UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION**
	)	**FILE NO. _____**
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.	)	
_____	)	

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW Plaintiff **L. Lin Wood, Jr.** ("Plaintiff"), by and through his undersigned counsel of record, and file this his Verified Complaint for Declaratory and Injunctive Relief (the "Complaint"), respectfully showing this honorable Court as follows:

INTRODUCTION

1.

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

2.

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

3.

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

4.

As a result, the inclusion and tabulation of absentee ballots for the general election (and potentially, for all future elections held within this state) is improper and must not be permitted. To allow otherwise would erode the sacred and basic

rights of Georgia citizens under the United States Constitution to participate in and rely upon a free and fair election.

JURISDICTION AND VENUE

5.

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

6.

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

7.

Venue is proper under 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claim occurred or will occur in this District. Alternatively,

venue is proper under 28 U.S.C. § 1391(b) because at least one Defendant to this action resides in this District and all Defendants reside in this State.

PARTIES

8.

Plaintiff L. Lin Wood, Jr. is an adult individual who is a qualified registered elector residing in Fulton County, Georgia. Plaintiff constitutes an "elector" who possesses all of the qualifications for voting in the State of Georgia, as set forth in O.C.G.A. §§ 21-2-2(7) and 21-2-216(a). Plaintiff brings this suit in his capacity as a private citizen. As a qualified elector and registered voter, Plaintiff has Article III standing to bring this action. *See Meek v. Metro. Dade County*, 985 F.2d 1471, 1480 (11th Cir. 1993).

9.

Defendant Brad Raffensperger ("Secretary Raffensperger") is named herein in his official capacity as Secretary of State of the State of Georgia. Secretary Raffensperger is a state official subject to suit in his official capacity because his office "imbues him with the responsibility to enforce the [election laws]." *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). Secretary Raffensperger serves as the Chairperson of Georgia's State Election Board, which promulgates and enforces rules and regulations to (i) obtain uniformity in the practices and

proceedings of election officials as well as legality and purity in all primaries and general elections, and (ii) be conducive to the fair, legal, and orderly conduct of primaries and general elections. *See* O.C.G.A. §§ 21-2-30(d), 21-2-31, 21-2-33.1. Secretary Raffensperger, as Georgia's chief elections officer, is further responsible for the administration of the state laws affecting voting, including the absentee voting system. *See* O.C.G.A. § 21-2-50(b).

10.

Defendants Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board") are members of the State Election Board in Georgia, responsible for "formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. § 21-2-31(2). Further, the State Election Board "promulgate[s] rules and regulations to define uniform and nondiscriminatory standards concerning what constitutes a vote and what will be counted as a vote for each category of voting system" in Georgia. O.C.G.A. § 21-2-31(7). The State Election Board, personally and through the conduct of the Board's employees, officers, agents, and servants, acted under color of state law at all times relevant to this action and are sued for declaratory and injunctive relief in their official capacities.

FACTS

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

Nor can the authority to ignore existing legislation be delegated to an executive officer. While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," *Ariz. State Legislature*, 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush*, 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley*, 285 U.S. at 365.

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

17.

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

18.

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

19.

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

20.

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

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

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

21.

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

22.

Under O.C.G.A. § 21-2-386(a)(1)(C), the Georgia Legislature also established a clear and efficient process to be used by County Officials if they determine that an elector has failed to sign the oath on the outside envelope

enclosing the ballot or that the signature does not conform with the signature on file in the registrar's or clerk's office (a "defective absentee ballot").

23.

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

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

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

24.

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

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

25.

Notwithstanding the clarity of the applicable statutes and the constitutional authority for the Georgia Legislature's actions, on March 6, 2020, the Secretary of State of the State of Georgia, Secretary Raffensperger, and the State Election Board, who administer the state elections (the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively, the "Democrat Party Agencies"), setting forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State of Georgia.[1] A true and correct copy of the Litigation Settlement is attached hereto and incorporated herein as **Exhibit A**.

26.

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

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[1] *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.

27.

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

28.

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

29.

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

30.

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

31.

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

32.

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

33.

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

> County registrars and absentee ballot clerks ***are required***, upon receipt of each mail-in absentee ballot, to compare the signature or make of the elector on the mail-in absentee ballot envelope with the signatures or marks in eNet and on the application for the mail-in absentee ballot. If the signature does not appear to be valid, registrars and clerks are required to follow the procedure set forth in O.C.G.A. § 21-2-386(a)(1)(C). When reviewing an elector's signature on the mail-in absentee ballot envelope, the registrar or clerk must compare the signature on the mail-in absentee ballot envelope to each signature contained in such elector's voter registration record in eNet and the elector's signature on the application for the mail-in absentee ballot. ***If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file in eNet or on the absentee ballot***

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

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

34.

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

35.

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

36.

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

37.

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

38.

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

39.

Under O.C.G.A. § 21-2-220(c), the elector must present identification, but need not submit identification if the electors submit with their application

information such that the County Officials are able to match the elector's information with the state database, generally referred to as the eNet system.

40.

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

41.

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

42.

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

43.

In the primary preceding the November 3, 2020 election, news stories recorded that many absentee ballots did not reach voters until after the polls were closed. *See, e.g.*, F. Bajak and C. Cassidy, "Vote-by-mail worries: A 'leaky pipeline' in many states," Associated Press Aug. 8, 2020, https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffccd64fc878e7, retrieved Nov. 11, 2020).

44.

In response and to encourage confidence in absentee voting during the COVID-19 crisis, the Secretary of State launched Ballot Trax to track absentee ballots, permitting electors to track the progress of absentee ballots as they were processed.

45.

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

46.

County Officials were not incentivized to spend additional time to check absentee ballot applications – by increasing the number of reviewers and

complexity of the process, the Litigation Settlement procedures created further disincentives to accurate processing of signature matches.

47.

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

48.

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

49.

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

50.

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

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

51.

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

52.

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

53.

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

54.

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

55.

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

56.

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

57.

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

58.

"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).

59.

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

60.

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

61.

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

62.

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.

63.

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.

64.

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

65.

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.

66.

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

67.

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

68.

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

69.

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

70.

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

71.

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

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

72.

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

73.

The Electors Clause states that "[e]ach State shall appoint, in such Manner as ***the Legislature*** thereof may direct, a Number of Electors" for President. U.S. Const. art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the United States Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by ***the Legislature*** thereof." U.S. Const. art. I, § 4, cl. 1 (emphasis added).

74.

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

75.

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

76.

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

77.

The procedure set forth in the Litigation Settlement for the handling of defective absentee ballots is not consistent with the laws of the State of Georgia, and thus, Defendants' actions under the Litigation Settlement exceed their authority. *See* O.C.G.A. § 21-2-31(2).

78.

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

79.

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

80.

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

81.

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

82.

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

83.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

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

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

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

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

Respectfully submitted this 13th day of November, 2020.

SMITH & LISS, LLC

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

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(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted this 13th day of November, 2020.

SMITH & LISS, LLC

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

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Atlanta, Georgia 30328
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rsmith@smithliss.com

CERTIFICATE OF SERVICE

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

Secretary of State Brad Raffensperger
214 State Capitol
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This 13th day of November, 2020.

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COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

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

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

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

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

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

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

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

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

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

2. Prompt Notification of Absentee Ballot Rejection.

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

> When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.
>
> Ga. R. & Reg. § 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

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

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

3. Signature Match.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: March 6, 2020

/s/ Bruce V. Spiva

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Bruce V. Spiva*
John Devaney*
Amanda R. Callais*
K'Shaani Smith*
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Counsel for State Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION**
	)	**FILE NO. _____**
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.	)	
_____	)	

VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

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

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

L. Lin Wood, Jr.

Sworn to and subscribed before me
this 13 day of November, 2020.

Notary Public

KIMBERLY BENNETT NOTARY PUBLIC DEKALB COUNTY, GEORGIA

My Commission Expires:

3/4/2021

JS44 (Rev. 10/2020 NDGA)

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

L. Lin Wood, Jr.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Fulton
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

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; Anh Le, in her official capacity as a Member

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Fulton
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Ray S. Smith, III
Smith & Liss, LLC
5 Concourse Parkway, Suite 2600
Atlanta, GA 30328
(404) 760-6000, rsmith@smithliss.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. GOVERNMENT PLAINTIFF
- ☑ 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- ☐ 2 U.S. GOVERNMENT DEFENDANT
- ☐ 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(FOR DIVERSITY CASES ONLY)

PLF	DEF		PLF	DEF	
☐ 1	☐ 1	CITIZEN OF THIS STATE	☐ 4	☐ 4	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
☐ 2	☐ 2	CITIZEN OF ANOTHER STATE	☐ 5	☐ 5	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
☐ 3	☐ 3	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	☐ 6	☐ 6	FOREIGN NATION

IV. ORIGIN (PLACE AN "X "IN ONE BOX ONLY)

- ☑ 1 ORIGINAL PROCEEDING
- ☐ 2 REMOVED FROM STATE COURT
- ☐ 3 REMANDED FROM APPELLATE COURT
- ☐ 4 REINSTATED OR REOPENED
- ☐ 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- ☐ 6 MULTIDISTRICT LITIGATION - TRANSFER
- ☐ 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
- ☐ 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Violation of voters' United States Constitutional rights, including First and Fourteenth Am. (Equal Protection), Articles I and II (Electors & Election Clauses), and 42 U.S.C. 1983

(IF COMPLEX, CHECK REASON BELOW)

- ☐ 1. Unusually large number of parties.
- ☐ 2. Unusually large number of claims or defenses.
- ☐ 3. Factual issues are exceptionally complex
- ☐ 4. Greater than normal volume of evidence.
- ☐ 5. Extended discovery period is needed.
- ☐ 6. Problems locating or preserving evidence
- ☐ 7. Pending parallel investigations or actions by government.
- ☐ 8. Multiple use of experts.
- ☐ 9. Need for discovery outside United States boundaries.
- ☐ 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT $_____ APPLYING IFP _____ MAG. JUDGE (IFP) _____

JUDGE _____ MAG. JUDGE _____ NATURE OF SUIT _____ CAUSE OF ACTION _____
(Referral)

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK
- ☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- ☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- ☐ 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK
- ☐ 110 INSURANCE
- ☐ 120 MARINE
- ☐ 130 MILLER ACT
- ☐ 140 NEGOTIABLE INSTRUMENT
- ☐ 151 MEDICARE ACT
- ☐ 160 STOCKHOLDERS' SUITS
- ☐ 190 OTHER CONTRACT
- ☐ 195 CONTRACT PRODUCT LIABILITY
- ☐ 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK
- ☐ 210 LAND CONDEMNATION
- ☐ 220 FORECLOSURE
- ☐ 230 RENT LEASE & EJECTMENT
- ☐ 240 TORTS TO LAND
- ☐ 245 TORT PRODUCT LIABILITY
- ☐ 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK
- ☐ 310 AIRPLANE
- ☐ 315 AIRPLANE PRODUCT LIABILITY
- ☐ 320 ASSAULT, LIBEL & SLANDER
- ☐ 330 FEDERAL EMPLOYERS' LIABILITY
- ☐ 340 MARINE
- ☐ 345 MARINE PRODUCT LIABILITY
- ☐ 350 MOTOR VEHICLE
- ☐ 355 MOTOR VEHICLE PRODUCT LIABILITY
- ☐ 360 OTHER PERSONAL INJURY
- ☐ 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- ☐ 365 PERSONAL INJURY - PRODUCT LIABILITY
- ☐ 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- ☐ 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK
- ☐ 370 OTHER FRAUD
- ☐ 371 TRUTH IN LENDING
- ☐ 380 OTHER PERSONAL PROPERTY DAMAGE
- ☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK
- ☐ 422 APPEAL 28 USC 158
- ☐ 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK
- ☐ 440 OTHER CIVIL RIGHTS
- ☑ 441 VOTING
- ☐ 442 EMPLOYMENT
- ☐ 443 HOUSING/ ACCOMMODATIONS
- ☐ 445 AMERICANS with DISABILITIES - Employment
- ☐ 446 AMERICANS with DISABILITIES - Other
- ☐ 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK
- ☐ 462 NATURALIZATION APPLICATION
- ☐ 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK
- ☐ 463 HABEAS CORPUS- Alien Detainee
- ☐ 510 MOTIONS TO VACATE SENTENCE
- ☐ 530 HABEAS CORPUS
- ☐ 535 HABEAS CORPUS DEATH PENALTY
- ☐ 540 MANDAMUS & OTHER
- ☐ 550 CIVIL RIGHTS - Filed Pro se
- ☐ 555 PRISON CONDITION(S) - Filed Pro se
- ☐ 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK
- ☐ 550 CIVIL RIGHTS - Filed by Counsel
- ☐ 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK
- ☐ 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- ☐ 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK
- ☐ 710 FAIR LABOR STANDARDS ACT
- ☐ 720 LABOR/MGMT. RELATIONS
- ☐ 740 RAILWAY LABOR ACT
- ☐ 751 FAMILY and MEDICAL LEAVE ACT
- ☐ 790 OTHER LABOR LITIGATION
- ☐ 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK
- ☐ 820 COPYRIGHTS
- ☐ 840 TRADEMARK
- ☐ 880 DEFEND TRADE SECRETS ACT OF 2016 (DTSA)

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK
- ☐ 830 PATENT
- ☐ 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - a/k/a Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK
- ☐ 861 HIA (1395ff)
- ☐ 862 BLACK LUNG (923)
- ☐ 863 DIWC (405(g))
- ☐ 863 DIWW (405(g))
- ☐ 864 SSID TITLE XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK
- ☐ 870 TAXES (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK
- ☐ 375 FALSE CLAIMS ACT
- ☐ 376 Qui Tam 31 USC 3729(a)
- ☐ 400 STATE REAPPORTIONMENT
- ☐ 430 BANKS AND BANKING
- ☐ 450 COMMERCE/ICC RATES/ETC.
- ☐ 460 DEPORTATION
- ☐ 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- ☐ 480 CONSUMER CREDIT
- ☐ 485 TELEPHONE CONSUMER PROTECTION ACT
- ☐ 490 CABLE/SATELLITE TV
- ☐ 890 OTHER STATUTORY ACTIONS
- ☐ 891 AGRICULTURAL ACTS
- ☐ 893 ENVIRONMENTAL MATTERS
- ☐ 895 FREEDOM OF INFORMATION ACT 899
- ☐ 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- ☐ 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK
- ☐ 410 ANTITRUST
- ☐ 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK
- ☐ 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

☐ **CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23** **DEMAND $** injunctive relief

JURY DEMAND ☐ **YES** ☑ **NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)**

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE_____ **DOCKET NO.**_____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- ☐ **1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.**
- ☐ **4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.**
- ☐ **5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.**
- ☐ **6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):**

- ☐ **7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case ☐ IS ☐ IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.**

/s/ Ray S. Smith, III — November 13, 2020

SIGNATURE OF ATTORNEY OF RECORD **DATE**

4months,SDGLC2

U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:20-cv-04651-SDG

Wood v. Raffensperger et al
Assigned to: Judge Steven D. Grimberg
Cause: 42:1983 Civil Rights Act

Date Filed: 11/13/2020
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

Plaintiff

L. Lin Wood, Jr.

represented by **Ray Stallings Smith , III**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Brad Raffensperger
in his official capacity as Secretary of State of the State of Georgia

represented by **Charlene S McGowan**
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Department of Law
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ATTORNEY TO BE NOTICED

Defendant

Rebecca N. Sullivan
in her capacity as Vice Chair of the Georgia State Election Board

represented by **Charlene S McGowan**
(See above for address)
ATTORNEY TO BE NOTICED

Russell D. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

David J. Worley
in his official capacity as a Member of the Georgia State Election Board

represented by **Charlene S McGowan**
(See above for address)
ATTORNEY TO BE NOTICED

Russell D. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Matthew Mashburn
in his official capacity as a Member of the Georgia State Election Board

represented by **Charlene S McGowan**
(See above for address)
ATTORNEY TO BE NOTICED

Russell D. Willard
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Anh Le
in her official capacity as a Member of the Georgia Election Board

represented by **Charlene S McGowan**
(See above for address)
ATTORNEY TO BE NOTICED

Russell D. Willard
(See above for address)
ATTORNEY TO BE NOTICED

V.

Intervenor Defendant

Democratic Party of Georgia, Inc.
Democratic Party of Georgia

represented by **Adam Martin Sparks**
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1201 West Peachtree St., NW
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404-888-9700
Email: sparks@khlawfirm.com
ATTORNEY TO BE NOTICED

Intervenor Defendant

DSCC
DSCC

represented by **Adam Martin Sparks**
(See above for address)
ATTORNEY TO BE NOTICED

Intervenor Defendant

DCCC

represented by **Adam Martin Sparks**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/13/2020	1	COMPLAINT filed by L. Lin Wood, Jr.. (Filing fee $400.00, receipt number BGANDC-10373555) (Attachments: # 1 Exhibit -A -Litigation Settlement, # 2 Verification regarding Election, # 3 Civil Cover Sheet)(eop) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 11/13/2020)
11/13/2020	2	EIGHTH AMENDMENT TO GENERAL ORDER 20-01 RE: COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY COVID-19 AND RELATED CORONA VIRUS. Signed by Judge Thomas W. Thrash, Jr. on 9/28/20. (eop) (Entered: 11/13/2020)
11/13/2020	3	Certificate of Interested Persons by L. Lin Wood, Jr. (Smith, Ray) (Entered: 11/13/2020)
11/16/2020	4	STANDING ORDER Regarding Civil Litigation. Signed by Judge Steven D. Grimberg on November 16, 2020. (ash) (Entered: 11/16/2020)
11/16/2020	5	AMENDED COMPLAINT against All Defendants filed by L. Lin Wood, Jr. (Attachments: # 1 Exhibit Exhibit A to Amended Complaint: Litigation Settlement, # 2 Exhibit Exhibit B to Amended Complaint: Coleman Affidavit, # 3 Exhibit Exhibit C to Amended Complaint: Deidrich Affidavit, # 4 Affidavit Amended Complaint Verification) (Smith, Ray) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 11/16/2020)
11/17/2020	6	Emergency MOTION for Temporary Restraining Order IMMEDIATE HEARING REQUESTED with Brief In Support by L. Lin Wood, Jr. (Attachments: # 1 Exhibit A Litigation Settlement, # 2 Exhibit B Coleman Affidavit, # 3 Exhibit C Deitrich Affidavit, # 4 Exhibit D Volyes Affidavit, # 5 Exhibit E Zeher Affidavit, # 6 Exhibit F Romero Affidavit, # 7 Exhibit G Reyes Affidavit, # 8 Exhibit H Johnston Affidavit, # 9 Exhibit I Silva Affidavit, # 10 Exhibit J O'Neal Affidavit, # 11 Exhibit K Fisher Affidavit, # 12 Exhibit L Savage Affidavit, # 13 Exhibit M Peterford Affidavit, # 14 Exhibit N Redacted Declaration, # 15 Exhibit O Makridis Declaration, # 16 Exhibit P Failure Study, # 17 Exhibit R Moore Affidavit, # 18 Exhibit S S. Hall Affidavit, # 19 Exhibit T R Hall Affidavit, # 20 Exhibit U Hartman Affidavit)(Smith, Ray) (Entered: 11/17/2020)
11/18/2020	7	Supplemental MOTION for Temporary Restraining Order *to File Exhibit Q to Motion, Ramsland Affidavit* by L. Lin Wood, Jr. (Attachments: # 1 Exhibit Q Ramsland Affidavit) (Smith, Ray) (Entered: 11/18/2020)
11/18/2020	8	MOTION to Intervene *as Defendants* with Brief In Support by Democratic Party of Georgia, Inc., DSCC, DCCC. (Attachments: # 1 Exhibit A: Proposed Intervenors' Proposed Motion to Dismiss, # 2 Exhibit B: Proposed Intervenors' Brief in Support of Proposed Motion to Dismiss, # 3 Exhibit C: Proposed Intervenors' Proposed Answer to Amended Complaint)(Sparks, Adam) (Entered: 11/18/2020)
11/18/2020	9	APPLICATION for Admission of Marc Erik Elias Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388354).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	10	APPLICATION for Admission of Amanda R. Callais Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388395).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)

11/18/2020	11	APPLICATION for Admission of Kevin J. Hamilton Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388415).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	12	APPLICATION for Admission of Amanda J. Beane Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388436).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	13	APPLICATION for Admission of Alexi M. Velez Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388444).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	14	APPLICATION for Admission of Matthew Mertens Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388463).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	15	APPLICATION for Admission of Emily Brailey Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388481).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	16	APPLICATION for Admission of Gillian Kuhlmann Pro Hac Vice (Application fee $ 150, receipt number AGANDC-10388493).by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 11/18/2020)
11/18/2020	17	NOTICE of Appearance by Charlene S McGowan on behalf of Anh Le, Matthew Mashburn, Brad Raffensperger, Rebecca N. Sullivan, David J. Worley (McGowan, Charlene) (Entered: 11/18/2020)
11/18/2020	18	NOTICE of Appearance by Russell D. Willard on behalf of Anh Le, Matthew Mashburn, Brad Raffensperger, Rebecca N. Sullivan, David J. Worley (Willard, Russell) (Entered: 11/18/2020)
11/18/2020	19	Certificate of Interested Persons by DCCC, DSCC, Democratic Party of Georgia, Inc.. (Sparks, Adam) (Entered: 11/18/2020)
11/18/2020	20	Amended MOTION to Supplement 7 Supplemental MOTION for Temporary Restraining Order *to File Exhibit Q to Motion, Ramsland Affidavit* by L. Lin Wood, Jr. (Attachments: # 1 Exhibit Q Ramsland Affidavit)(Smith, Ray) (Entered: 11/18/2020)
11/18/2020	21	NOTICE OF VIDEO PROCEEDING re: 6 Emergency MOTION for Temporary Restraining Order IMMEDIATE HEARING REQUESTED. Motion Hearing set for 11/19/2020 at 03:00 PM in No Courtroom before Judge Steven D. Grimberg. Connection Instructions: https://ganduscourts.zoomgov.com/j/1609807754; Meeting ID: 160 980 7754; Passcode: 841353. You must follow the instructions of the Court for remote proceedings available here. The procedure for filing documentary exhibits admitted during the proceeding is available here. *Photographing, recording, or broadcasting of any judicial proceedings, including proceedings held by video teleconferencing or telephone conferencing, is strictly and absolutely prohibited.* (ash) (Entered: 11/18/2020)

PACER Service Center			
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11/18/2020 16:15:23			
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Description:	Docket Report	**Search Criteria:**	1:20-cv-04651-SDG
Billable Pages:	5	**Cost:**	0.50

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

IN RE: COURT OPERATIONS UNDER THE EXIGENT CIRCUMSTANCES CREATED BY COVID-19 AND RELATED CORONAVIRUS

GENERAL ORDER 20-01
Eighth Amendment

ORDER

General Order 20-01, dated March 16, 2020, as amended by orders dated March 30, 2020; April 30, 2020; May 26, 2020; July 1, 2020; July 10, 2020; August 3, 2020; and September 1, 2020; addresses Court operations for the United States District Court for the Northern District of Georgia under the exigent circumstances created by the Coronavirus Pandemic and the spread of COVID-19. The Seventh Amendment to General Order 20-01, entered September 1, 2020, extended the time periods specified in the Order through and including November 1, 2020.

