions [2, 3] are denied, as is his request for a hearing.[7] The Clerk is directed to close this case.

IT IS SO ORDERED this 28th day of December, 2020.

Timothy C. Batten, Sr.
United States District Judge

[7] Though the Court identified December 30, 2020 as the appropriate date, if any, for a hearing, it finds that oral argument is unnecessary under the circumstances for the proper adjudication of this matter.