Data from the Georgia Department of Public Health reflects that the average number of confirmed new COVID-19 cases in the State of Georgia remains significantly in excess of 1,000 cases per day as do the fourteen and seven-day averages for daily confirmed cases within the State. These numbers far exceed those that existed at the time the Court entered General Order 20-01 and are among the highest nationally. Georgia now ranks fourth in the United States in total cases behind only California, Florida, and Texas. The four counties within Georgia with the most confirmed COVID-19 cases: Fulton, Gwinnett, Cobb, and DeKalb, are all within the Northern District. Together these counties currently

account for almost thirty percent of the cases within the State. While declining from the extreme highs experienced in July, the percentage of those tested for COVID-19 who test positive still exceeds eight percent, again among the highest positivity rates nationally. As reflected in the data, the prevalence of COVID-19 within the District is far greater than it was on March 16, 2020, when the Court originally entered General Order 20-01.

The total number of COVID-19 deaths in Georgia and the Northern District continues to rise, and no vaccine or cure is yet available to the general public. There has been no change to the President's declaration of a national emergency under the National Emergencies Act (50 U.S.C. § 1601 et seq.) due to COVID-19 or to the findings of the Judicial Conference of the United States that emergency conditions due to this national emergency have materially affected and will materially affect the functioning of the federal courts generally. Specifically, within the Northern District, emergency conditions have prevented defense counsel from meeting with their in-custody clients and have severely limited communications with those clients in general. Capabilities provided by technology, while helpful, are inadequate to offset the impediments currently confronted by counsel in this District. Other aspects of case preparation have been similarly impacted. As a result of Georgia's level of COVID-19 infections and test positivity, witness travel has been problematic due to quarantine regulations in effect in many states that apply to persons traveling to and from Georgia. These circumstances and others have severely impeded if not prevented counsels' ability to prepare for trial.

To date the Court has suspended jury trials in the hopes that COVID-19 could be contained, and its threat eliminated. The continued spread of COVID-19 within the United States and Georgia after months of intense preventative measures, however, makes clear that the resumption of jury trials cannot await the complete demise of this disease. At the same time, the Court will not reinitiate jury trials while it deems the public health and safety and that of those appearing before the Court cannot be adequately protected. Based on the above, it is the conclusion of the Court that a further extension of the suspension of jury trials is required to allow conditions within the District to sufficiently improve so that counsel can adequately prepare for trial and the health and safety of the public, those appearing before the Court, and the Court itself, can be adequately safeguarded. The extension of the suspension of jury trials also will facilitate the further coordination of health and safety procedures that will be required when jury trials resume, which the Court plans to occur in January 2021.

Therefore,

IT IS HEREBY ORDERED that General Order 20-01, as amended, is <u>further amended</u> to extend the time periods specified therein through and including the date of January 3, 2021.

IT IS FURTHER ORDERED that while there will be no civil or criminal jury trials in any division of the Northern District of Georgia until after January 3, 2021, grand jurors may continue to be summoned and grand jury proceedings may continue to be held;

and summonses may be issued to prospective jurors for civil and criminal jury trials scheduled to begin after January 3, 2021.

IT IS FURTHER ORDERED that the time period of any continuance entered as a result of this Order (whether that continuance causes a pre-indictment delay or a pre-trial delay) shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), as the Court finds that the ends of justice served by taking that action outweigh the interests of the parties and the public in a speedy trial. Absent further order of the Court or any individual judge, the period of exclusion shall be from March 23, 2020, through and including January 3, 2021. The Court may extend the period of exclusion as circumstances may warrant. This Order and period of exclusion are incorporated by reference as a specific finding under 18 U.S.C. § 3161(h)(7)(A) in the record of each pending case where the Speedy Trial Act applies. *See Zedner v. United States*, 547 U.S. 489, 506-07 (2006). The periods of exclusion in the Court's prior orders on this subject, General Order 20-01 and its subsequent amendments, are likewise incorporated by reference as a specific finding under 18 U.S.C. § 3161(h)(7)(A) in the record of each pending case where the Speedy Trial Act applies.

SO ORDERED this 29 day of September 2020.

Thomas W. Thrash

THOMAS W. THRASH, JR.
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION**
	)	**FILE NO. _____**
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.	)	
_____	)	

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

(1) The undersigned counsel of record for a party to this action certifies that the following is a full and complete list of all parties in this action, including any parent corporation and any publicly held corporation that owns 10% or more of the stock of a party:

Plaintiff: L. Lin Wood, Jr.

Defendants: Brad Raffensberger, 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.

(2) The undersigned further certifies that the following is a full and complete list of all other persons, associations, firms, partnerships, or corporations having either a financial interest in or other interest which could be substantially affected by the outcome of this particular case:

None.

(3) The undersigned further certifies that the following is a full and complete list of all persons serving as attorneys for the parties in this proceeding:

Plaintiff: Ray S. Smith, III, Smith & Liss, LLC

Defendants: Unknown.

Respectfully submitted this 13th day of November, 2020.

SMITH & LISS, LLC

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

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

CERTIFICATE OF SERVICE

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

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

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

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

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

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

This 13th day of November, 2020.

SMITH & LISS, LLC

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

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

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

IN RE: CIVIL CASES ASSIGNED TO UNITED STATES DISTRICT JUDGE STEVEN D. GRIMBERG

STANDING ORDER REGARDING CIVIL LITIGATION

This case has been assigned to United States District Judge Steven D. Grimberg. These guidelines are furnished to inform the parties and their counsel of the policies, procedures, and practices of this Court, and to promote the just, speedy, and economical disposition of cases. This Order, in combination with the Civil Local Rules of the United States District Court for the Northern District of Georgia and the Federal Rules of Civil Procedure, shall govern this case, superseding any previous case instruction orders. In the event a Magistrate Judge is assigned to this case, orders issued by that judge, rather than this Standing Order, shall govern while the case is pending before the Magistrate Judge.

Each counsel of record and *pro se* party is required to sign and file, within 10 days after entry of this Order, a Certificate of Compliance in a format consistent with the Certificate of Compliance attached as Exhibit B. The signed Certificate should *not* be mailed to Chambers.

TABLE OF CONTENTS

I. CASE ADMINISTRATION

a. Contacting Chambers

The Courtroom Deputy Clerk, Alisha Holland, is your principal point of contact on matters related to this case. ***Neither counsel nor the parties should discuss the merits of their case with the Courtroom Deputy Clerk or any of the Court's law clerks.***

Communications with Chambers should generally be made by email, with all counsel or parties copied, to Courtroom Deputy Holland at Alisha_Holland@gand.uscourts.gov. If necessary, counsel or parties may also contact Chambers by telephone (404-215-1470), or by mail or hand delivery:

The Honorable Steven D. Grimberg
ATTN: Courtroom Deputy Alisha Holland
1767 United States Courthouse
75 Ted Turner Drive, S.W.
Atlanta, Georgia 30303-3309

Counsel and parties are cautioned that the Court, in its discretion, may file on the docket any written communications, including emails, submitted to Chambers.

b. Courtesy Copies of Documents

Courtesy copies of filings should not be provided to the Court unless requested.

c. Attorney Leaves of Absence

Counsel are encouraged to review their calendars and submit as early as possible any requests for leave(s) of absence. Leave requests shall comply with LR 83.1(E)(3), NDGa. Accordingly, requests for leave for 21 days or more must be made by motion. However, requests for fewer than 21 days shall be filed on the docket rather than submitted via letter to Chambers.

d. *Pro Se* Parties

Specific procedures applicable to *pro se* parties are contained in the Appendix to this Standing Order and should be followed by individuals who are not represented by counsel.

II. CASE MANAGEMENT

a. Removed Cases

For cases removed to this Court based on diversity of citizenship under 28 U.S.C. § 1332, the Court must evaluate whether it may properly exercise jurisdiction based on the citizenship of individuals and entities. Therefore, in cases where one or more parties is a limited liability company, partnership, or similar entity, the removing party must provide the Court with the identity and citizenship of each of the entity's members and sub-members (or partners and sub-partners), until the Court is left only with individuals or corporations to evaluate for diversity of citizenship purposes.

b. Responses to Pleadings

A party filing an answer to a complaint, counterclaim, crossclaim, or third-party complaint shall copy into its answer the paragraph of the pleading to which it is responding and provide its answer to that paragraph immediately following.

A responsive pleading must admit or deny each of the averments of the adverse party's pleading. For example, if the complaint alleges, "A copy of the parties' contract is attached as Exhibit A," the defendant may not plead, *e.g.*, "Defendant admits that Exhibit A is attached to the complaint," or that "the document speaks for itself." Evasive denials such as these will be disregarded, and the averments to which they are directed will be deemed admitted pursuant to Fed. R. Civ. P. 8(b)(6).

c. Amended Complaints and Motions to Dismiss

If, in response to a motion to dismiss, a plaintiff files an amended complaint pursuant to Fed. R. Civ. P. 15(a)(1), the defendant-movant is directed to determine—within 10 days after the filing of the amended complaint—whether the pending motion to dismiss has been rendered moot. If so, the defendant shall withdraw it.

During the pendency of a motion to dismiss that would dispose of the entire action, all discovery is automatically stayed until and unless the Court rules on the

motion or otherwise directs. This stay includes all pretrial activity and deadlines, such as the LR 16.1, NDGa conference, Joint Preliminary Report and Discovery Plan, initial disclosures, and commencement of discovery. If a party believes good cause exists for any or all pretrial activity to continue or deadlines to remain in effect, notwithstanding the pendency of a motion to dismiss, the party may submit a request to Chambers pursuant to the discovery dispute procedures outlined in Section III.f. of this Standing Order. This automatic stay does not apply to partial motions to dismiss or to any motions to dismiss filed after the commencement of discovery.

d. Motions for Temporary Restraining Orders or Preliminary Injunctive Relief

Any request for a temporary restraining order or for preliminary injunctive relief must be made by ***separate*** motion. If a party requests such relief only in the complaint or other pleading, but fails to file a separate motion seeking the same, the request will not be considered until the merits of the case are addressed. After filing an appropriate motion, the movant should contact Chambers to request expedited consideration.

e. Brief Nomenclature

Briefs should be titled on CM/ECF as follows: The initial brief of a movant should be titled "[name of Party]'s Brief in Support of [name of motion]." The brief

of the responding party should be titled "[name of Respondent]'s Response in Opposition to [name of motion]." The reply of the moving party should be titled "[name of Party]'s Reply in Support of [name of motion]."

f. Electronic Filing of Exhibits and Attachments

The parties should make every effort to label all electronically uploaded exhibits and attachments according to their content. For example, documents should be uploaded as Ex. A: Smith Deposition; Ex. B: Employment Contract; Ex. C: Jones Letter, etc., rather than simply Ex. A, Ex. B, and Ex. C. When practicable, each party should file documents in a text-searchable PDF format. Exhibits or attachments that are not referenced and relied on in the body of the party's submission will not be considered.

g. Proposed Orders

For all consent, unopposed, or joint motions, a proposed order should be filed along with the motion via CM/ECF. A Word version of the proposed order should be attached to the CM/ECF filing receipt email and forwarded to Chambers. Proposed orders on contested motions should not be filed or submitted to Chambers unless specifically requested by the Court.

h. Extensions of Time

The Court is responsible for processing cases toward a prompt and just resolution. To that end, the Court seeks to set reasonable, but firm deadlines. Motions for extension of time, even if designated as joint, unopposed, or by consent, will not be granted as a matter of course.

Parties seeking an extension should explain with specificity the unanticipated or unforeseen circumstances necessitating the extension and should set forth a full timetable for the completion of the briefing for which the extension is sought. *E.g.*, if a defendant seeks additional time to file a motion to dismiss, the request should include a proposed schedule for completion of the briefing, including filing of the response and reply briefs. Parties should indicate whether the opposing party consents to the request for an extension and the proposed schedule. A proposed order should be filed along with the motion via CM/ECF. If such a motion is filed less than three days prior to the deadline the parties seek to extend, the parties should promptly alert Chambers to the filing via email.

i. Extensions of Page Limits

As with motions for extension of time, requests for extensions of the page limits prescribed by the Local Rules will not be granted as a matter of course. Parties seeking an extension of the page limit must file such a motion at least three

days in advance of the filing deadline and must explain with specificity the circumstances necessitating additional pages. Parties should indicate whether the opposing party consents to the request for additional pages. A proposed order should be filed along with the motion via CM/ECF.

If a party files a motion to extend the page limit at the same time its brief is due, the extension request will be denied absent a compelling and unanticipated reason.

j. Page Limits for Objections to Reports and Recommendations by Magistrate Judges

Objections to Reports and Recommendations of Magistrate Judges (and, when applicable, special masters), as well as responses to such objections, shall be limited to 15 pages. Requests for an extension of this page limit must follow the procedure set forth above.

k. Footnotes

Footnotes must be in the same font type and size as the main text of the filing, although they should be single-spaced. Substantive arguments included in footnotes will not be considered.

l. Conferences

Parties are encouraged to request a conference with the Court when they believe that it will be helpful, and they have specific goals for the conference. Conferences may be requested via email to Chambers.

m. Requests for Oral Argument or Hearing on Motions

The Court will consider requests for oral argument or a hearing on a contested motion. Such a request should be filed as a ***separate*** motion. The motion will receive favorable consideration if the requesting party represents that a lawyer with less than five years of litigation experience will conduct the argument (or at least a large majority of the argument), it being the Court's belief that less experienced lawyers need more opportunities for court appearances than they usually receive.

n. Mediation

Parties are encouraged to mediate their disputes, and to do so early in the litigation process. On a joint or consent motion, discovery and other pretrial deadlines will generally be stayed during the pendency of mediation.

On request from any party, or on its own initiative, the Court may refer the parties to court-ordered mediation before a United States Magistrate Judge pursuant to LR 16.7(B), NDGa. There is no cost for this mediation service. Requests

to mediate before a magistrate judge may be made jointly or *ex parte* by emailing Chambers.

o. Settlements

When all parties to a matter have reached a tentative settlement or agreed to a settlement in principal, but have not yet completed all steps necessary to document the settlement, they should alert the Court to this status by filing a Notice of Settlement that indicates the amount of time needed to complete the settlement process and dismiss the action.

III. Discovery

a. General Principles of Discovery

In conducting discovery, parties should be guided by courtesy, candor, and common sense. Direct and informal communication among counsel is encouraged to facilitate discovery and to resolve disputes without the need for Court intervention.

b. Joint Preliminary Report and Discovery Plan

A Word version of the proposed Scheduling Order that is filed along with the Joint Preliminary Report and Discovery Plan ("Joint Report") should be attached to the CM/ECF filing receipt email and forwarded to Chambers. After the Joint Report is filed, the Court may schedule a Rule 16 conference. Neither the

timing of the Rule 16 conference or entry of the Scheduling Order shall delay the start of discovery.

c. Initial Disclosures

Initial disclosures should be as complete as possible based on the information reasonably available to the parties at the time of disclosure. Responses may not be reserved for later supplementation.

d. Written Discovery Responses

The Federal Rules prohibit boilerplate and general objections in response to written discovery requests. Parties should not carelessly invoke the usual litany of rote objections, *i.e.*, attorney-client privilege, work-product protection, overly broad/unduly burdensome, irrelevant, or not reasonably calculated to lead to the discovery of admissible evidence.

A party shall not include in its response to a discovery request a "Preamble" or a "General Objections" section stating that the party objects to the discovery request "to the extent that" it violates some rule pertaining to discovery. Instead, each individual discovery request must be met with every specific objection thereto—but only those objections that actually apply to that particular request. Otherwise, it is impossible for the Court or the party on which the discovery

response is served to know exactly what objections have been asserted to each request. All "General Objections" shall be disregarded by the Court.

A party that objects in part and responds in part to a discovery request must indicate whether the response is complete, *i.e.*, whether additional information or documents would have been provided but for the objection(s). For example, a party is not permitted to raise objections and then state, "Subject to these objections and without waiving them, the response is as follows . . . ." unless the party expressly indicates whether additional information would have been included in the response but for the objection(s).

If a privilege objection is made, the claim must be supported by a privilege log or statement of particulars sufficient to enable the Court to assess its validity. In the case of a document, the privilege log or statement should specify the privilege relied on and generally include: the date, title, subject, and purpose of the document; the name and position of the author, and the names and positions of all the recipients. In the case of an oral communication, the privilege log or statement should include the privilege relied on and generally identify: the date, place, subject, and purpose of the communication; and the names and positions of all individuals present.

The parties are expected to observe the limitations regarding the number and scope of interrogatories as stated in Fed. R. Civ. P. 26(b) and 33.

e. Depositions

Barring extraordinary circumstances, all parties should be consulted, and the convenience of counsel, witnesses, and the parties accommodated, ***before*** a deposition is noticed.

If counsel enter into stipulations at the beginning of a deposition, the terms of each stipulation should be fully stated on the record. General stipulations such as "all objections except as to form are reserved" are disfavored.

Objections to the manner of taking the deposition, to the evidence, or to the conduct of a party shall be noted on the record, but the evidence objected to ***shall be taken*** subject to the objection. In the absence of a good faith claim of privilege or witness harassment, instructions not to answer are rarely justified and may lead to sanctions. Speaking objections and other tactics for coaching a witness during the deposition are not permissible. Counsel are encouraged to try to resolve deposition objections without the Court's involvement.

The Court will not permit the taking of depositions for the preservation of testimony after the close of discovery, absent a good faith reason to do so. A party must request the Court's permission to conduct such a deposition.

f. Discovery Disputes

Parties are required to confer in good faith, by telephone or in person, before bringing discovery disputes to the Court. The duty to confer is ***not*** satisfied by sending a written document (*e.g.*, email or letter) to the opposing party, ***unless*** repeated attempts to confer by telephone or in person are unsuccessful.

Parties must submit discovery disputes to the Court ***before*** filing a formal motion. Thus, prior to the filing of a discovery motion (except for unopposed, consent, or joint motions), the party seeking Court intervention must email Chambers a statement outlining its position and requesting a conference with the Court. All opposing parties must be copied on such emails. The statement shall not exceed 500 words regardless of the number of issues presented. The party initiating the request for a discovery conference may attach as an exhibit to its statement an ***excerpt*** of the relevant discovery requests and any responses and objections that are the subject of the dispute. A complete copy of the discovery requests should ***not*** be attached. The opposing party or parties may provide a responding statement to the Court, subject to the same limitations. In the discretion of the Court, statements submitted by the parties may be filed on the docket.

After receipt of the parties' submissions, Chambers will schedule a conference call with all parties in which the Court will attempt to rule on or resolve the matter without the necessity of a formal motion. The conference call will be recorded by a court reporter.

If a dispute between a party and a non-party arises (*e.g.*, a disagreement regarding a subpoena), the party must promptly inform the non-party of this discovery-dispute policy. In raising the discovery dispute with the Court, both the party ***and*** the non-party must follow the same procedure detailed above.

g. Discovery Period Extensions

Parties are encouraged to formulate their discovery plans early to facilitate the completion of necessary discovery before the close of the discovery period. If all parties agree that an extension of a discovery deadline is necessary, the parties shall file a consent motion. The consent motion shall state: (1) the original (and, if applicable, current) date from which the extension is being sought; (2) the number of previous requests for extensions, if any; and (3) why the extension is needed to complete identifiable tasks.

Where extension requests are not made by consent, or are otherwise opposed, the requesting party should provide the same information outlined

above but make the request using the discovery dispute procedure outlined in Section III.f.

Absent extraordinary circumstances, requests or motions for extensions must be filed prior to the expiration of the existing discovery period. The Court will not enforce private agreements between the parties or their counsel to conduct discovery beyond the conclusion of the discovery period. The Court does not allow the presentation of evidence at trial that was requested and not revealed during the discovery period *unless* it orders such material to be produced after completion of the discovery period pursuant to a motion to compel (or similar motion).

h. Confidentiality Agreements, Protective Orders, Motions to Seal

Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to file documents containing confidential information shall first consult with the party who designated the document as confidential to determine if some less restrictive measure than filing the document under seal may serve to provide adequate protection. Any motion to file under seal should indicate whether it is by consent, unopposed, or opposed.

To request to file material under seal, counsel should follow the mechanism described in the Local Rules and consult the Court's Procedure for Electronic

Filing Under Seal in Civil Cases.[1] These procedures require filing an *un*redacted version of the document as provisionally under seal ***and*** publicly filing a redacted version of the document, in addition to the motion to file under seal.

When filing the ***un***redacted, provisionally sealed document, counsel should use the CM/ECF event code "Notice of Filing." The Notice of Filing should be the lead document, and the brief and all supporting documents should be included as exhibits to the notice. For example, if the party is requesting that Exhibit A to a Motion for Summary Judgment and a portion of the memorandum of law in support of the motion be filed under seal, the Notice of Filing Sealed Document should attach as exhibits: the motion for summary judgment, the unredacted supporting memorandum of law, Exhibit A, and all other exhibits to the motion.

These instructions do not apply to parties appearing *pro se*. For *pro se* litigants, motions to seal must be manually filed with the Clerk of Court. In such instances, the material subject to the request to seal should be attached as an exhibit to the motion. The Clerk will enter the motion on the docket under a provisional seal, without public viewing access.

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1 www.gand.uscourts.gov/cv-sealed-procedures

The party filing the motion to file under seal should clearly indicate the type of material the party is seeking to seal and its justification for protecting that material from disclosure. In accordance with Fed. R. Civ. P. 26(c), the Court will only grant such motions for good cause. Given the public's interest in disclosure, good cause will generally only be established where the materials contain trade secrets, personal identifying information, or sensitive commercial information.

IV. Summary Judgment

a. Record Citations

Record citations should be made only in the statement of undisputed (or disputed) material facts or responses thereto (hereinafter collectively referred to as "SMFs"). Summary judgment briefs should cite only to the relevant numbered paragraph(s) of the SMFs, not the underlying record.

Deposition transcripts that are cited in the SMFs should be filed in their entirety under a separate but contemporaneous "Notice of Filing" docket entry, unless such transcripts have previously been filed on the docket. Excerpts of deposition transcripts should not be attached to the SMFs or summary judgment brief.

b. Statements of Undisputed or Disputed Material Facts

Statements of Undisputed or Disputed Material Facts are each limited to 15 pages. A party responding to a statement of undisputed or disputed material facts shall copy the statement to which it is responding and provide its response to that statement immediately following.

V. Trial

a. Proposed Consolidated Pretrial Order

As part of the proposed consolidated pretrial order, the parties must submit a single, unified set of proposed *voir dire* questions. The parties may divide the list according to the questions that each party proposes to ask. Any objections by the opposing party must be included directly below the question at issue. The Court's Qualifying Questions for Prospective Jurors are attached to this Standing Order as Exhibit A. Do not duplicate these questions in the proposed *voir dire* questions.

In listing witnesses or exhibits in the proposed consolidated pretrial order, a party may not reserve the right to supplement the list and may not adopt another party's list by reference. Witnesses and exhibits not identified in the proposed consolidated pretrial order may not be used during trial, unless the witness or exhibit is solely for impeachment or rebuttal and could not have been anticipated in advance, or to prevent a manifest injustice.

b. Final Pretrial Conference

The Court will conduct a final pretrial conference prior to trial. The purpose of the conference is to simplify the issues to be tried and to rule on evidentiary objections raised in the proposed consolidated pretrial order.

Unless otherwise directed, all motions *in limine* shall be filed at least 14 days before the conference. Briefs in opposition to motions *in limine* should be filed at least seven days before the conference. Because the motions *in limine* will be addressed during the conference, the Court disfavors the filing of reply briefs.

Daubert motions must be filed no later than the date the proposed consolidated pretrial order is filed. Briefs in opposition must be filed within 14 days following the *Daubert* motion. Reply briefs must be filed within seven days thereafter.

c. Courtroom Technology

Our courtroom has various electronic equipment for use by counsel at trial and hearings. For more information on the equipment, or to schedule an opportunity to test the equipment, please contact Chambers. It is the parties' responsibility to make sure they know how to use the equipment available, to have the cables necessary to hook up their equipment, and to ensure that their equipment will interface with the Court's technology.

Any party or counsel without a Blue Card (*i.e.*, the blue ID card issued through the U.S. Marshals Service) who would like to bring into the courthouse electronic equipment, such as a laptop computer or a cell phone with a camera, must file a motion and proposed order allowing the same. The proposed order should identify the electronic equipment, specify the date(s) of the hearing or trial to which the party or counsel desires to bring the equipment, and identify the courtroom to which the equipment will be brought. The motion and accompanying order should be filed at least three business days prior to the hearing or trial. A Word version of the proposed order should be attached to the CM/ECF filing receipt email of the motion and forwarded to Chambers.

d. Trial Days

The Court's trial days will generally run from 9:30 a.m. until 5:00 p.m., Monday through Friday. There will be a 15-minute recess mid-morning and again mid-afternoon, as well as a lunch break.

When the jury is in the courtroom, it is the responsibility of the Court, the litigants, and counsel to use the jury's time efficiently. Accordingly, it is each party's responsibility to have enough witnesses on hand for each day's proceedings. Matters that need to be addressed outside the presence of the jury should be reasonably anticipated and raised during breaks or before the start of

the trial day. **Sidebar conferences during trial are particularly disfavored and requests for them may be denied.**

i. Voir Dire

During *voir dire*, the Court will ask certain qualifying questions. The Court's questionnaire is attached as Exhibit A. The Court will then permit the attorneys to ask the *voir dire* questions it has approved.

In general, eight jurors will be selected to deliberate for cases expected to last one week or less. The Court may empanel additional jurors for cases expected to last more than one week.

ii. Courtroom Communications and Conduct

All communications to the Court should be made before a microphone from a position at counsel table or from the lectern. Counsel should refrain from making disparaging remarks or displaying ill will toward witnesses and other counsel. Counsel and litigants are to refrain from making gestures, facial expressions, or audible comments as manifestations of approval or disapproval of testimony, argument, or rulings by the Court. Counsel are prohibited from addressing comments or questions to each other. All arguments, objections, and motions should be addressed to the Court.

Counsel should not ordinarily make motions in the presence of the jury. Such matters may be raised at the next recess. A motion for mistrial must be made immediately, but the Court may require argument at the next recess or excuse the jury. When making an objection, counsel shall state only the legal basis of the objection (*e.g.*, "leading" or "hearsay") and should not elaborate, argue, or refer to other evidence unless asked to do so by the Court. Offers or requests for stipulations should be made privately, not within the hearing of the jury.

iii. Exhibits

Exhibits must be examined and marked before trial in compliance with LR 16.4, NDGa. The parties should deliver tabbed, indexed three-ringed binders with the marked trial exhibits to Courtroom Deputy Holland before the start of court on the first day of trial. At the same time, parties should also provide copies of the marked exhibits in electronic form (*e.g.*, on a disc, thumb drive, or other similar media) to Ms. Holland.

While in Court, all papers intended for Judge Grimberg should be handed to Ms. Holland, who will pass them to the Judge. Counsel are not required to obtain permission to approach a witness in order to show the witness an exhibit or other document.

iv. Jury Charges

Notwithstanding LR 51.1(A), NDGa, preliminary requests to charge and proposed verdict forms (if any) shall be filed on CM/ECF no later than five days prior to the final pretrial conference, unless otherwise ordered by the Court. At the same time, a Word version of the proposed jury charge and proposed verdict form (if any) should be attached to the CM/ECF filing receipt email and forwarded to Chambers.

The jury charge shall be a single, unified set of proposed jury instructions. In other words, the Court requires a consolidated set of jury instructions to which all parties agree. Following the agreed-on jury instructions, the parties should include their instructions to which opposing counsel objects. The parties should indicate who is proposing the instruction, the legal basis for it, and the basis for the other party's opposition.

Ordinarily, the Court will charge the jury before closing argument. The jury will be provided with a written copy of the jury instructions before deliberations begin.

Counsel must use the Eleventh Circuit Pattern Jury Instructions, if applicable. If there is no appropriate Eleventh Circuit charge, counsel should use

Federal Jury Practice and Instructions.[2] If Georgia State law applies, counsel must use the Suggested Pattern Jury Instructions by the Council of Superior Court Judges of Georgia. If other state law applies, counsel shall present the appropriate pattern instruction from the applicable state.

When proposing charges for which there is not a pattern charge, counsel must provide citations to the legal authorities supporting the charge requested. Each request to charge shall be numbered sequentially and on a separate page, with authority for the requested charge cited at the bottom of the page. Counsel should be sure to include all substantive law issues and should not assume that the Court has its own charge on the substantive law.

SO ORDERED this the 16th day of November 2020.

Steven D. Grimberg
United States District Judge

[2] O'Malley, Grenig & Lee, FED. JURY PRACTICE & INSTRUCTIONS (6th ed. 2012 Supp. 2020).

EXHIBIT A: QUALIFYING QUESTIONS FOR PROSPECTIVE JURORS

1. Does any member of the panel know or are you related to [Plaintiff's attorney]?

2. Does any member of the panel know any employees of, or has any member of the panel or an immediate family member worked for or been represented by the law firm of [Plaintiff's attorney]?

3. Does any member of the panel know or are you related to [Defendant's attorney]?

4. Does any member of the panel know any employees of, or has any member of the panel or an immediate family member worked for or been represented by the law firm of [Defendant's attorney]?

5. Does anyone know or are you related to [Plaintiff] in the case?

6. Does anyone know or are you related to [Defendant] in the case?

7. Does anyone know any of the following individuals who may be witnesses in this case [list witnesses]?

8. Does anyone believe you know anything about this case or that you have heard anything about this case before coming to Court today?

9. Is there any member of the panel who would not accept the law as I give it to you in my instructions even if you disagree with the law?

10. Does any juror hold any belief, religious or otherwise, which discourages or prevents jury service?

11. Is there any member of the panel who has any special disability or problem that would make serving as a member of this jury difficult or impossible?

EXHIBIT B: CERTIFICATE OF COMPLIANCE

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

XXXXXXXXXXXX, Plaintiff, v. XXXXXXXXXXXX, Defendant.	Civil Action No. XX-cv-XXXXX-SDG

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the Court's Standing Order Regarding Civil Litigation and that I will comply with its provisions during the pendency of this action.

_____
Signature of counsel/*pro se* party

APPENDIX
SPECIAL INSTRUCTIONS FOR *PRO SE* LITIGANTS

Parties proceeding *pro se* (without an attorney) must comply with the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") as well as the Court's Local Rules ("LR, NDGa"). *Pro se* parties may obtain certain basic materials and hand-outs from the Office of the Clerk of Court located on the 22nd Floor of the Richard B. Russell Federal Building, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303. Many documents are also available on the Court's website at www.gand.uscourts.gov. *Pro se* litigants may utilize the law library located on the 23rd floor of the courthouse.

Litigants are generally prohibited from engaging in *ex parte* communications with the Court. "*Ex parte* communications" means any form of contact with the Court outside the presence of the opposing party or opposing party's counsel. If a litigant seeks court action, the appropriate procedure is to put the request in writing, in the form of a motion, file the motion with the Clerk's office, and serve the opposing party or party's counsel.

A *pro se* litigant is required to (1) provide the Clerk with an **original** of any further pleadings or other papers filed after the Complaint, and (2) **serve** on the opposing party or party's counsel, by mail or hand delivery, a copy of every additional pleading or other paper described in Fed. R. Civ. P. 5. Once counsel for

the opposing party has appeared in the case, the opposing party should not be served individually; service should be made directly on the opposing party's counsel. The Clerk of Court and the U.S. Marshals Service will not serve documents filed by either party, unless expressly directed to do so by the Court.

Each pleading or paper described in Fed. R. Civ. P. 5 shall include a certificate stating the date on which an accurate copy of that document was served. This Court may disregard any papers that have not been properly filed with the Clerk, or that do not include a certificate of service. *Pro se* litigants are also advised that, under LR 7.1, NDGa, if the deadline for a response to a motion passes without a response being filed, the motion is deemed unopposed. Further, under LR 56.1(B)(2)(a)(2), NDGa, if a respondent to a motion for summary judgment fails to contest the movant's statement of material facts, the Court will deem the movant's facts as admissions.

Pro se litigants are further **REQUIRED** to keep the Court advised of their current address at all times during the pendency of the lawsuit. LR 83.1(D)(3), NDGa provides that parties appearing *pro se* have a duty to notify the Clerk's Office by letter of any change in address or telephone number. A *pro se* litigant's failure to do so where such failure "causes delay or adversely affects the management of a case" may be subject to sanction by the Court. *Pro se* litigants are

encouraged to provide the opposing party/counsel with an email address for purposes of communicating regarding the case and serving copies of court filings and discovery. *Pro se* litigants are advised, however, that the Court serves via regular mail only and not via email.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
	)	
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

VERIFIED AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

Declaratory and Injunctive Relief (the "Complaint"), respectfully showing this honorable Court as follows:[1]

INTRODUCTION

1.

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

2.

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

3.

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

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

4.

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

JURISDICTION AND VENUE

5.

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

6.

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

7.

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

PARTIES

8.

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

9.

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

10.

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

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

FACTS

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

11.

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

12.

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

13.

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

14.

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

15.

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

16.

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

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

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

17.

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

18.

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

19.

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

20.

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

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

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

21.

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

22.

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

23.

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

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

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

24.

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

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

25.

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

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

26.

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

27.

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

28.

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

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

29.

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

30.

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

31.

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

32.

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

33.

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

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

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

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

34.

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

35.

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

36.

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

37.

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

38.

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

39.

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

40.

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

41.

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

42.

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

43.

In the primary preceding the November 3, 2020 election, news stories recorded that many absentee ballots did not reach voters until after the polls were closed. *See, e.g.*, F. Bajak and C. Cassidy, "Vote-by-mail worries: A 'leaky pipeline' in many states," Associated Press Aug. 8, 2020, https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffccd64fc878e7, retrieved Nov. 11, 2020).

44.

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

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

45.

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

46.

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

47.

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

48.

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

49.

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

50.

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

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

51.

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

52.

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

53.

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

54.

According to Secretary Raffensperger, in the special election for the other of Georgia's United States Senators held on November 3, 2020, 1,271,106 votes were cast for Senator Kelly Loeffler, and 1,615,402 votes were cast for Reverend Raphael Warnock. As a result, a run-off election between Senator Loeffler and Rev. Warnock will occur on January 5, 20201.

55.

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

56.

Secretary Raffensperger declared that for the Hand Recount,

> Per the instructions given to counties as they conduct their audit triggered full hand recounts, designated monitors will be given complete access to observe the process from the beginning. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely. The general public and the press will be restricted to a public viewing area. Designated monitors will be able to watch the recount while standing close to the elections workers conducting the recount.
>
> Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county... Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted, providing monitors and the public an additional way to keep tabs on the process.

Id.

57.

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

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

58.

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

59.

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

60.

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

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

61.

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

62.

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

63.

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

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

64.

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

65.

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

66.

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

67.

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

68.

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

69.

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

70.

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

71.

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

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

72.

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

73.

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

74.

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

75.

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

76.

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

77.

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

78.

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

79.

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

80.

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

81.

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

82.

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

83.

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

84.

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

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

85.

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

86.

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

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

87.

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

88.

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

89.

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

90.

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

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

91.

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

92.

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

93.

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

94.

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

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

95.

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

96.

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

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

97.

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

98.

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

99.

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

100.

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

101.

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

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

102.

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

103.

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

104.

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

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

105.

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

106.

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

a. That any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, be reperformed consistent with this Court's declaration;

b. That monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the upcoming January 5, 2021 run-off election;

c. That Plaintiff and the Republican Party be given at least 24 hours notice prior to any and all election activity;

d. That all ballots cast in Georgia be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-designated monitors;

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

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

107.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

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

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

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

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

1. That any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, be reperformed consistent with this Court's declaration;

2. That monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the upcoming January 5, 2021 run-off election;

3. That Plaintiff and the Republican Party be given at least 24 hours notice prior to any and all election activity;

4. That all ballots cast in Georgia be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-designated monitors;

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

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

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

Respectfully submitted this 16th day of November, 2020.

SMITH & LISS, LLC

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

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(404) 760-6000
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CERTIFICATE OF COMPLIANCE

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

Respectfully submitted this 16th day of November, 2020.

SMITH & LISS, LLC

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

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(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF SERVICE

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

Secretary of State Brad Raffensperger
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This 16th day of November, 2020.

SMITH & LISS, LLC

Ray S. Smith, III
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COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

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

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

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

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

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

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

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

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

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

2. Prompt Notification of Absentee Ballot Rejection.

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

> When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.
>
> Ga. R. & Reg. § 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

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

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

3. <u>Signature Match</u>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: March 6, 2020

/s/ Bruce V. Spiva

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Bruce V. Spiva*
John Devaney*
Amanda R. Callais*
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Counsel for State Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

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

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

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

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 15, 2020 by Alyssa Specht from the Trump Campaign, on behalf of the Georgia Republican Party (the "Republican Party").

3. Ms. Edmunds of the Republican Party told to arrive at 285 Andrew Young International Blvd. between 8:00 a.m. and 9:00 am on the morning of November 15. The address was for the Georgia World Congress Center, and there was no exterior activity at that address when I arrived. There were no instructional or directional signs.

4. After I made a series of phone calls ending with Matthew Honeycutt, he gave me directions to go to the bottom rear of the building to an "employee entrance." I arrived at 9:00 a.m.

5. As I arrived, a large crowd was leaving, saying that they had "just finished" the hand recount.

6. Another volunteer and I walked into the counting area to verify what had been said and to observe any activity, as we had been requested to do. Some counting activity appeared to still be going on.

7. We signed in, and then were told that there were "too many" volunteers on the floor and that we would not be permitted to walk the floor and observe.

8. I saw a few people here and there walking the floor. But there were no other observers at the tables where counting activity was happening. There were two people per table and they appeared to be sticking ballots into piles. We were not close enough to see much of anything else because we were not allowed.

9. I believed that we were there to watch actual "hand counting" as had been announced in the newspapers and by the Secretary of State when he requested a "hand count."

10. There was no way to tell if any counting was accurate or if the activity was proper.

[SIGNATURE AND OATH ON NEXT PAGE]

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

Amanda Coleman

Amanda Coleman

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

CARLA DANIEL NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES 07-29-2024

Carla Daniel

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION**
	)	**FILE NO. _____**
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.	)	
_____	)	

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

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

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

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

7. There was no consistency on counting. Only a few tables (of the 170+) were verbally doing the pass count, so there was no way to see that the correct candidate was being put into the correct pile.

8. I observed (and told an election worker) that one counter seemed to be making piles of 9 (but counting them as 10). It took a while for me to get someone to help me, so by the time they came to observe him, the batch was counted and they did not make him recount the stack.

9. Counters were writing the number of ballots for each candidate on scrap paper (no one had the same paper, some was torn, some was colored) and then adding manually. This is where I noticed some manual entry errors, specifically when an elderly counter wrote down the number ballots, she couldn't remember the number, the person with her said a different number, they finally agreed on a number, she added numbers on a scratch paper before putting the number onto the official Audit Board Batch Sheet.

10. The batch sheets were taken to Arlo to input but there was no independent verification or monitoring of the numbers being input.

11. Five times between 8:00 a.m. and 9:00 a.m., I noticed tables with ballots on the table, but both workers had gone to get food. The ballots were left unattended. Drinks were on the tables with ballots. I noticed two tables of a

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Maria Diedrich

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

CARLA DANIEL NOTARY PUBLIC GEORGIA COBB COUNTY EXPIRES 07-29-2024

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
_____	)	

VERIFICATION

STATE OF GEORGIA

COUNTY OF FULTON

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

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

L. Lin Wood, Jr.

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

Notary Public

My Commission Expires:

3/4/2021

KIMBERLY BENNETT
NOTARY
PUBLIC
DEKALB COUNTY, GEORGIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, *et al.*,	)	
	)	
Defendants.	)	
	)	

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

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

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

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

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

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY.

A. The Complaint.

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

The Complaint alleges violations of the United States Constitution and the

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

B. Federal Constitutional Protections for Free and Fair Elections.

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

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

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

C. Georgia Law Governing the Handling of Absentee Ballots.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

183-1-14-.13.

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

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

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

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

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

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

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

E. <u>The November 3, 2020 Election and "Full Hand Recount."</u>

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

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

> Per the instructions given to counties as they conduct their audit triggered ***full hand recounts***, designated monitors will be given ***complete access to observe the process from the beginning***. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely… Designated monitors will be able to ***watch the recount while standing close to the elections workers conducting the recount***.
>
> Political parties are allowed to designate ***a minimum of two monitors per county*** at a ratio of one monitor per party for every ten audit boards in a county… Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted, providing monitors and the public an additional way to keep tabs on the process.

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

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

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

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

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

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

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

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

III. ARGUMENT AND CITATION OF AUTHORITIES.

A. The Standard for Relief.

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

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

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

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

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

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

B. <u>This Court Should Enter Emergency Injunctive Relief.</u>

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

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

1. Plaintiff has a substantial likelihood of success.

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

a. *Defendants violated the Equal Protection Clause.*

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

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

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

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

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

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

Defendants are not part of the Georgia Legislature and cannot exercise

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

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

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

b. *Defendants violated the Electors Clause.*

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

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

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

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

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

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

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

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

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

consistent with the Georgia Election Code.

2. Plaintiff will suffer irreparable harm.

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

3. The Balance of Harms and Public Interest.

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

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

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

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

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

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

1. Prohibiting the certification of the results of the 2020 general election in Georgia on a statewide basis; or

2. Alternatively, prohibiting the certification of said results which include the tabulation of defective absentee ballots; and

3. Declaring that:

a. Any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, must be reperformed in a manner consistent with the Georgia Election Code;

b. Monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the January 5, 2021 run-off election;

c. That Plaintiff and the Republican Party by given at least 24 hours notice prior to any and all election activity;

d. That all ballots in Georgia must be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-

designated monitors;

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

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

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

Respectfully submitted this 17th day of November, 2020.

SMITH & LISS, LLC

/s/_____
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Georgia Bar No. 662555
Counsel for Plaintiff

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designated monitors;

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

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

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

Respectfully submitted this 17th day of November, 2020.

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CERTIFICATE OF COMPLIANCE

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

Respectfully submitted this 16th day of November, 2020.

SMITH & LISS, LLC

/s/
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CERTIFICATE OF SERVICE

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

Secretary of State Brad Raffensperger
214 State Capitol
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This 16th day of November, 2020.

SMITH & LISS, LLC

/s/
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COMPROMISE SETTLEMENT AGREEMENT AND RELEASE

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

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

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

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

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

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

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

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

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

2. Prompt Notification of Absentee Ballot Rejection.

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

> When a timely submitted absentee ballot is rejected, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than the close of business on the third business day after receiving the absentee ballot. However, for any timely submitted absentee ballot that is rejected on or after the second Friday prior to Election Day, the board of registrars or absentee ballot clerk shall send the elector notice of such rejection and opportunity to cure, as provided by O.C.G.A. § 21-2-386, by mailing written notice, and attempt to notify the elector by telephone and email if a telephone number or email is on the elector's voter registration record, no later than close of business on the next business day.
>
> Ga. R. & Reg. § 183-1-14-.13 Prompt Notification of Absentee Ballot Rejection

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

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

3. <u>Signature Match</u>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: March 6, 2020

/s/ Bruce V. Spiva

Marc E. Elias*
Bruce V. Spiva*
John Devaney*
Amanda R. Callais*
K'Shaani Smith*
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Counsel for State Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

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

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

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

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 15, 2020 by Alyssa Specht from the Trump Campaign, on behalf of the Georgia Republican Party (the "Republican Party").

3. Ms. Edmunds of the Republican Party told to arrive at 285 Andrew Young International Blvd. between 8:00 a.m. and 9:00 am on the morning of November 15. The address was for the Georgia World Congress Center, and there was no exterior activity at that address when I arrived. There were no instructional or directional signs.

4. After I made a series of phone calls ending with Matthew Honeycutt, he gave me directions to go to the bottom rear of the building to an "employee entrance." I arrived at 9:00 a.m.

5. As I arrived, a large crowd was leaving, saying that they had "just finished" the hand recount.

6. Another volunteer and I walked into the counting area to verify what had been said and to observe any activity, as we had been requested to do. Some counting activity appeared to still be going on.

7. We signed in, and then were told that there were "too many" volunteers on the floor and that we would not be permitted to walk the floor and observe.

8. I saw a few people here and there walking the floor. But there were no other observers at the tables where counting activity was happening. There were two people per table and they appeared to be sticking ballots into piles. We were not close enough to see much of anything else because we were not allowed.

9. I believed that we were there to watch actual "hand counting" as had been announced in the newspapers and by the Secretary of State when he requested a "hand count."

10. There was no way to tell if any counting was accurate or if the activity was proper.

[SIGNATURE AND OATH ON NEXT PAGE]

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

Amanda Coleman

Amanda Coleman

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

CARLA DANIEL NOTARY PUBLIC COBB COUNTY EXPIRES GEORGIA 07-29-2024

Carla Daniel

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION**
	)	**FILE NO. _____**
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.	)	
_____	)	

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

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

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

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

7. There was no consistency on counting. Only a few tables (of the 170+) were verbally doing the pass count, so there was no way to see that the correct candidate was being put into the correct pile.

8. I observed (and told an election worker) that one counter seemed to be making piles of 9 (but counting them as 10). It took a while for me to get someone to help me, so by the time they came to observe him, the batch was counted and they did not make him recount the stack.

9. Counters were writing the number of ballots for each candidate on scrap paper (no one had the same paper, some was torn, some was colored) and then adding manually. This is where I noticed some manual entry errors, specifically when an elderly counter wrote down the number ballots, she couldn't remember the number, the person with her said a different number, they finally agreed on a number, she added numbers on a scratch paper before putting the number onto the official Audit Board Batch Sheet.

10. The batch sheets were taken to Arlo to input but there was no independent verification or monitoring of the numbers being input.

11. Five times between 8:00 a.m. and 9:00 a.m., I noticed tables with ballots on the table, but both workers had gone to get food. The ballots were left unattended. Drinks were on the tables with ballots. I noticed two tables of a

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Maria Diedrich

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

CARLA DANIEL NOTARY PUBLIC GEORGIA COBB COUNTY EXPIRES 07-29-2024

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

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

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

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

2. I am a poll manager at Precinct SS02 A and B (Sandy Springs). The Fulton County Board of Elections ("BOE") sent an email soliciting poll managers and assistant poll managers for the purpose of participating in the "hand count" audit of votes cast in the November 3, 2020 presidential election. I accepted the assignment.

3. My direct supervisor, Marie Wright, asked me if I could confirm that I could show up to participate as an auditor in the recount from Saturday, November 14 until Wednesday, November 18, 2020. I was told that it was a requirement of the accepting the assignment to be available from 7:00 a.m. until 5:00 p.m on each of those five days. I was to be paid $200 per day.

4. The BOE also solicited Fulton County employees generally, such as workers from the public libraries. Most had no election experience (other than perhaps voting themselves).

5. On Saturday at 7:00 a.m., I showed up to the Georgia World Congress Center at 285 Andrew Young International Blvd. in downtown Atlanta. We had to watch a very short training video (probably less than 5 minutes) -- there was no audio, but there were captions. I watched it three times to ensure I had captured all the information, but there were some things that were not

covered, like what an auditor should do if he or she saw matters of concern. I did not see any helpful written materials on that issue.

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

10. After counting, we were instructed to pick up each individual "pile" and count the ballots in each pile and place them in alternating stacks of 10 each. After counting the final tally, we were instructed to compare the number with the original number from the opening tally sheet. (The tally sheet provided a road map to the number that was needed to reconcile with the original reported results.)

11. We began counting around 9:00 a.m. We were given a tally sheet to record our findings, and manila envelopes for write-in candidates and disputed ballots. Again, we were not given any information or standards on how to interpret spoiled ballots or other discrepancies.

12. We noticed that the supervisors seemed selective as to how to allocate the assignments. For our first assignment, we were given a cardboard box that contained only absentee ballots. It was taped shut with packing tape with the seal of the Secretary of State. But the seal was blank, signed by no one, and no information had been supplied. There were no markings indicating the provenance of the box. The box was marked as Box No. 5 – Absentee – Batch Numbers 28-36.

13. Inside the box were stacks of ballots of approximately 100 ballots each. Each stack contained an original tally sheet that said the location where the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Susan Voyles

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

CARLA DANIEL NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES 07-29-2024

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
_____	)	

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

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

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

2. I am an attorney licensed to practice law in the state of Florida.

3. On Sunday November 15, 2020 Alyssa Specht appointed me to serve as a Monitor for the duration of the Risk Limiting Audit in DeKalb County (the "DeKalb Appointment Letter"). A true and accurate copy of the appointment letter is attached to this Affidavit as **Exhibit "A."**

4. On Sunday at around 12:30 p.m., I showed up to 2994 Turner Hill Road, Stonecrest, Georgia 30038 to begin observing as a Monitor. Prior to my arrival, I was sent a handout titled "Audit/Recount Monitor and Vote Review Panel Handout" which outlined the rules in place as well as provided guidelines for observation. A true and accurate copy of the Audit/Recount Monitor and Vote Review Panel Handout is attached to this Affidavit as **Exhibit "B."**

5. After signing in and providing the DeKalb appointment letter to the check-in desk, I was permitted to roam throughout the facility to conduct observations.

6. The first thing I noticed was signs taped to each table (the "Review Table" or "Review Tables") indicated a place for ballots for Trump, Biden, and Jorgenson and other signs for "Blanks" (no vote for President) or overvotes (multiple votes for President). At each Review Table were two people

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

7. Due to the COVID restrictions, we were instructed to stay a minimum of six feet away from any Recounter sitting at one of the Review Tables.

8. The ballots would be brought to the Review Table in a cardboard box by another worker. I was never able to get close enough to read any writing on any of the cardboard boxes. After the carboard box was opened, stacks of ballots were removed and placed on the Review Table. There were notes on each stack but again, I was never able to get close enough to read what was written.

9. Once the stack of ballots was on the Review Table, the process of reviewing the ballot began in the manner outlined above in paragraph 6.

10. At no time did I witness any Recounter or any individual participating in the recount verifying signatures.

11. If one of the Recounters encountered a ballot that was questionable, he or she raised a piece of paper with a "?" and what seemed to be a supervisor would come to that Review Table. A short conversation was had and the supervisor would provide the Recounters with instructions. Again, I was never able to get close enough to hear what was said.

12. When a Review Table completed reviewing a cardboard box full of ballots, one of the Recounters would write some information (I assume it was the number of ballots for each candidate the box contained) on a piece of paper and place it on top of the cardboard box. Then one of the Recounters would hold a piece of paper with a "√" (check mark) on it in the air and someone would come pick up the box full of ballots.

13. There was no person verifying the number of votes that the Recounter would write on the paper.

14. At one point, I was able to get close enough to a Review Table to see the ballots and the markings on them. It was strange—there were many ballots where just Joseph Biden was filled in and no other candidate whatsoever.

15. At another table, I watched the Recounters pull out a stack of ballots that appeared to be strange too. The bubble filled out for Joseph Biden looked to be a perfect black mark.

16. I spoke to other Observers present that day and they had witnessed the same thing. Other Observes also informed me that fellow Observers were removed for getting too close to the Review Tables. That when they would get close enough to see what was actually filled in on the ballot, one of the Recounters would begin making a big scene and call over a supervisor. The supervisor would then remove the Monitor permanently.

17. While in DeKalb County, I saw a lot of hostility towards Republicans and none towards Democrats.

18. On the evening of November 15, 2020, Alyssa Specht appointed me as an Monitor in Henry County for the whole duration of the Risk Limiting Audit ("Henry County Appointment Letter"). A true and accurate copy of the Henry County Appointment Letter is attached to this Affidavit as **Exhibit "C."**

19. I arrived at 562 Industrial Boulevard, McDonough, Georgia 30253 at around 9:30 a.m.

20. When I entered the building, I was halted by a woman at the door who immediately informed me that I was not needed and that all the position had been filled. At this time, the woman neither asked who I was nor why I was present. I asked this woman to speak to the person in charge.

21. Within a few seconds, I was greeted by Ameika Pitts ("Ms. Pitts"), Henry Country's Elections Director. Ms. Pitts informed me that my assistance was not needed, and I was free to go. Again, this was told to me prior to her asked why I was there and who I was.

22. I then pulled the Henry County Appointment Letter up on my phone and presented it to her. Ms. Pitts immediately told me that I was not able to have my phone inside the building even though the recount was allegedly being "live streamed." After a brief conversation, I send Ms. Pitts a copy of the letter and was permitted to enter the building, but only in the public observation area.

23. Fortunately, after speaking to several Republican Party volunteers, Ms. Pitts was provided my name from the Henry County Republican Chairwoman and I was permitted to enter into the observation area.

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

25. As I began walking around, I noticed several differences between DeKalb County and Henry County. In Henry County, the ballots were brought to each Review Table in a red, plastic box with security ties used to hold the

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

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

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Nicholas J. Zeher

STATE OF FLORIDA

COUNTY OF PALM BEACH

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

[Affix Seal]

Notary Public

My Commission Expires_____

ROBERT N. ALLEN, JR.
MY COMMISSION # GG 221322
EXPIRES: July 9, 2022
Bonded Thru Notary Public Underwriters

Exhibit A

November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

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

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

David J. Shafer
Chairman

Michael Welsh
Secretary

Exhibit B

Audit/Recount
Monitor and Vote Review Panel Handout

Audit Observer Handout

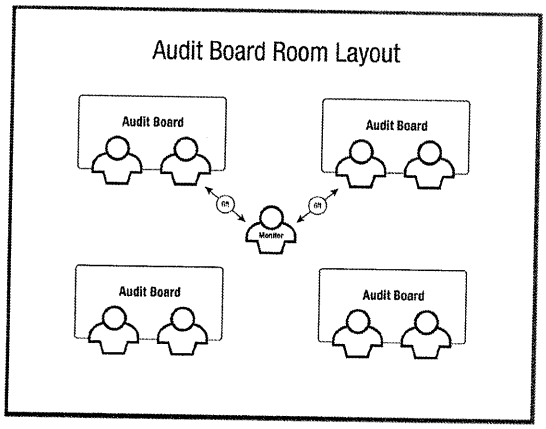
Arrival:

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

Audit Observers/Designated Monitors:

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

Room Set up



Audit Teams Responsibilities

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

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

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

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

Audit Board Batch Sheet

County _____

Batch Name _____

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

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

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

Ballots sent to the Vote Review Panel (if any)

Write-in	
Duplicated	
Undetermined	

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

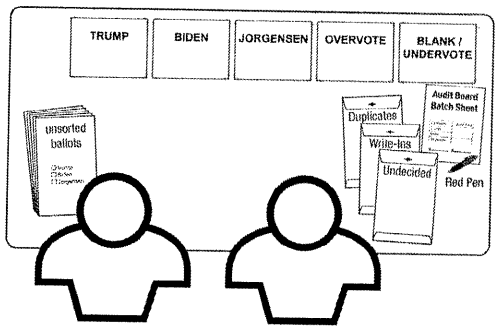
Was the container resealed by the audit board? ☐ Yes

X_____ X_____
(Audit Board Member) (Audit Board Member)

Check In/Out Station
☐ Recorded batch return on Ballot Container Inventory Sheet
☐ Delivered Vote Review Panel ballots (if any)
☐ Entered tallies into Arlo
_____ Initials of check in/out station member

Table Set up

Audit Board Table Top Organization



No Photography is allowed in the observation area.

Check-in/out Process

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

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

Closing of Audit Room:

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

Monitor Observes Issue...What to Do?

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

Be on the lookout for:

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

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

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

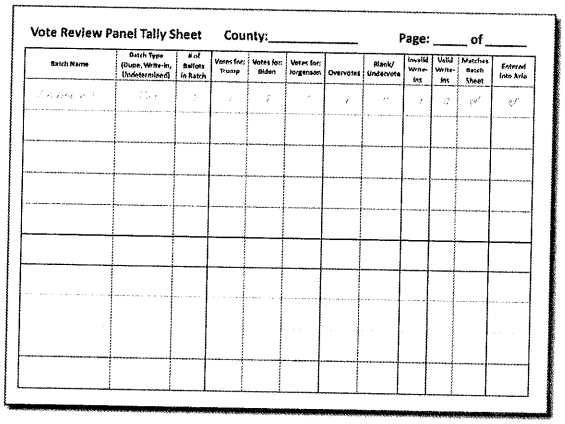
The Vote Review Panel

Vote Review Panel (VRP) Member:

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

Three types of Ballots:

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



Vote Review Panel Tally Sheet County:_____ Page: ____ of _____

Batch Name	Batch Type (Dupe, Write-In, Undetermined)	# of Ballots in Batch	Votes for: Trump	Votes for: Biden	Votes for: Jorgensen	Overvotes	Blank/ Undervote	Invalid Write-Ins	Valid Write-Ins	Matches Batch Sheet	Entered Into Arlo

Common Adjudication Scenarios

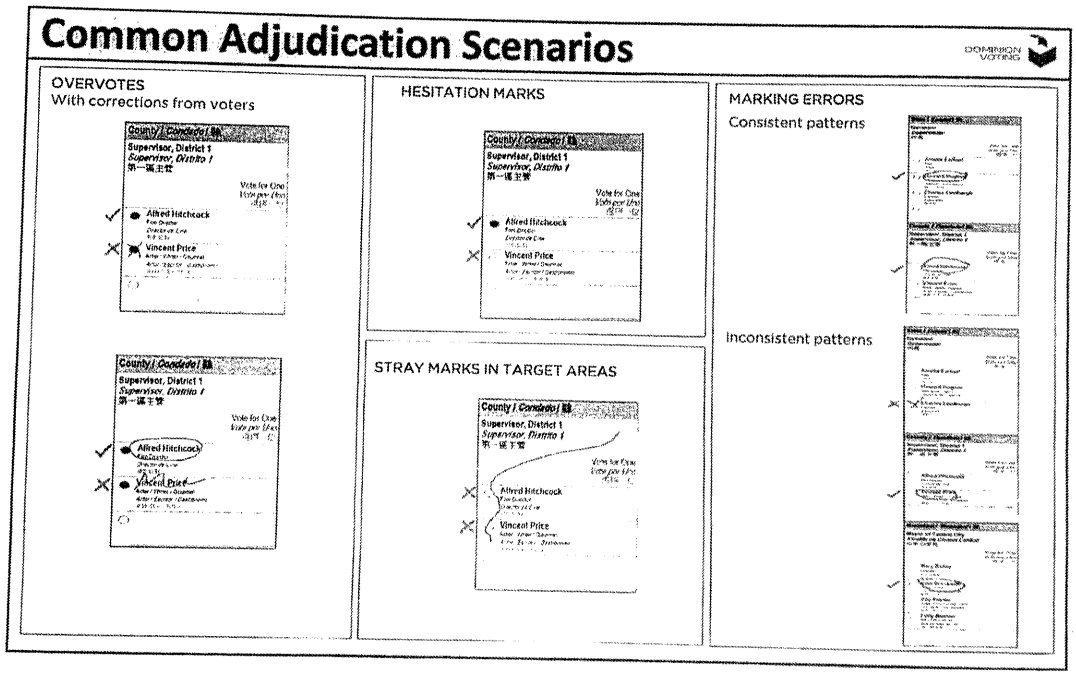


Exhibit C

November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

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

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

David J. Shafer
Chairman

Michael Welsh
Secretary

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

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

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

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

2. I am a Florida Bar licensed paralegal.

3. I am a registered Democrat.

4. I was interested in the election process in this country and wanted to be an observer in the Georgia recount process.

5. On Monday, November 16, 2020, I presented myself to Cobb County Poll Precinct located at 2245 Callaway Road SW, Marietta, GA. I was able to be on the floor observing the recount process in Room C. I observed the poll workers not calling out verbally the names on each ballot. They simply passed each ballot to each other in silence.

6. It was of particular interest to me that hundreds of these ballots seemed impeccable, with no folds or creases. The bubble selections were perfectly made (all within the circle), only observed selections in black ink, and all happened to be selections for Biden.

7. It was also of particular interest to me to see that signatures were not being verified and there were no corresponding envelopes seen in site.

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

9. Based on my observations, I believe there was fraud was committed in the presidential election and question the validity of the Georgia recount process.

[SIGNATURE AND OATH ON NEXT PAGE]

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

Mayra L. Romera

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Ibrahim Reyes

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	
Plaintiff,	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
v.	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	

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

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

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

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

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

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

Consetta S. Johnson

STATE OF GEORGIA

COUNTY OF COBB

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

[Affix Seal] CARLA DANIEL NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES 07-29-2024

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
	)	
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
_____	)	

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

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

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

2. I am and have been a Florida trial lawyer for over 26 years.

3. I am a registered Democrat.

4. Me and several people from my firm were very interested in the election process in this country and wanted to be observers in the Georgia recount process to see if we had a valid, secure and non-biased voting system.

5. On Sunday, November 15, 2020 I arrived to Dekalb County Poll Precinct located at 2998 Turner Hill Road, Stonecrest, GA 30038.

6. I was allowed to be an observer and walked over to a table of two women counting votes.

7. I watched them pull out a pile of what I observed to be absentee ballots and noticed two very distinct characteristics that these ballots had. One, I noticed that they all had a perfect black bubble and were all Biden select. I was able to observe the perfect bubble for a few minutes before they made me move away from the table. At no time did I speak to the poll workers or obstruct them in any way. I heard them go through the stack and call out Biden's name over 500 times in a row.

8. On the following day, on November 16, 2020, I presented myself to Cobb County Poll Precinct located at 2245 Callaway Road SW, Marietta, GA. At first, I was standing next to the panel reviewers in Room B, where I observed absentee ballots being reviewed with the same perfect bubble that I had seen the night before at Dekalb County. All of these ballots had the same two characteristics: they were all for Biden and had the same perfect black bubble.

9. After being there for over an hour, I walked over to Room C where the absentee ballots were being manually recounted (audited). While in this room, I did not hear a verbal callout as to each ballot as I had heard the day before in Dekalb County. It was instead, done in a silent manner between both poll workers.

10. I was able to visualize the perfect bubble with the name Biden on it for approximately ten minutes before a female middle aged (blonde hair with glasses) supervisor in a ski jacket asked me to move ten feet away and refused to give me her name. Later on, one of the people traveling with me from my office, heard her say to keep an eye on the guy with a blue blazer and a pocket square, he is not allowed to come on the floor and observe past the yellow tape. I was the only one wearing a blue blazer with a pocket square.

11. I also observed a dispute at one of the tables between an observer and a male supervisor (perhaps in his mid-thirties) who stated that a box had been certified incorrectly because the recount number was different than the original number. The observer was also upset because nothing was done about it.

12. I also saw absentee ballots for Trump inserted into Biden's stack and were counted as Biden votes. This occurred a few times.

13. I also observed throughout my three days in Atlanta, not once did anyone verify signatures on these ballots. In fact, there was no authentication process in place and no envelopes were observed or allowed to be observed.

14. I saw hostility towards Republican observers but never towards Democrat observers. Both were identified by badges.

15. Lastly, after my frustrating experience, I decided to try to speak one of the poll workers after hours. I identified myself as an observer that wanted to know more about the process and any pressure he may have been under. He advised that they, as poll workers, have been prohibited to speak to observers at any time, and that the pressure they have been under by their supervisors has been great. Not only in the speed of counting, but in reference to

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Carlos E. Silva

STATE OF GEORGIA

COUNTY OF FULTON

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

[Affix Seal]

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
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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.	)	
	)	

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

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

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

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

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

6. Around 3:00 p.m., I observed an auditor incorrectly collecting batches into odd numbers. I told a supervisor and she made the auditors at that table start over again.

7. We were too far away from the ballots to see who they were being voted for. If the auditors were not recording correctly, we would have no one of knowing whether the call out of any name was what was reflected on the ballot.

8. Around 4:00 pm. I saw another auditor incorrectly sort Biden votes without verification from another auditor. That auditor was collecting ballots that he said were voted for Biden and sorting them into 10 ballot stacks. But he did not show the ballots to anyone else. This violated the whole purpose of verifying the ballots as counted.

9. I was the only poll monitor near the table at the time. I went and told one of the supervisors who immediately went over to check and then went and spoke with "Gavin," the Republican supervisor/attorney. By the time I went back over the original Republican monitor was there with a different poll supervisor ("Twyla") and a group of 4 Democratic monitors had formed around the table.

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

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

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

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

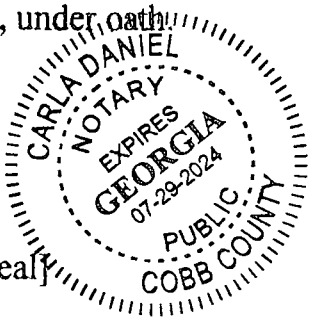
I declare under penalty of perjury that the foregoing statements are true and correct

Andrea O'Neal

STATE OF GEORGIA

COUNTY OF FULTON

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



[Affix Seal]

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
_____	)	

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

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

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

8. The military ballots did not have one specific precinct code on them. Instead, they had multiple precincts printed on it (a "combo"). I challenged this as when this is done, you do not know what precinct the voter is registered in.

9. Based on my observations above and the fact that signatures on the ballots were not being verified, I believe the military ballots are highly suspicious of fraud. I declare under penalty of perjury that the foregoing statements are true and correct.

[SIGNATURE AND OATH ON NEXT PAGE]

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

Debra J. Fisher

STATE OF GEORGIA

COUNTY OF COBB

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

[Affix Seal]

CARLA DANIEL NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES 07-29-2024

Notary Public

My Commission Expires 07-29-2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
	)	
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

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

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

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

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

7. Batches of ballots were marked with discrepancies on post it notes. See picture on Annex 1. Ballots were placed in unmarked bins that are unattended or just placed randomly on a counter just lying around. There appeared to be little, if any, supervision, or control. I saw at least one open ballot box (container ABM5B/ 31148252). See picture on Annex 1.

8. Four hours after a shift change, at many stations (at least 4 that I could see), the counters were not counting ballots correctly. Instead of the "pass count" for dual control purposes, counters were opening ballot batches independently and "fast counting."

9. I reported the fast counting, and announcement was made to cause the counters to use a confirmed process for reviewing and counting the ballots. Perhaps there had been some training, but it seemed inconsistent. But even after an announcement was made asking them to resume "pass counting." they continued to batch and group "just get it over with."

10. Unsecured, completed ballot boxes were left all day when they should have been secured by the (green) numbered lock tags. The security tags were being used to lock the bags of ballots, but they were lying around in the open and could have been used by anyone. See picture on Annex 1. There was no permanent processing of assigning a tag number to a bag, so every bag was

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

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

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

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

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

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

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

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

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

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

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

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

21. Some ballot batch tally sheets have no number written at all in the Trump column but include numbers for Biden; I regarded those as not likely to be 100% Biden votes in a given batch, but just incomplete.

22. A laptop with access to the data entry system was left in the open area with the password for the wifi and the laptop on a Post-it note affixed to the laptop. When informed of this security breach, the supervisor simply said, "I know." The "secured ballot counting area" was wide open to many people, even some without a security badge.

23. One worker was entering numbers and writing on ballot sheets alone and out of sight of the security camera. When informed, the supervisor simply moved her to another table.

24. The ballot batch tally sheets that are then given to the data entry tables were marked in red pen. Red pens were left on the table, which would permit the auditors to correct the ballot batch tally sheets they were auditing.

25. On November 17, the lack of security, confusion, and hostility to Republican poll watchers continued. The supervisor placed a red line in tape across the floor and instructed the poll watchers to stand behind the gold tape. There was no way to see if the ballots were being read correctly. See picture on Annex 1.

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

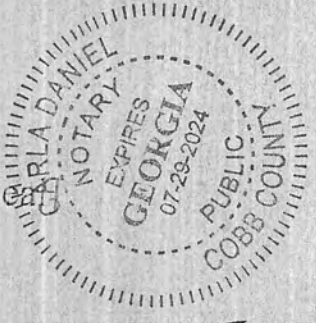
Tiffany Savage

STATE OF GEORGIA

COUNTY OF GWINNETT

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

[Affix Seal]



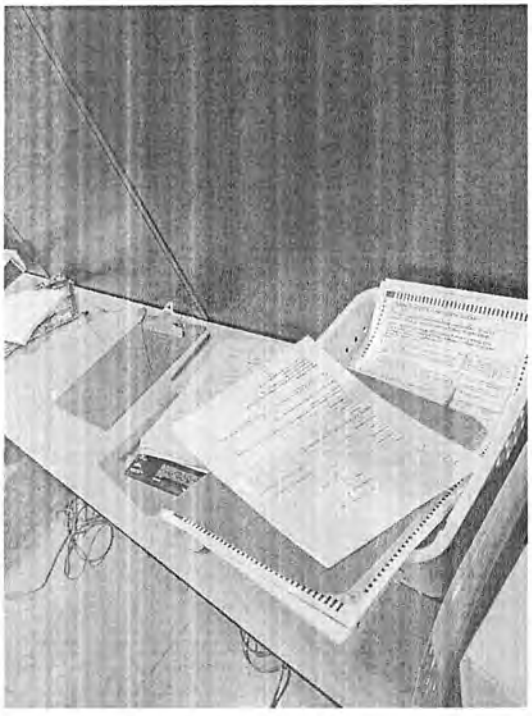
Carla Daniel
Notary Public

My Commission Expires 07-29-2024

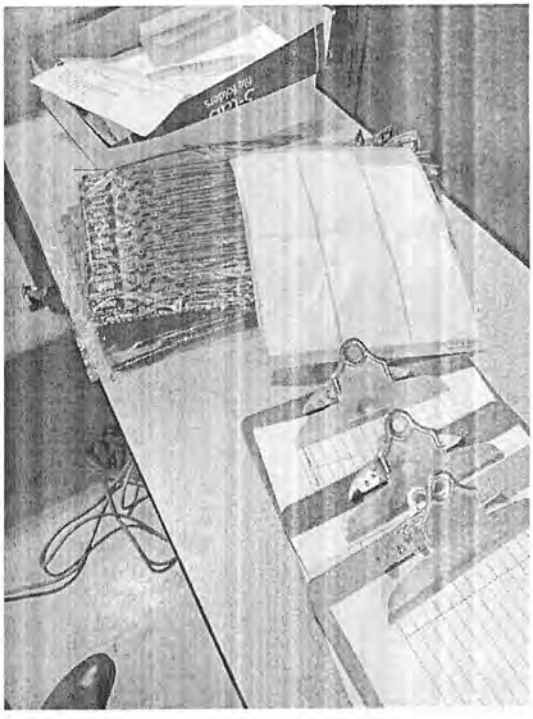
[00384011.]

Annex 1

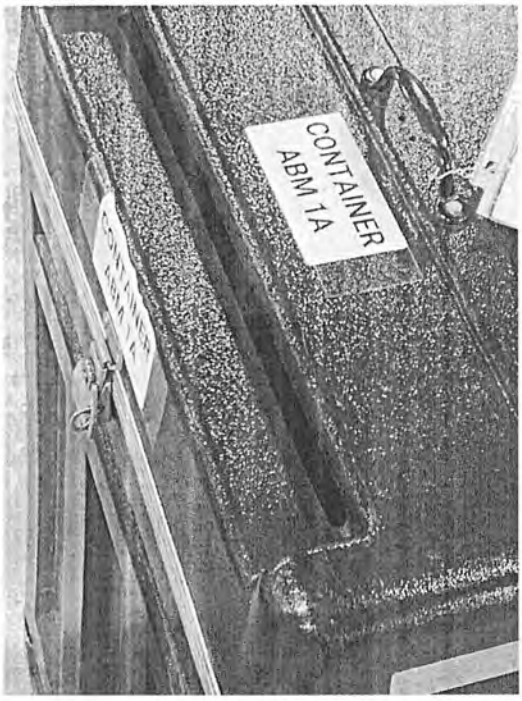
Picture 1



Picture 3



Picture 2



Picture 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
_____	)	

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

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

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

2. I am an attorney licensed to practice law in the state of Florida.

3. On Sunday November 15, 2020 Alyssa Specht appointed me to serve as a Monitor for the duration of the Risk Limiting Audit in DeKalb County (the "DeKalb Appointment Letter"). A true and accurate copy of the appointment letter is attached to this Affidavit as **Exhibit "A."**

4. On Sunday at around 12:30 p.m., I showed up to 2994 Turner Hill Road, Stonecrest, Georgia 30038 to begin observing as a Monitor. Prior to my arrival, I was sent a handout titled "Audit/Recount Monitor and Vote Review Panel Handout" which outlined the rules in place as well as provided guidelines for observation. A true and accurate copy of the Audit/Recount Monitor and Vote Review Panel Handout is attached to this Affidavit as **Exhibit "B."**

5. After signing in and providing the DeKalb appointment letter to the check-in desk, I was permitted to roam throughout the facility to conduct observations.

6. The first thing I noticed was signs taped to each table (the "Review Table" or "Review Tables") indicated a place for ballots for Trump, Biden, and Jorgenson and other signs for "Blanks" (no vote for President) or overvotes (multiple votes for President). At each Review Table were two people

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

7. Due to the COVID restrictions, we were instructed to stay a minimum of six feet away from any Recounter sitting at one of the Review Tables.

8. The ballots would be brought to the Review Table in a cardboard box by another worker. I was never able to get close enough to read any writing on any of the cardboard boxes. After the carboard box was opened, stacks of ballots were removed and placed on the Review Table. There were notes on each stack but again, I was never able to get close enough to read what was written.

9. Once the stack of ballots was on the Review Table, the process of reviewing the ballot began in the manner outlined above in paragraph 6.

10. At no time did I witness any Recounter or any individual participating in the recount verifying signatures.

11. If one of the Recounters encountered a ballot that was questionable, he or she raised a piece of paper with a "?" and what seemed to be a supervisor would come to that Review Table. A short conversation was had and the supervisor would provide the Recounters with instructions. Again, I was never able to get close enough to hear what was said.

12. When a Review Table completed reviewing a cardboard box full of ballots, one of the Recounters would write some information (I assume it was the number of ballots for each candidate the box contained) on a piece of paper and place it on top of the cardboard box. Then one of the Recounters would hold a piece of paper with a "√" (check mark) on it in the air and someone would come pick up the box full of ballots.

13. There was no person verifying the number of votes that the Recounter would write on the paper.

14. At one point, I witnessed a fellow monitor chase after a ballot box that was supposedly finished being counted.

15. Once this monitor was towards the back of the room, with this ballot box, the supervisor in charge chased after him, directing him to go back to the main part of the room and to leave the ballot box.

16. It was later learned that this ballot box needed to be recounted because a 0 (zero) had been incorrectly added to the Biden count, making it approximately 10,000 plus votes for Biden, when it should only have been in the thousands.

17. I spoke to other Observers present that day and they had witnessed the same thing. Other Observes also informed me that fellow Observers were removed for getting too close to the Review Tables. That when they would get close enough to see what was actually filled in on the ballot, one of the Recounters would begin making a big scene and call over a supervisor. The supervisor would then remove the Monitor permanently.

18. While in DeKalb County, I saw a lot of hostility towards Republicans and none towards Democrats.

19. Further, I noticed a Democrat Monitor speaking to a Recounter, which was strictly against the rules of conduct during the recount.

20. On the evening of November 15, 2020, Alyssa Specht appointed me as an Monitor in Henry County for the whole duration of the Risk Limiting Audit ("Henry County Appointment Letter"). A true and accurate copy of the Henry County Appointment Letter is attached to this Affidavit as **Exhibit "C."**

21. I arrived at 562 Industrial Boulevard, McDonough, Georgia 30253 at around 9:30 a.m.

22. When I entered the building, I was halted by a woman at the door who immediately informed me that I was not needed and that all the position had been filled. At this time, the woman neither asked who I was nor why I was present. I asked this woman to speak to the person in charge.

23. Within a few seconds, I was greeted by Ameika Pitts ("Ms. Pitts"), Henry Country's Elections Director. Ms. Pitts informed me that my assistance was not needed, and I was free to go. Again, this was told to me prior to her asked why I was there and who I was.

24. I then pulled the Henry County Appointment Letter up on my phone and presented it to her. Ms. Pitts immediately told me that I was not able to have my phone inside the building even though the recount was allegedly being "live streamed." After a brief conversation, I send Ms. Pitts a copy of the letter and was permitted to enter the building, but only in the public observation area.

25. Fortunately, after speaking to several Republican Party volunteers, Ms. Pitts was provided my name from the Henry County Republican Chairwoman and I was permitted to enter into the observation area.

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

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

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

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

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

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

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

[SIGNATURE AND OATH ON NEXT PAGE]

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

Kevin Peterford

STATE OF FLORIDA

COUNTY OF PALM BEACH

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

[Affix Seal]

Notary Public

My Commission Expires_____

NICHOLAS JOHN ZEHER
MY COMMISSION # GG 976387
EXPIRES: April 6, 2024
Bonded Thru Notary Public Underwriters

Exhibit A

GAGOP

November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

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

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

David J. Shafer
Chairman

Michael Welsh
Secretary

Exhibit B

Audit/Recount
Monitor and Vote Review Panel Handout

Audit Observer Handout

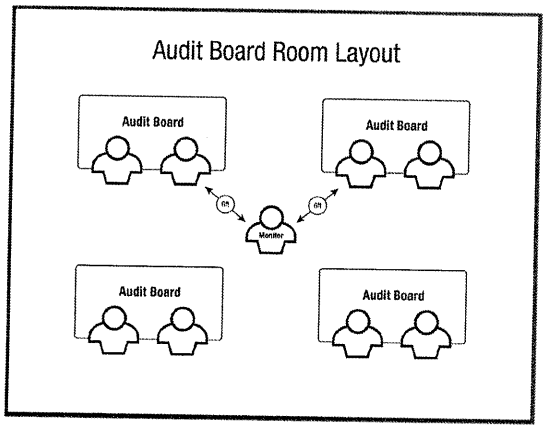
Arrival:

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

Audit Observers/Designated Monitors:

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

Room Set up



Audit Teams Responsibilities

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

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

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

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

Audit Board Batch Sheet

County _____

Batch Name _____

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

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

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

Ballots sent to the Vote Review Panel (if any)

Write-in	
Duplicated	
Undetermined	

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

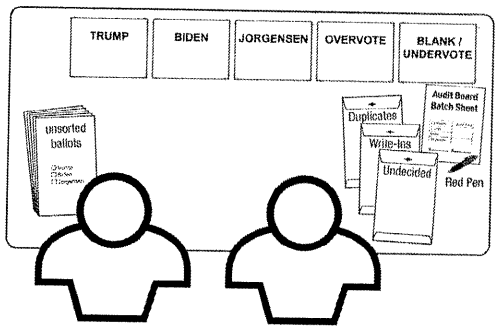
Was the container resealed by the audit board? ☐ Yes

X_____ X_____
(Audit Board Member) (Audit Board Member)

Check In/Out Station
☐ Recorded batch return on Ballot Container Inventory Sheet
☐ Delivered Vote Review Panel ballots (if any)
☐ Entered tallies into Arlo
_____ Initials of check in/out station member

Table Set up

Audit Board Table Top Organization



No Photography is allowed in the observation area.

Check-in/out Process

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

- batch name
- audit board number

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

Closing of Audit Room:

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

Monitor Observes Issue...What to Do?

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

Be on the lookout for:

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

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

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

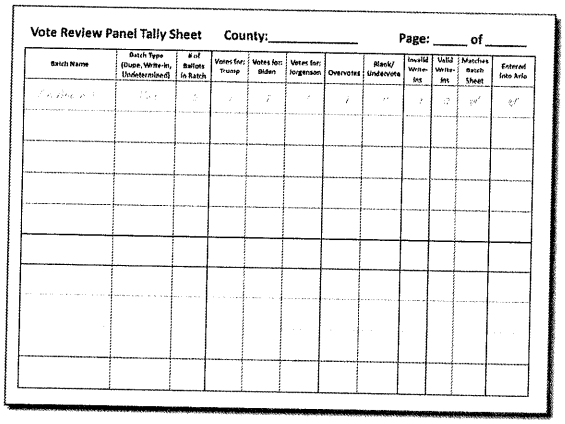
The Vote Review Panel

Vote Review Panel (VRP) Member:

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

Three types of Ballots:

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



Vote Review Panel Tally Sheet County:_____ Page: ____ of _____

Batch Name	Batch Type (Dupe, Write-In, Undetermined)	# of Ballots in Batch	Votes for: Trump	Votes for: Biden	Votes for: Jorgensen	Overvotes	Blank/ Undervote	Invalid Write-Ins	Valid Write-Ins	Matches Batch Sheet	Entered Into Arlo

Common Adjudication Scenarios

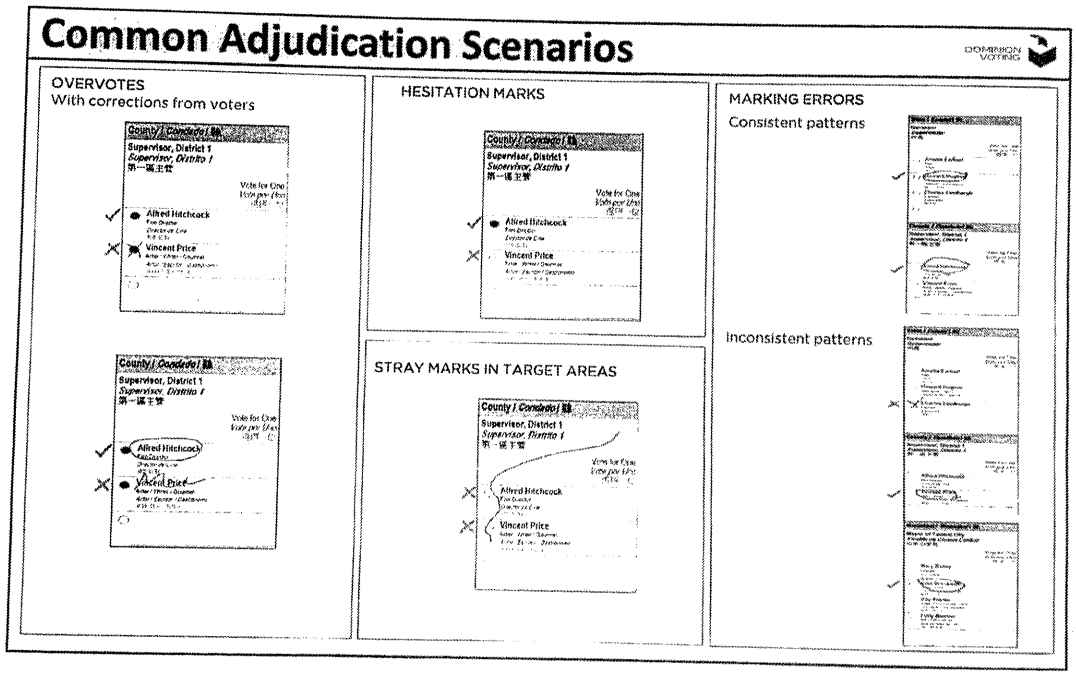


Exhibit C

November 15, 2020

Monitor Designee – Risk Limiting Audit

To Whom it May Concern:

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

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

David J. Shafer
Chairman

Michael Welsh
Secretary

DECLARATION OF [redacted]

I, [redacted], hereby state the following:

1. [redacted]

2. I am an adult of sound mine. All statements in this declaration are based on my personal knowledge and are true and correct.

3. I am making this statement voluntarily and on my own initiative. I have not been promised, nor do I expect to receive, anything in exchange for my testimony and giving this statement. I have no expectation of any profit or reward and understand that there are those who may seek to harm me for what I say in this statement. I have not participated in any political process in the United States, have not supported any candidate for office in the United States, am not legally permitted to vote in the United States, and have never attempted to vote in the United States.

4. I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.

5. [redacted] Over the course of my career, I specialized in the marines [redacted]

6. Due to my training in special operations and my extensive military and academic formations, I was selected for the national security guard detail of the President of Venezuela. [redacted]

[redacted]

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

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

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

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

10. Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, representatives, and personnel from Smartmatic which included [redacted]. The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes *against* persons running the Venezuelan government to votes *in their favor* in order to maintain control of the government.

11. In mid-February of 2009, there was a national referendum to change the Constitution of Venezuela to end term limits for elected officials, including the President of Venezuela. The referendum passed. This permitted Hugo Chavez to be re-elected an unlimited number of times.

12. After passage of the referendum, President Chavez instructed me to make arrangements for him to meet with Jorge Rodriguez, then President of the National Electoral Council, and three executives from Smartmatic. Among the three Smartmatic representatives were [redacted] President Chavez had multiple meetings with Rodriguez and the Smartmatic team at which I was present. In the first of four meetings, Jorge Rodriguez promoted the idea to create software that would manipulate elections. Chavez was very excited and made it clear that he would provide whatever Smartmatic needed. He wanted them immediately to create a voting system which would ensure that any time anything was going to be voted on the voting system would guarantee results that Chavez wanted. Chavez offered Smartmatic many inducements, including large sums of money, for Smartmatic to create or modify the voting system so that it would guarantee Chavez would win every election cycle. Smartmatic's team agreed to create such a system and did so.

13. I arranged and attended three more meetings between President Chavez and the representatives from Smartmatic at which details of the new

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

14. Smartmatic's electoral technology was called "Sistema de Gestión Electoral" (the "Electoral Management System"). Smartmatic was a pioneer in this area of computing systems. Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter's ballot. The voter's thumbprint was linked to a computerized record of that voter's identity. Smartmatic created and operated the entire system.

15. Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software and hardware that accomplished that result for President Chavez.

16. After the Smartmatic Electoral Management System was put in place, I closely observed several elections where the results were manipulated using Smartmatic software. One such election was in December 2006 when Chavez was running against Rosales. Chavez won with a landslide over Manuel Rosales - a margin of nearly 6 million votes for Chavez versus 3.7 million for Rosales.

17. On April 14, 2013, I witnessed another Venezuelan national election in which the Smartmatic Electoral Management System was used to manipulate and change the results for the person to succeed Hugo Chávez

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

18. By two o'clock in the afternoon on that election day Capriles Radonsky was ahead of Nicolás Maduro by two million votes. When Maduro and his supporters realized the size of Radonsky's lead they were worried that they were in a crisis mode and would lose the election. The Smartmatic machines used for voting in each state were connected to the internet and reported their information over the internet to the Caracas control center in real-time. So, the decision was made to reset the entire system. Maduro's and his supporters ordered the network controllers to take the internet itself offline in practically all parts in Venezuela and to change the results.

19. It took the voting system operators approximately two hours to make the adjustments in the vote from Radonsky to Maduro. Then, when they turned the internet back on and the on-line reporting was up and running again, they checked each screen state by state to be certain where they could see that each vote was changed in favor of Nicholas Maduro. At that moment the Smartmatic system changed votes that were for Capriles Radonsky to Maduro. By the time the system operators finish, they had achieved a convincing, but narrow victory of 200,000 votes for Maduro.

20. After Smartmatic created the voting system President Chavez wanted, he exported the software and system all over Latin America. It was sent to Bolivia, Nicaragua, Argentina, Ecuador, and Chile – countries that were in alliance with President Chavez. This was a group of leaders who wanted to be able to guarantee they maintained power in their countries. When Chavez died, Smartmatic was in a position of being the only

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

21. I want to point out that the software and fundamental design of the electronic electoral system and software of Dominion and other election tabulating companies relies upon software that is a descendant of the Smartmatic Electoral Management System. In short, the Smartmatic software is in the DNA of every vote tabulating company's software and system.

22. Dominion is one of three major companies that tabulates votes in the United States. Dominion uses the same methods and fundamentally same software design for the storage, transfer and computation of voter identification data and voting data. Dominion and Smartmatic did business together. The software, hardware and system have the same fundamental flaws which allow multiple opportunities to corrupt the data and mask the process in a way that the average person cannot detect any fraud or manipulation. The fact that the voting machine displays a voting result that the voter intends and then prints out a paper ballot which reflects that change does not matter. It is the software that counts the digitized vote and reports the results. The software itself is the one that changes the information electronically to the result that the operator of the software and vote counting system intends to produce that counts. That's how it is done. So the software, the software itself configures the vote and voting result -- changing the selection made by the voter. The software decides the result regardless of what the voter votes.

23. All of the computer controlled voting tabulation is done in a closed environment so that the voter and any observer cannot detect what is taking place unless there is a malfunction or other event which causes the observer to question the process. I saw first-hand that the manipulation and changing of votes can be done in real-time at the secret counting center which existed in Caracas, Venezuela. For me it was something very surprising and disturbing. I was in awe because I had never been present to actually see it occur and I saw it happen. So, I learned first-hand that it doesn't matter what the voter decides or what the paper ballot says. It's the software operator and the software that decides what counts – not the voter.

24. If one questions the reliability of my observations, they only have to read the words of [redacted] a time period in

which Smartmatic had possession of all the votes and the voting, the votes themselves and the voting information at their disposition in Venezuela. [redacted] he was assuring that the voting system implemented or used by Smartmatic was completely secure, that it could not be compromised, was not able to be altered.

25. But later, in 2017 when there were elections where Maduro was running and elections for legislators in Venezuela, [redacted] and Smartmatic broke their secrecy pact with the government of Venezuela. He made a public announcement through the media in which he stated that all the Smartmatic voting machines used during those elections were totally manipulated and they were manipulated by the electoral council of Venezuela back then. [redacted] stated that all of the votes for Nicholas Maduro and the other persons running for the legislature were manipulated and they actually had lost. So I think that's the greatest proof that the fraud can be carried out and will be denied by the software company that [redacted] admitted publicly that Smartmatic had created, used and still uses vote counting software that can be manipulated or altered.

26. I am alarmed because of what is occurring in plain sight during this 2020 election for President of the United States. The circumstances and events are eerily reminiscent of what happened with Smartmatic software electronically changing votes in the 2013 presidential election in Venezuela. What happened in the United States was that the vote counting was abruptly stopped in five states using Dominion software. At the time that vote counting was stopped, Donald Trump was significantly ahead in the votes. Then during the wee hours of the morning, when there was no voting occurring and the vote count reporting was off-line, something significantly changed. When the vote reporting resumed the very next morning there was a very pronounced change in voting in favor of the opposing candidate, Joe Biden.

27. [redacted] I have worked in gathering information, researching, and working with information technology. That's what I know how to do and the special knowledge that I have. Due to these recent election events, I contacted a number of reliable and intelligent ex-co-workers of mine that are still informants and work with the intelligence community. I asked for them to give me information that was up-to-date information in as far as how all these businesses are acting, what actions they are taking.

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

[redacted]

Declaration of Christos A. Makridis

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

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

   Although election officials have said that these glitches have been corrected and are not reflected in the final tallies, it is hard to take these statements on faith without any evidence, particularly given DVS' bad track record. Moreover, it is also possible that there are many other instances of "glitches" that were not caught.
5. These glitches are on top of those that occurred in Morgan and Spalding counties. Marcia Ridley, elections supervisor at Spalding County Board of Elections, said that the company "uploaded something last night, which is not normal, and it caused a glitch," preventing poll workers from "using the pollbooks to program the

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

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

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

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

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

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

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

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

Fulton -6% 16% 28%

DeKalb -6% 6% 22%

Gwinnett 3% 25% 45%

Cobb -6% 20% 38%

Chatham -4% 3% 26%

Henry 8% 14% 46%

Muscogee -4% -6% 24%

Bibb -1% -5% 18%

Douglas 2% 9% 37%

Clarke -14% 16% 22%

Mean -2.8% 9.8% 30.6%

Median -4% 11.5% 27%

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

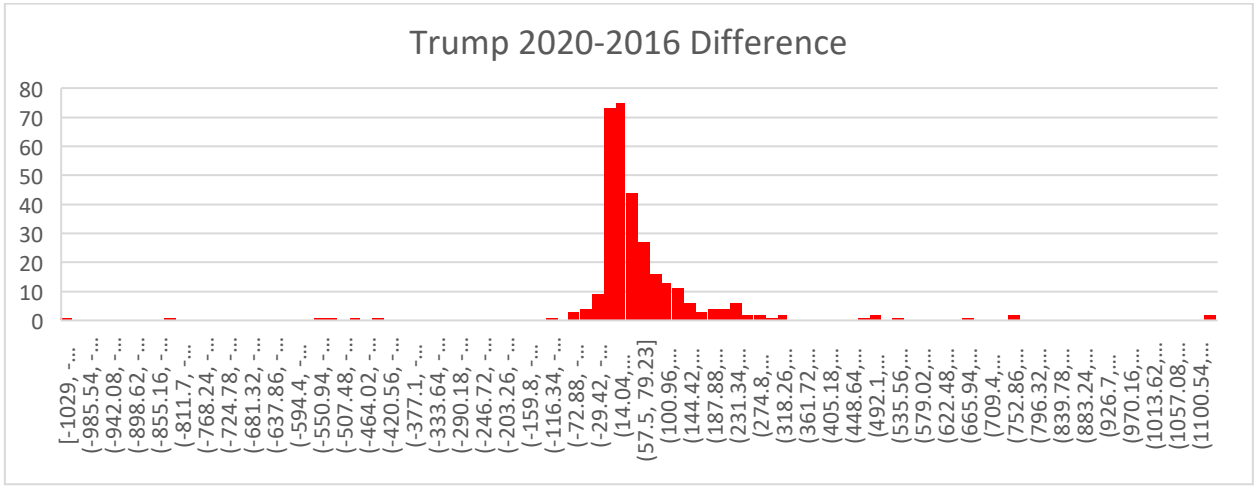
Moreover, all it takes is one or two counties, like Fulton, to become a hotspot for fraud for it to sway the overall election outcome, particularly via Atlanta.

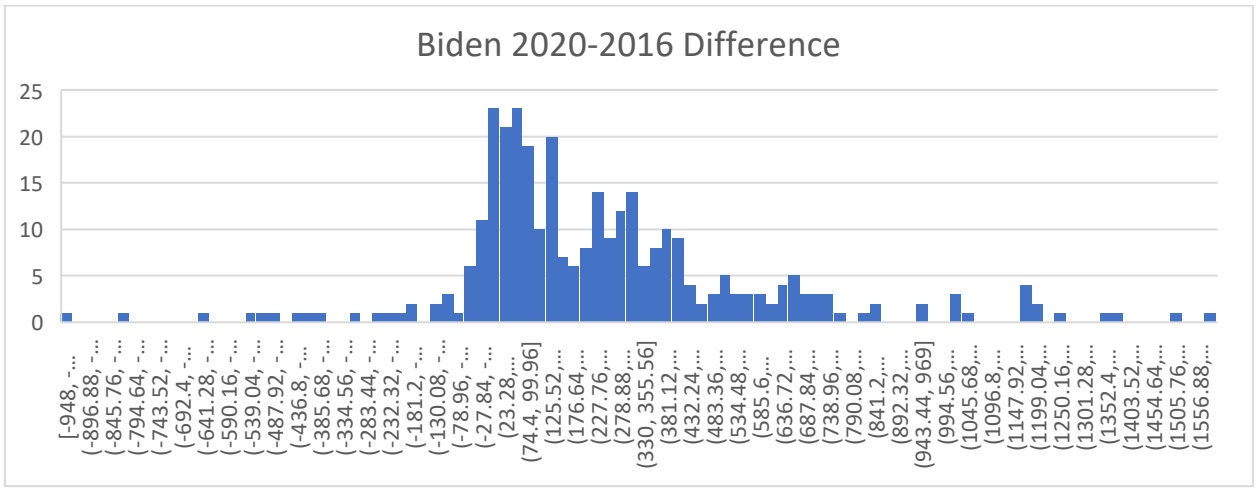
Moreover, as a control group, consider the fact that counties that are on the Northeastern border of Alabama have a much lower increase in Democrat votes for Biden. These counties are comparable given their proximity, making the especially large surge in Georgia more suspect.

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

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

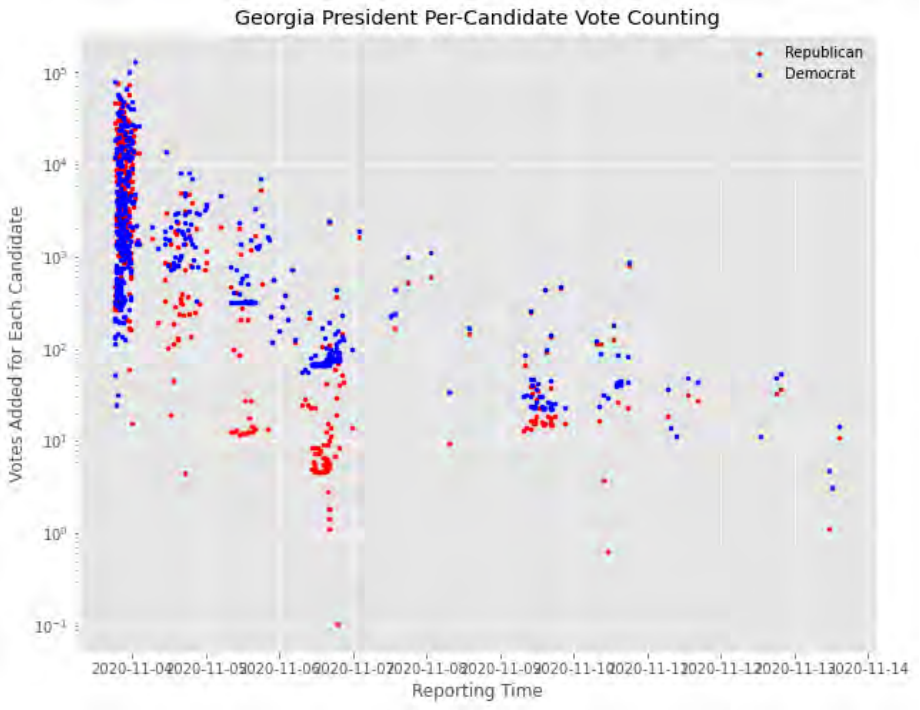
and Biden. Whereas the distribution for Trump is perfectly "normal," the distribution for Biden is non-normal: it is skewed heavily to the right. This is not present in other states that do not have similar concerns about fraudulent activity, but is present in the states with those concerns (e.g., Pennsylvania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





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

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



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

Christos A. Makridis,

Christos Makridis

ELECTION LAW JOURNAL
Volume 19, Number 3, 2020

DOI: 10.1089/elj.2019.0619

Ballot-Marking Devices Cannot Ensure the Will of the Voters

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

ABSTRACT

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

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

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

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

INTRODUCTION: CRITERIA FOR VOTING SYSTEMS

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

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

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

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

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

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

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

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

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

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

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

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

[3]See footnote 17.

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

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

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

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

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

Examples

The only known practical technology for contestable, strongly defensible voting is a system of *hand-marked paper ballots*, kept demonstrably physically secure, counted by machine, audited manually, and recountable by hand.[5] In a hand-marked paper ballot election, ballot-marking software cannot be the source of an error or change-of-election-outcome, because no software is used in marking ballots. Ballot-scanning-and-counting software can be the source of errors, but such errors can be detected and corrected by audits.

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

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

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

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

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

BACKGROUND

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

Voting equipment

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

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

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

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

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

A *ballot-marking device* provides a computerized user interface (UI) that presents the ballot to voters and captures their expressed selections—for instance, a touchscreen interface or an assistive interface that enables voters with disabilities to vote independently. Voter inputs (expressed votes) are recorded electronically. When a voter indicates that the ballot is complete and ready to be cast, the BMD prints a paper version of the electronically marked ballot. We use the term *BMD* for devices that mark ballots but do not tabulate or retain them, and *all-in-one* for devices that combine ballot marking, tabulation, and retention into the same paper path.

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

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

- DRE+VVPAT machines—direct-recording electronic (DRE) voting machines with a voter-verifiable paper audit trail (VVPAT)—provide the voter a touchscreen (or other) interface, then print a paper ballot that is displayed to the voter under glass. The voter is expected to review this ballot and approve it, after which the machine deposits it into a ballot box. DRE+VVPAT machines do not contain optical scanners; that is, they do not read what is marked on the paper ballot; instead, they tabulate the vote directly from inputs to the touchscreen or other interface.
- BMD+Scanner all-in-one machines[8] provide the voter a touchscreen (or other) interface to

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

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

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

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

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

Hacking

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

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

Hackers might be corrupt insiders with access to a voting-machine warehouse; corrupt insiders with access to a county's election-administration computers; outsiders who can gain remote access to election-administration computers; outsiders who can gain remote access to voting-machine manufacturers' computers (and "hack" the firmware installed in new machines, or the firmware updates supplied for existing machines), and so on. Supply-chain hacks are also possible: the hardware installed by a voting system vendor may have malware pre-installed by the vendor's component suppliers.[10]

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

Election assurance through risk-limiting audits

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

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

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

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

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

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

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

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

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

Properly preserved hand-marked paper ballots ensure that expressed votes are identical to recorded votes. But BMDs might not record expressed votes accurately, for instance, if BMD software has bugs, was misconfigured, or was hacked: a BMD printout is not a trustworthy record of the expressed votes. Neither a compliance audit nor an RLA can possibly check whether errors in recording expressed votes altered election outcomes. RLAs that rely on BMD output therefore cannot limit the risk that an incorrect reported election outcome will go uncorrected.

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

(NON)CONTESTABILITY/ DEFENSIBILITY OF BMDS

A BMD-generated paper trail is not a reliable record of the vote expressed by the voter.

Like any computer, a BMD (or a DRE+VVPAT) is vulnerable to bugs, misconfiguration, hacking, installation of unauthorized (fraudulent) software, and alteration of installed software.

If a hacker sought to steal an election by altering BMD software, what would the hacker program the BMD to do? In cybersecurity practice, we call this the *threat model*.

The simplest threat model is this one: In some contests, not necessarily top-of-the-ticket, change a small percentage of the votes (such as 5%).

In recent national elections, analysts have considered a candidate who received 60% of the vote to have won by a landslide. Many contests are decided by less than a 10% margin. Changing 5% of the votes can change the margin by 10%, because

[12]Risk-limiting audits (RLAs) do not protect against problems that cause BMDs to print something other than what was shown to the voter on the screen, nor do they protect against problems with ballot custody.

[13]Technically, it is the *diluted margin* that enters the calculation. The diluted margin is the number of votes that separate the winner with the fewest votes from the loser with the most votes, divided by the number of ballots cast, including undervotes and invalid votes.

"flipping" a vote for one candidate into a vote for a different candidate changes the difference in their tallies—i.e., the margin—by two votes. If hacking or bugs or misconfiguration could change 5% of the votes, that would be a very significant threat.

Although public and media interests often focus on top-of-the-ticket races such as president and governor, elections for lower offices such as state representatives, who control legislative agendas and redistricting, and county officials, who manage elections and assess taxes, are just as important in our democracy. Altering the outcome of smaller contests requires altering fewer votes, so fewer voters are in a position to notice that their ballots were misprinted. And most voters are not as familiar with the names of the candidates for those offices, so they might be unlikely to notice if their ballots were misprinted, even if they checked.

Research in a real polling place in Tennessee during the 2018 election found that half the voters *didn't look at all* at the paper ballot printed by a BMD, even when they were holding it in their hand and directed to do so while carrying it from the BMD to the optical scanner (DeMillo et al. 2018). Those voters who did look at the BMD-printed ballot spent *an average of 4 seconds* examining it to verify that the eighteen or more choices they made were correctly recorded. That amounts to 222 milliseconds per contest, barely enough time for the human eye to move and refocus under perfect conditions and not nearly enough time for perception, comprehension, and recall (Rayner 2009). A study by other researchers (Bernhard et al. 2020), in a simulated polling place using real BMDs deliberately hacked to alter one vote on each paper ballot, found that only 6.6% of voters told a pollworker something was wrong.[14,15] The same study found that among voters who examined their hand-marked ballots, half were unable to recall key features of ballots cast moments before, a prerequisite step for being able to recall their own ballot choices. This finding is broadly consistent with studies of effects like "change blindness" or "choice blindness," in which human subjects fail to notice changes made to choices made only seconds before (Johansson et al. 2008).

Suppose, then, that 10% of voters examine their paper ballots carefully enough to even *see* the candidate's name recorded as their vote for legislator or county commissioner. Of those, perhaps only half will remember the name of the candidate they intended to vote for.[16]

Of those who notice that the vote printed is not the candidate they intended to vote for, what will they think, and what will they do? Will they think, "Oh, I must have made a mistake on the touchscreen," or will they think, "Hey, the machine is cheating or malfunctioning!" There's no way for the voter to know for sure—voters do make mistakes—and there's *absolutely* no way for the voter to prove to a pollworker or election official that a BMD printed something other than what the voter entered on the screen.[17,18]

Either way, polling-place procedures generally advise voters to ask a pollworker for a new ballot if theirs does not show what they intended. Pollworkers should void that BMD-printed ballot, and the voter should get another chance to mark a ballot. Anecdotal evidence suggests that many voters are too timid to ask, or don't know that they have the right to ask, or are not sure whom to ask. Even if a voter asks for a new ballot, training for pollworkers is uneven, and we are aware of no formal

[14]You might think, "the voter really *should* carefully review their BMD-printed ballot." But because the scientific evidence shows that voters *do not* (DeMillo et al. 2018) and cognitively *cannot* (Everett 2007) perform this task well, legislators and election administrators should provide a voting system that counts the votes *as voters express them*.

[15]Studies of voter confidence about their ability to verify their ballots are not relevant: in typical situations, subjective confidence and objective accuracy are at best weakly correlated. The relationship between confidence and accuracy has been studied in contexts ranging from eyewitness accuracy (Bothwell et al. 1987; Deffenbacher 1980; Wixted and Wells 2017) to confidence in psychological clinical assessments (Desmarais et al. 2010) and social predictions (Dunning et al. 1990). The disconnect is particularly severe at high confidence. Indeed, this is known as "the overconfidence effect." For a lay discussion, see *Thinking, Fast and Slow* by Nobel economist Daniel Kahnemann (2011).

[16]We ask the reader, "do you know the name of the most recent losing candidate for county commissioner?" We recognize that some readers of this document *are* county commissioners, so we ask those readers to imagine the frame of mind of their constituents.

[17]You might think, "the voter can prove it by showing someone that the vote on the paper doesn't match the vote onscreen." But that won't work. On a typical BMD, by the time a paper record is printed and ejected for the voter to hold and examine, the touchscreen no longer shows the voter's choice. You might think, "BMDs should be designed so that the choices still show on the screen for the voter to compare with the paper." But a hacked BMD could easily alter the on-screen choices to match the paper, *after* the voter hits the "print" button.

[18]Voters should *certainly not* video-record themselves voting! That would defeat the privacy of the secret ballot and is illegal in most jurisdictions.

procedure for resolving disputes if a request for a new ballot is refused. Moreover, there is no sensible protocol for ensuring that BMDs that misbehave are investigated—nor can there be, as we argue below.

Let's summarize. If a machine alters votes on 5% of the ballots (enabling it to change the margin by 10%), and 10% of voters check their ballots carefully and 50% of the voters who check notice the error, then optimistically we might expect 5% x 10% x 50% or 0.25% of the voters to request a new ballot and correct their vote.[19] This means that the machine will change the margin by 9.75% and get away with it.

In this scenario, 0.25% of the voters, one in every 400 voters, has requested a new ballot. You might think, "that's a form of *detection* of the hacking." But is isn't, as a practical matter: a few individual voters may have detected that there was a problem, but there's no procedure by which this translates into any action that election administrators can take to correct the outcome of the election. Polling-place procedures *cannot correct or deter hacking, or even reliably detect it*, as we discuss next. This is essentially the distinction between a system that is merely software independent and one that is contestable: a change to the software that alters the outcome might generate evidence for an alert, conscientious, individual voter, but it does not generate public evidence that an election official can rely on to conclude there is a problem.

Even if some voters notice that BMDs are altering votes, there's no way to correct the election outcome.

That is, BMD voting systems are *not contestable*, *not defensible* (and therefore *not strongly defensible*), and *not strongly software independent*. Suppose a state election official wanted to detect whether the BMDs are cheating, and correct election results, based on actions by those few alert voters who notice the error. What procedures could possibly work against the manipulation we are considering?

1. How about, "If at least 1 in 400 voters claims that the machine misrepresented their vote, void the entire election."[20] No responsible authority would implement such a procedure. A few dishonest voters could collaborate to invalidate entire elections simply by falsely claiming that BMDs changed their votes.

2. How about, "If at least 1 in 400 voters claims that the machine misrepresented their vote, then investigate." Investigations are fine, but then what? The only way an investigation can ensure that the outcome accurately reflects what voters expressed to the BMDs is to void an election in which the BMDs have altered votes and conduct a new election. But how do you know whether the BMDs have altered votes, except based on the claims of the voters?[21] Furthermore, the investigation itself would suffer from the same problem as above: how can one distinguish between voters who detected BMD hacking or bugs from voters who just want to interfere with an election?

This is the essential security flaw of BMDs: few voters will notice and promptly report discrepancies between what they saw on the screen and what is on the BMD printout, and even when they do notice, there's nothing appropriate that can be done. Even if election officials are convinced that BMDs malfunctioned, *there is no way to determine who really won*.

Therefore, BMDs should not be used by most voters.

Why can't we rely on pre-election and post-election logic and accuracy testing, or parallel testing?

Most, if not all, jurisdictions perform some kind of *logic and accuracy testing* (LAT) of voting equipment before elections. LAT generally involves voting on the equipment using various combinations of selections, then checking whether the equipment tabulated the votes correctly. As the Volkswagen/Audi "Dieselgate" scandal shows, devices can be programmed to behave properly when they are tested but misbehave in use (Contag et al. 2017).

[19]This calculation assumes that the 10% of voters who check are in effect a random sample of voters: voters' propensity to check BMD printout is not associated with their political preferences.

[20]Note that in many jurisdictions, far fewer than 400 voters use a given machine on Election Day: BMDs are typically expected to serve fewer than 300 voters per day. (The vendor ES&S recommended 27,000 BMDs to serve Georgia's 7 million voters, amounting to 260 voters per BMD (Election Systems and Software 2018).) Recall also that the rate one in 400 is tied to the amount of manipulation. What if the malware flipped only one vote in 50, instead of one vote in 20? That could still change the margin by 4%, but—in this hypothetical—would be noticed by only one voter in 1,000, rather than one in 400. The smaller the margin, the less manipulation it would have taken to alter the electoral outcome.

[21]Forensic examination of the BMD might show that it *was* hacked or misconfigured, but it cannot prove that the BMD *was not* hacked or misconfigured.

Therefore, LAT can never prove that voting machines performed properly in practice.

Parallel or "live" testing involves pollworkers or election officials using some BMDs at random times on Election Day to mark (but not cast) ballots with test patterns, then check whether the marks match the patterns. The idea is that the testing is not subject to the "Dieselgate" problem, because the machines cannot "know" they are being tested on Election Day. As a practical matter, the number of tests required to provide a reasonable chance of detecting outcome-changing errors is prohibitive, and even then the system is not *defensible.* See Section 6, "Parallel Testing of BMDs."

Suppose, counterfactually, that it was practical to perform enough parallel testing to guarantee a large chance of detecting a problem if BMD hacking or malfunction altered electoral outcomes. Suppose, counterfactually, that election officials were required to conduct that amount of parallel testing during every election, and that the required equipment, staffing, infrastructure, and other resources were provided. Even then, the system would not be *strongly defensible*; that is, if testing detected a problem, there would be no way to to determine who really won. The only remedy would be a new election.

Don't voters need to check hand-marked ballots, too?

It is always a good idea to check one's work, but there is a substantial body of research (e.g., Reason 2009) suggesting that preventing error as a ballot is being marked is a fundamentally different cognitive task than detecting an error on a previously marked ballot. In cognitively similar tasks, such as proof reading for non-spelling errors, ten percent rates of error detection are common (Reason 2009, 167 et seq.), whereas by carefully attending to the task of correctly marking their ballots, voters apparently can largely avoid marking errors.

A fundamental difference between hand-marked paper ballots and ballot-marking devices is that, with hand-marked paper ballots, voters are responsible for catching and correcting *their own errors*, while if BMDs are used, voters are also responsible for catching *machine errors, bugs, and hacking*. Voters are the *only* people who can detect such problems with BMDs—but, as explained above, if voters do find problems, there's no way they can prove to poll workers or election officials that there were problems and no way to ensure that election officials take appropriate remedial action.

CONTESTABILITY/DEFENSIBILITY OF HAND-MARKED OPSCAN

The most widely used voting system in the United States is optical-scan counting of hand-marked paper ballots.[22] Computers and computer software are used in several stages of the voting process, and if that software is hacked (or erroneous), then the computers will deliberately (or accidentally) report incorrect outcomes.

- Computers are used to prepare the PDF files from which (unvoted) optical-scan ballots are printed, with ovals (or other targets to be marked) next to the names of candidates. Because the optical scanners respond to the *position on the page,* not the name of the candidate nearest the target, computer software could cheat by reordering the candidates on the page.
- The optical-scan voting machine, which scans the ballots and interprets the marks, is driven by computer software. Fraudulent (hacked) software can deliberately record (some fraction of) votes for Candidate A and votes for Candidate B.
- After the voting machine reports the in-the-precinct vote totals (or, in the case of central-count optical scan, the individual-batch vote totals), computers are used to aggregate the various precincts or batches together. Hacked software could cheat in this addition process.

Protection against any or all of these attacks relies on a system of risk-limiting audits, along with compliance audits to check that the chain of custody of ballots and paper records is trustworthy. Without such audits, optical-scan ballots (whether hand marked or machine marked) are neither contestable nor defensible.

[22]Verified Voting Foundation, "The Verifier—Polling Place Equipment—November 2020," *Verified Voting* (2020) <https://www.verifiedvoting.org/verifier/> (fetched February 8, 2020).

We analyze the contestability/defensibility of hand-marked optical-scan ballots with respect to each of these threats, assuming a system of RLAs and compliance audits.

- Hacked generation of PDFs leading to fraudulently placed ovals. In this case, a change or error in the computer software *can* change the election outcome: on thousands of ballots, voters place a mark next to the name of candidate A, but (because the candidate name has been fraudulently misplaced on the paper), the (unhacked) optical scanner records this as a vote for candidate B. But an RLA will correct the outcome: a human, inspecting and interpreting this paper ballot, will interpret the mark as a vote for candidate A, as the voter intended. The RLA will, with high probability, conclude that the computer-reported election outcome cannot be confirmed, and a full recount must occur. Thus the system is *contestable:* the RLA produces public evidence that the (computer-reported) outcome is untrustworthy. This full recount (in the presence of witnesses, in view of the public) can provide convincing public evidence of its own correctness; that is, the system is *defensible*.
- Hacked optical-scan vote counter, reporting fraudulent vote totals. In this case, a change or error in the computer software *can* change the election outcome: on thousands of ballots, voters place a mark next to the name of candidate A, but the (hacked) optical scanner records this as a vote for candidate B. But an RLA can detect the incorrect outcome (just as in the case above); the system is *contestable*. And a full recount will produce a correct outcome with public evidence: the system is *defensible*.
- Hacked election-management system (EMS), fraudulently aggregating batches. A risk-limiting audit can detect this problem, and a recount will correct it: the system is contestable and defensible. But actually, contestability and defensibility against this attack is even easier and simpler than RLAs and recounts. Most voting machines (including precinct-count optical scanners) print a "results tape" in the polling place, at the close of the polls (in addition to writing their results electronically to a removable memory card). This results tape is (typically) signed by pollworkers and by credentialed challengers, and open to inspection by members of the public, before it is transported (with chain-of custody protections) along with the ballot boxes to a secure central location. The county clerk or registrar of voters can (and in many counties, does) inspect these paper records to verify that they correspond to the precinct-by-precinct machine-reported aggregation. Errors (or fraud) in aggregation can be detected and corrected without the need to inspect individual ballots: the system is contestable and defensible against this class of errors.

END-TO-END VERIFIABLE (E2E-V) SYSTEMS

In all BMD systems currently on the market, and in all BMD systems certified by the Election Assistance Commission (EAC), the printed ballot or ballot summary is the only channel by which voters can verify the correct recording of their ballots, independently of the computers. The analysis in this article applies to all of those BMD systems.

There is a class of voting systems called "end-to-end verifiable" (E2E-V), which provide an alternate mechanism for voters to verify their votes (Benaloh et al. 2014; Appel 2018b). The basic idea of an E2E-V system is that a cryptographic protocol encodes the vote; mathematical properties of the cryptographic system allow the voters to verify (probabilistically) that their vote has been accurately counted, but does not compromise the secret ballot by allowing voters to prove how they voted. E2E-V systems have not been adopted in public elections (except that Scantegrity was used for municipal elections in Takoma Park, Maryland, in 2009 and 2011).

Each E2E-V system requires its own analysis of contestability/defensibility.

Scantegrity (Chaum et al. 2008) is a system of preprinted optical-scan ballots, counted by conventional precinct-count optical scanners, but with an additional security feature: when the voter fills in an oval with a special pen, the oval is mostly darkened (so it's counted conventionally by the optical scanner), but two-letter code is also revealed that the voter can (optionally) use in the cryptographic protocol. Scantegrity is contestable/defensible, but not because of its E2E-V properties: since it's an add-on to a conventional optical-scan system

with hand-marked paper ballots, RLAs and compliance audits can render this system contestable/defensible.

Prêt-à-Voter (Ryan et al. 2009) is the system in which the voter separates the candidate list from the oval-target list after marking the ballot and before deposit into the optical scanner. This system can be made contestable, with difficulty: the auditing procedure requires participation of the voters in an unintuitive cryptographic challenge. It is not clear that the system is defensible: if this cryptographic challenge proves that the blank ballots have been tampered with, then no recount can reliably reconstruct the true result with public evidence.

STAR-Vote (Benaloh et al. 2013) is a DRE+VVPAT system with a smart ballot box. Voters interact with a device that captures their votes electronically and prints a paper record that voters can inspect, but the electronic votes are held "in limbo" until the paper ballot is deposited in the smart ballot box. The ballot box does not read the votes from the ballot; rather, depositing the ballot tells the system that it has permission to cast the votes it had already recorded from the touchscreen. The claimed advantage of STAR-Vote (and other systems that use the "Benaloh challenge") is that RLAs and ballot-box chain-of-custody are not required in order to obtain software independence. To ensure that the E2E-V cryptographic protocol has correctly recorded each vote, the voter can "challenge" the system to prove that the cryptographic encoding of the ballot records the vote actually printed on the paper ballot. To do so, the voter must discard (void) this ballot and vote a fresh ballot; this is because the challenge process reveals the vote to the public, and a voting system must preserve the secrecy of the (cast) ballots. Thus, the voter cannot ensure the correct encoding of their true ballot, but (since STAR-Vote must print the ballot before knowing whether the voter will challenge), the voter can ensure it with any desired *error probability*.

STAR-Vote is software independent but it is not contestable or defensible. The reason is that, while the challenge can produce public evidence that a machine did not accurately encrypt the plaintext vote on the ballot, if the machine prints the wrong plaintext vote and a correct encryption of that incorrect vote, there is no evidence the voter can use to prove that to anyone else.

No E2E-V system is currently certified by the EAC, nor to our knowledge is any such system under review for certification, nor are any of the five major voting-machine vendors offering such a system for sale.[23]

PARALLEL TESTING OF BMDS

Wallach (2019) has proposed (in response to earlier drafts of this article) that contestability/defensibility failure of BMDs could be mitigated by *parallel testing*, which he also calls "live auditing." Stark (2019) has analyzed Wallach's proposal in detail. Here we provide a summary of the proposal and the analyses.

One might like to test each BMD before the election to make sure it's not hacked. Unfortunately, since the computer in a voting machine (including BMDs) has a real-time clock, the software (including fraudulent vote-stealing software) knows whether it's Election Day or not. Fraudulent software can make sure not to cheat except on Election Day.

The idea of parallel testing is to have trained auditors test the BMDs, at random times during an actual election: use the BMD to prepare a ballot, inspect that ballot to ensure it's marked correctly, then discard the ballot. The same BMDs in use during the polling will be selected, from time to time, for such test, right there in the polling places.

If the BMDs cheat with uniform random probability p, and if the BMD cannot distinguish an auditor from an ordinary voter, then after n random audits the probability of detecting the malware is $1 - (1 - p)^n$. If $p = 5\%$ and $n = 240$, then the probability of detection is 91%.

Unfortunately, the attacker is not constrained to cheat with uniform random probability; or, to put it another way, BMD malware may indeed be able to distinguish auditors from ordinary voters. Stark (2019) discusses many ways in which the "signature" of how auditors interact with the BMD may differ from ordinary voters, enough to give clues

[23]Some vendors, notably Scytl, have sold systems advertised as E2E-V in other countries. Those systems were not in fact E2E-V. Moreover, serious security flaws have been found in their implementations. See, e.g., S.J. Lewis, O. Pereira, and V. Teague, "Ceci N'est Pas une Preuve: The Use of Trapdoor Commitments in Bayer-Groth Proofs and the Implications for the Verifiabilty of the Scytl-SwissPost Internet Voting System" (March 12, 2019), <https://people.eng.unimelb.edu.au/vjteague/UniversalVerifiabilitySwissPost.pdf>.

to the malware about whether to cheat.[24] Therefore, one cannot simply multiply $(1 - p)^n$ and calculate a probability of detection.

While auditors might try to build an accurate model of voter behavior for live audits, that approach is doomed by privacy concerns and by the "curse of dimensionality": election officials would have to record every nuance of voter behavior (preferences across contests; language settings, font settings, and other UI settings; timing, including speed of voting and hesitation; on-screen review; etc.) for millions of voters to accurately approximate voter behavior.

There are many logistical problems with "live auditing." It would require additional voting machines (because testing requires additional capacity), staff, infrastructure, and other resources, *on Election Day* when professional staff is most stretched. One must be prepared to perform the audits at the busiest times of day; even that will cause lines of voters to lengthen, because otherwise the malware can simply cheat only at the busy times. Live auditing must be done in view of the voters (one cannot carry the voting machine into another room to do it), but some election officials are concerned that the creation of test ballots in the polling place could be perceived as a threat of ballot-box stuffing.

No state, to our knowledge, has implemented parallel testing or live auditing of BMDs.

In any case, we can assess the contestability and defensibility of parallel testing.

With a sufficiently high rate of parallel testing, and a sufficiently sophisticated randomization of auditor behavior, it may be possible to make BMDs with parallel testing *contestable:* an audit could detect *and prove* mismarking of paper ballots.

But BMDs with parallel testing is not *defensible*. It will be extremely difficult for an election official to generate convincing public evidence that the audit *would have* detected mismarking, if mismarking were occurring. To generate that public evidence, the election official would have to reveal substantial detail about the parallel-testing protocol: how, exactly, the random selection of times to test is made; how, exactly, the random selection is made of what candidates to vote for in the tests. Revealing such details of the protocol allows the attacker to analyze the protocol for clues about how and when to cheat with less chance of detection.

Furthermore, parallel testing has a severe disadvantage in comparison with other contestable/defensible paper-ballot-based voting systems: If the auditors detect that the BMDs have mismarked a ballot—even once—the entire election must be invalidated, and a do-over election must be held. This is because the auditor will have detected evidence that the BMDs in this election have been systematically mismarking ballots for some proportion of *all* voters. No recount of the paper ballots can correct this.

In contrast, if optical scanners are hacked to cheat on hand-marked paper ballots, the correct outcome can be calculated by a full hand recount of the paper ballots.[25]

Wallach also suggests, instead of parallel testing, the use of spoiled-ballot rates as a measure of BMD cheating. Suppose, when BMDs are not cheating, the baseline rate of spoiled ballots (i.e., voters asking for a "do-over" of their BMD marked ballot) is 1%. Suppose the machines are cheating on 5% of the ballots, and 6% of voters notice this, and ask for a do-over. Then the spoiled ballot rate increases to 1.3%. The election administrator is supposed to act upon this discrepancy. But the only meaningful action the administrator could take is to invalidate the entire election, and call for a do-over election. This is impractical.

Moreover, the underlying "natural" rate of spoilage will not be known exactly, and will vary from election to election, even if the machines function flawlessly. The natural rate might depend on the number of contests on the ballot, the complexity of voting rules (e.g., instant-runoff voting [IRV] versus plurality), ballot layout, and many other factors. For any rule, there will be a tradeoff between false alarms and failures to detect problems.

To continue the previous hypothetical, suppose that spoiled ballots follow a Poisson distribution (there is no reason to think that they do). Imagine that the theoretical rate is known to be 1% if the

[24]For example, BMDs do "know" their own settings and other aspects of each voting session, so malware can use that information to target sessions that use the audio interface, increase the font size, use the sip-and-puff interface, set the language to something other than English, or take much longer than average to vote. (Voters who use those settings might be less likely to be believed if they report that the equipment altered their votes.) For parallel testing to have a good chance of detecting all outcome-changing problems, the tests must have a large chance of probing *every* combination of settings and voting patterns that includes enough ballots to change any contest result. It is not practical.

[25]Provided, of course, that secure chain of custody of the ballot boxes can be demonstrated.

BMDs function correctly, and known to be 1.3% if the BMDs malfunction. How many votes must be cast for it to be possible to limit the chance of a false alarm to 1%, while ensuring a 99% chance of detecting a real problem? The answer is 28,300 votes. If turnout is roughly 50%, jurisdictions (or contests) with fewer than 60,000 voters could not in principle limit the chance of false positives and of false negatives to 1%—even under these optimistic assumptions and simplifications. Twenty-three of California's 58 counties have fewer than 60,000 registered voters.

OTHER TRADEOFFS, BMDS VERSUS HAND-MARKED OPSCAN

Supporters of ballot-marking devices advance several other arguments for their use.

Mark legibility. A common argument is that a properly functioning BMD will generate clean, error-free, unambiguous marks, while hand-marked paper ballots may contain mistakes and stray marks that make it impossible to discern a voter's intent. However appealing this argument seems at first blush, the data are not nearly so compelling. Experience with statewide recounts in Minnesota and elsewhere suggest that truly ambiguous handmade marks are very rare.[26] For instance, 2.9 million hand-marked ballots were cast in the 2008 Minnesota race between Al Franken and Norm Coleman for the U.S. Senate. In a manual recount, between 99.95% and 99.99% of ballots were unambiguously marked.[27,28] In addition, usability studies of hand-marked bubble ballots—the kind in most common use in U.S. elections—indicate a *voter* error rate of 0.6%, much lower than the 2.5%–3.7% error rate for machine-marked ballots (Everett 2007).[29] Thus, mark legibility is not a good reason to adopt BMDs for all voters.

Undervotes, overvotes. Another argument offered for BMDs is that the machines can alert voters to undervotes and prevent overvotes. That is true, but modern PCOS systems can also alert a voter to overvotes and undervotes, allowing a voter to eject the ballot and correct it.

Bad ballot design. Ill-designed paper ballots, just like ill-designed touchscreen interfaces, may lead to unintentional undervotes (Norden et al. 2008). For instance, the 2006 Sarasota, Florida, touchscreen ballot was badly designed. The 2018 Broward County, Florida, opscan ballot was badly designed: it violated three separate guidelines from the EAC's 2007 publication, "Effective Designs for the Administration of Federal Elections, Section 3: Optical Scan Ballots" (U.S. Election Assistance Commission 2007) In both of these cases (touchscreens in 2006, hand-marked optical-scan in 2018), undervote rates were high. The solution is to follow standard, published ballot-design guidelines and other best practices, both for touchscreens and for hand-marked ballots (Appel 2018c; Norden et al. 2008).

Low-tech paper-ballot fraud. All paper ballots, however they are marked, are vulnerable to *loss*, *ballot-box stuffing*, *alteration*, and *substitution* between the time they are cast and the time they are recounted. That's why it is so important to make sure that ballot boxes are always in multiple-person (preferably bipartisan) custody whenever they are handled, and that appropriate physical security measures are in place. Strong, verifiable chain-of-custody protections are essential.

Hand-marked paper ballots are vulnerable to alteration by anyone with a pen. Both hand-marked and BMD-marked paper ballots are vulnerable to substitution: anyone who has poorly supervised access to a legitimate BMD during election day can create fraudulent ballots, not necessarily to deposit them in the ballot box immediately (in case the

[26]States do need clear and complete regulations for interpreting voter marks.

[27]"During the recount, the Coleman and Franken campaigns initially challenged a total of 6,655 ballot-interpretation decisions made by the human recounters. The State Canvassing Board asked the campaigns to voluntarily withdraw all but their most serious challenges, and in the end approximately 1,325 challenges remained. That is, approximately 5 ballots in 10,000 were ambiguous enough that one side or the other felt like arguing about it. The State Canvassing Board, in the end, classified all but 248 of these ballots as votes for one candidate or another. That is, approximately 1 ballot in 10,000 was ambiguous enough that the bipartisan recount board could not determine an intent to vote." (Appel 2009; see also Office of the Minnesota Secretary of State 2009).

[28]We have found that some local election officials consider marks to be ambiguous if *machines* cannot read the marks. That is a different issue from *humans* being unable to interpret the marks. Errors in machine interpretation of voter intent can be dealt with by manual audits: if the reported outcome is wrong because machines misinterpreted handmade marks, an RLA has a known, large chance of correcting the outcome.

[29]Better designed user interfaces (UI) might reduce the error rate for machine-marked ballots below the historical rate for direct-recording electronic (DRE) voting machines; however, UI improvements cannot keep BMDs from printing something other than what the voter is shown on the screen.

ballot box is well supervised on Election Day) but with the hope of substituting it later in the chain of custody.[30]

All those attacks (on hand-marked and on BMD-marked paper ballots) are fairly low-tech. There are also higher-tech ways of producing ballots indistinguishable from BMD-marked ballots for substitution into the ballot box if there is inadequate chain-of-custody protection.

Accessible voting technology. When hand-marked paper ballots are used with PCOS, there is (as required by law) also an accessible voting technology available in the polling place for voters unable to mark a paper ballot with a pen. This is typically a BMD or a DRE. When the accessible voting technology is not the same as what most voters vote on—when it is used by very few voters—it may happen that the accessible technology is ill-maintained or even (in some polling places) not even properly set up by pollworkers. This is a real problem. One proposed solution is to require all voters to use the same BMD or all-in-one technology. But the failure of some election officials to properly maintain their accessible equipment is not a good reason to adopt BMDs for *all* voters. Among other things, it would expose all voters to the security flaws described above.[31] Other advocates object to the idea that disabled voters must use a different method of marking ballots, arguing that their rights are thereby violated. Both the Help America Vote Act (HAVA) and the Americans with Disabilities Act (ADA) require reasonable accommodations for voters with physical and cognitive impairments, but neither law requires that those accommodations must be used by all voters. To best enable and facilitate participation by all voters, each voter should be provided with a means of casting a vote best suited to their abilities.

Ballot printing costs. Preprinted optical-scan ballots cost 20–50 cents each.[32] Blank cards for BMDs cost up to 15 cents each, depending on the make and model of BMD.[33] But optical-scan ballots must be preprinted for as many voters as *might* show up, whereas blank BMD cards are consumed in proportion to how many voters *do* show up. The Open Source Election Technology Institute (OSET) conducted an independent study of total life cycle costs[34] for hand-marked paper ballots and BMDs in conjunction with the 2019 Georgia legislative debate regarding BMDs (Perez 2019). OSET concluded that, even in the most optimistic (i.e., lowest cost) scenario for BMDs and the most pessimistic (i.e., highest cost) scenario for hand-marked paper ballots and ballot-on-demand (BOD) printers—which can print unmarked ballots as needed—the total lifecycle costs for BMDs would be higher than the corresponding costs for hand-marked paper ballots.[35]

Vote centers. To run a vote center that serves many election districts with different ballot styles, one must be able to provide each voter a ballot containing the contests that voter is eligible to vote in, possibly in a number of different languages. This is easy with BMDs, which can be programmed with all the appropriate ballot definitions. With preprinted optical-scan ballots, the PCOS can be programmed to *accept* many different ballot styles, but the vote center must still maintain *inventory* of many different ballots. BOD printers are another economical alternative for vote centers.[36]

Paper/storage. BMDs that print summary cards rather than full-face ballots can save paper and storage space. However, many BMDs print full-face ballots—so they do not save storage—while many

[30]Some BMDs print a barcode indicating when and where the ballot was produced, but that does not prevent such a substitution attack against currently Election Assistance Commission (EAC)-certified, commercially available BMDs. We understand that systems under development might make ballot-substitution attacks against BMDs more difficult.

[31]Also, some accessibility advocates argue that requiring disabled voters to use BMDs compromises their privacy since hand-marked ballots are easily distinguishable from machine marked ballots. That issue can be addressed without BMDs-for-all: Accessible BMDs are already available and in use that mark ballots with marks that cannot easily be distinguished from hand-marked ballots.

[32]Single-sheet (one- or two-side) ballots cost 20–28 cents; double-sheet ballots needed for elections with many contests cost up to 50 cents.

[33]Ballot cards for ES&S ExpressVote cost about 15 cents. New Hampshire's (One4All/Prime III) BMDs used by sight-impaired voters use plain paper that is less expensive.

[34]They include not only the cost of acquiring and implementing systems but also the ongoing licensing, logistics, and operating (purchasing paper stock, printing, and inventory management) costs.

[35]Ballot-on-demand (BOD) printers currently on the market arguably are best suited for vote centers, but less expensive options suited for polling places could be developed. Indeed, BMDs that print full-face ballots could be re-purposed as BOD printers for polling place use, with modest changes to the programming.

[36]Ballot-on-demand printers *may* require maintenance such as replacement of toner cartridges. This is readily accomplished at a vote center with a professional staff. Ballot-on-demand printers may be a less attractive option for many small precincts on Election Day, where there is no professional staff—but on the other hand, they are less necessary, since far fewer ballot styles will be needed in any one precinct.

BMDs that print summary cards (which could save storage) use thermal printers and paper that is fragile and can fade in a few months.[37]

Advocates of hand-marked paper ballot systems advance these additional arguments.

Cost. Using BMDs for all voters substantially increases the cost of acquiring, configuring, and maintaining the voting system. One PCOS can serve 1,200 voters in a day, while one BMD can serve only about 260 (Election Systems and Software 2018)—though both these numbers vary greatly depending on the length of the ballot and the length of the day. OSET analyzed the relative costs of acquiring BMDs for Georgia's nearly seven million registered voters versus a system of hand-marked paper ballots, scanners, and BOD printers (Perez 2019). A BMD solution for Georgia would cost taxpayers between three and five times more than a system based on hand-marked paper ballots. Open-source systems might eventually shift the economics, but current commercial universal-use BMD systems are more expensive than systems that use hand-marked paper ballots for most voters.

Mechanical reliability and capacity. Pens are likely to have less downtime than BMDs. It is easy and inexpensive to get more pens and privacy screens when additional capacity is needed. If a precinct-count scanner goes down, people can still mark ballots with a pen; if the BMD goes down, voting stops. Thermal printers used in DREs with VVPAT are prone to jams; those in BMDs might have similar flaws.

These secondary pros and cons of BMDs do not outweigh the primary security and accuracy concern: BMDs, if hacked or erroneously programmed, can change votes in a way that is not correctable. BMD voting systems are not contestable or defensible. Audits that rely on BMD printout cannot make up for this defect in the paper trail: they cannot reliably detect or correct problems that altered election outcomes.

Barcodes

A controversial feature of some BMDs allows them to print one-dimensional or two-dimensional barcodes on the paper ballots. A one-dimensional barcode resembles the pattern of vertical lines used to identify products by their universal product codes. A two-dimensional barcode or QR code is a rectangular area covered in coded image *modules* that encode more complex patterns and information. BMDs print barcodes on the same paper ballot that contains human-readable ballot choices. Voters using BMDs are expected to verify the human-readable printing on the paper ballot card, but the presence of barcodes with human-readable text poses some significant problems.

Barcodes are not human readable. The whole purpose of a paper ballot is to be able to recount (or audit) the *voters'* votes in a way independent of any (possibly hacked or buggy) computers. If the official vote on the ballot card is the barcode, then it is impossible for the voters to verify that the official vote they cast is the vote they expressed. Therefore, before a state even *considers* using BMDs that print barcodes (and we do not recommend doing so), the state must ensure by statute that recounts and audits are based *only* on the human-readable portion of the paper ballot. Even so, audits based on untrustworthy paper trails suffer from the verifiability the problems outlined above.

Ballot cards with barcodes contain two different votes. Suppose a state does ensure by statute that recounts and audits are based on the human-readable portion of the paper ballot. Now a BMD-marked ballot card with both barcodes and human-readable text contains two different votes in each contest: the barcode (used for electronic tabulation), and the human-readable selection printout (official for audits and recounts). In few (if any) states has there even been a discussion of the legal issues raised when the official markings to be counted differ between the original count and a recount.

Barcodes pose technical risks. Any coded input into a computer system—including wired network packets, Wi-Fi, USB thumbdrives, *and barcodes*—pose the risk that the input-processing software can be vulnerable to attack via deliberately ill-formed input. Over the past two decades, many such vulnerabilities have been documented on *each* of these channels (including barcode readers) that, in the worst case,

[37]The California Top-To-Bottom Review (TTBR) of voting systems found that thermal paper can also be covertly spoiled wholesale using common household chemicals. <https://votingsystems.cdn.sos.ca.gov/oversight/ttbr/red-diebold.pdf> (last visited April 8, 2019; Matt Bishop, Principal Investigator). The fact that thermal paper printing can fade or deteriorate rapidly might mean it does not satisfy the federal requirement to preserve voting materials for 22 months (U.S. Code Title 52, Chapter 207, Sec. 20701, as of April 2020).

give the attacker complete control of a system.[38] If an attacker were able to compromise a BMD, the barcodes are an attack vector for the attacker to take over an optical scanner (PCOS or CCOS), too. Since it is good practice to close down all such unneeded attack vectors into PCOS or CCOS voting machines (e.g., don't connect your PCOS to the Internet!), it is also good practice to avoid unnecessary attack channels such as barcodes.

INSECURITY OF ALL-IN-ONE BMDS

Some voting machines incorporate a BMD interface, printer, and optical scanner into the same cabinet. Other DRE+VVPAT voting machines incorporate ballot-marking, tabulation, and paper-printout retention, but without scanning. These are often called "all-in-one" voting machines. To use an all-in-one machine, the voter makes choices on a touchscreen or through a different accessible interface. When the selections are complete, the BMD prints the completed ballot for the voter to review and verify, before depositing the ballot in a ballot box attached to the machine.

Such machines are especially unsafe: like any BMD described in Section 3, "(Non)Contestability/Defensibility of BMDs," they are not contestable or defensible, but in addition, if hacked they can print votes onto the ballot *after* the voter last inspects the ballot.

- The ES&S ExpressVote (in all-in-one mode) allows the voter to mark a ballot by touchscreen or audio interface, then prints a paper ballot card and ejects it from a slot. The voter has the opportunity to review the ballot, then the voter redeposits the ballot into the same slot, where it is scanned and deposited into a ballot box.
- The ES&S ExpressVoteXL allows the voter to mark a ballot by touchscreen or audio interface, then prints a paper ballot and displays it under glass. The voter has the opportunity to review the ballot, then the voter touches the screen to indicate "OK," and the machine pulls paper ballot up (still under glass) and into the integrated ballot box.
- The Dominion ImageCast Evolution (ICE) allows the voter to deposit a hand-marked paper ballot, which it scans and drops into the attached ballot box. *Or*, a voter can use a touchscreen or audio interface to direct the marking of a paper ballot, which the voting machine ejects through a slot for review; then the voter redeposits the ballot into the slot, where it is scanned and dropped into the ballot box.

In all three of these machines, the ballot-marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can mark the paper ballot (to add votes or spoil already-cast votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection.

Vote-stealing software could easily be constructed that looks for *undervotes* on the ballot, and marks those unvoted spaces for the candidate of the hacker's choice. This is very straightforward to do on optical-scan bubble ballots (as on the Dominion ICE) where undervotes are indicated by no mark at all. On machines such as the ExpressVote and ExpressVoteXL, the normal software indicates an undervote with the words "no selection made" on the ballot summary card. Hacked software could simply leave a blank space there (most voters wouldn't notice the difference), and then fill in that space and add a matching bar code after the voter has clicked "cast this ballot."

An even worse feature of the ES&S ExpressVote and the Dominion ICE is the *auto-cast* configuration setting (in the manufacturer's standard software) that allows the voter to indicate, "don't eject the ballot for my review, just print it and cast it without me looking at it." If fraudulent software were installed in the ExpressVote, it could change *all* the votes of any voter who selected this option, because the voting machine software would know *in advance of printing* that the voter had waived the opportunity to inspect the printed ballot. We call this auto-cast feature "permission to cheat" (Appel 2018a).

Regarding these all-in-one machines, we conclude:

[38] An example of a barcode attack is based on the fact that many commercial barcode-scanner components (which system integrators use to build cash registers or voting machines) treat the barcode scanner using the same operating-system interface as if it were a keyboard device; and then some operating systems allow "keyboard escapes" or "keyboard function keys" to perform unexpected operations.

- Any machine with ballot printing in the same paper path with ballot deposit is not *software independent*; it is *not* the case that "an error or fault in the voting system software or hardware cannot cause an undetectable change in election results." Therefore such all-in-one machines do not comply with the VVSG 2.0 (the Election Assistance Commission's Voluntary Voting Systems Guidelines). Such machines are not contestable or defensible, either.
- All-in-one machines on which all voters use the BMD interface to mark their ballots (such as the ExpressVote and ExpressVoteXL) *also* suffer from the same serious problem as ordinary BMDs: most voters do not review their ballots effectively, and elections on these machines are not contestable or defensible.
- The auto-cast option for a voter to allow the paper ballot to be cast without human inspection is particularly dangerous, and states must insist that vendors disable or eliminate this mode from the software. However, even disabling the auto-cast feature does not eliminate the risk of undetected vote manipulation.

Remark

The Dominion ImageCast Precinct ICP320 is a precinct-count optical scanner (PCOS) that also contains an audio+buttons ballot-marking interface for disabled voters. This machine can be configured to cast electronic-only ballots from the BMD interface, or an external printer can be attached to print paper optical-scan ballots from the BMD interface. When the external printer is used, that printer's paper path is *not* connected to the scanner+ballot-box paper path (a person must take the ballot from the printer and deposit it into the scanner slot). Therefore this machine is as safe to use as any PCOS with a separate external BMD.

CONCLUSION

Ballot-marking devices produce ballots that do not necessarily record the vote expressed by the voter when they enter their selections on the touchscreen: hacking, bugs, and configuration errors can cause the BMDs to print votes that differ from what the voter entered and verified electronically. Because outcome-changing errors in BMD printout do not produce public evidence, BMD systems are not *contestable*. Because there is no way to generate convincing public evidence that reported outcomes are correct despite any BMD malfunctions that might have occurred, BMD systems are not *defensible*. Therefore, BMDs should not be used by voters who can hand mark paper ballots.

All-in-one voting machines, which combine ballot-marking and ballot-box-deposit into the same paper path, are even worse. They have all the disadvantages of BMDs (they are not contestable or defensible), and they can mark the ballot after the voter has inspected it. Therefore they are not even *software independent*, and should not be used by those voters who are capable of marking, handling, and visually inspecting a paper ballot.

When computers are used to record votes, the original transaction (the voter's expression of the votes) is not documented in a verifiable way.[39] When pen and paper are used to record the vote, the original expression of the vote *is* documented in a verifiable way (if demonstrably secure chain of custody of the paper ballots is maintained). Audits of elections conducted with hand-marked paper ballots, counted by optical scanners, can ensure that reported election outcomes are correct. Audits of elections conducted with BMDs *cannot* ensure that reported outcomes are correct.

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[39]It is conceivable that cryptographic protocols like those used in E2E-V systems could be used to create BMD-based systems that are contestable and defensible, but no such system exists, nor, to our knowledge, has such a design been worked out in principle. Existing E2E-V systems that use a computer to print (encrypted) selections are neither contestable nor defensible, as explained in Section 1, "Introduction: Criteria for Voting Systems."

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Received for publication December 27, 2019; received in revised form February 14, 2019; accepted April 4, 2020; published online June 17, 2020.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
_____	)	

AFFIDAVIT OF KELLY MOORE IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

I, Kelly Moore, declare under penalty of perjury that the following is true and correct:

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

2. I volunteered to be a monitor for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") in connection with what was identified to me as the "hand count" of votes cast in the November 3, 2020 presidential election. I was assigned to monitor the hand count on November 16, 2020 at the Lithonia Voting Facility in Lithonia, Georgia.

3. At the Lithonia location, I was originally scheduled to watch from 1:00 p.m. until 5:00 p.m. I saw irregularities at every table. Every paid auditor was not following procedure. Stacks were being created without regard for the number in the stacks. Stacks of 15 or 16 were being created instead of the required method of creating a stack of ten, and then another stack of ten at right angles on top.

4. There was no system in place that would create an accurate count. When one group left with an "unfinished box," it was left behind for the next group – at least in once case open and unattended. I watched it to see what would happen, and a poll worker attempted to recover it as a completed box until I called the supervisor.

5. Everyone seemed confident that there would be no change in the counts and did not want to follow any rules set in place. I was confronted with Democrat poll workers and the supervisor, "Twyla" verbally harassed other poll watchers, particularly if she felt they were Republican.

5. From the handful of paper absentee ballots I was able to see up close, it looked like many of the absentee ballots were perfectly filled out, as if the bubbles had been filled in by a machine. But we were kept at such a distance we could not see if they varied in a significant way from the other absentee ballots I observed.

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

Kelly Moore

STATE OF GEORGIA

COUNTY OF DEKALB

Kelly Moore, appeared before me, a Notary Public in and for the above jurisdiction, this 18th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]

Notary Public

My Commission Expires AUGUST 17, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
	)	
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

AFFIDAVIT OF SCOTT GRAHAM HALL IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

I, SCOTT GRAHAM HALL, declare under penalty of perjury that the following is true and correct:

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

2. I was an Election recount monitor at the Georgia World Congress Center on Saturday, November 14, 2020 and Sunday, November 15, 2020. Saturday morning during the manual recount of the mail-in ballots, I observed large quantities of ballots being cast for Joseph Biden on ballots that did not appear to have been mailed.

3. There were no creases in the mail in ballots giving the impression that they were never folded into an envelope and mailed. Most importantly, these ballots appeared to be pre-printed with the selections already made. The bubbles that one would select to choose their candidate appeared to have the exact same markings, with no different color inks, and no markings outside of the bubble as if they were all done perfectly. Hundreds of ballots at a time were counted for Biden only.

4. Additionally, on Sunday, November 15, 2020 around Noon, after most of the people had left, a table was set up in the far right-hand corner of the room outside of the area that was roped off for counting in where it was not visible

to security cameras. I noticed on the bag it was labeled "Welcome". I have attached a photograph of the table and area.

[SIGNATURE AND OATH ON NEXT PAGE]

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

SCOTT GRAHAM HALL

STATE OF Georgia

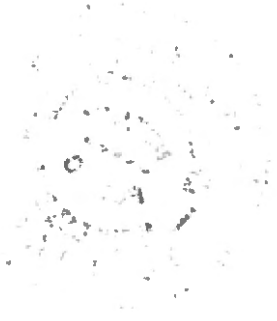
COUNTY OF Fulton

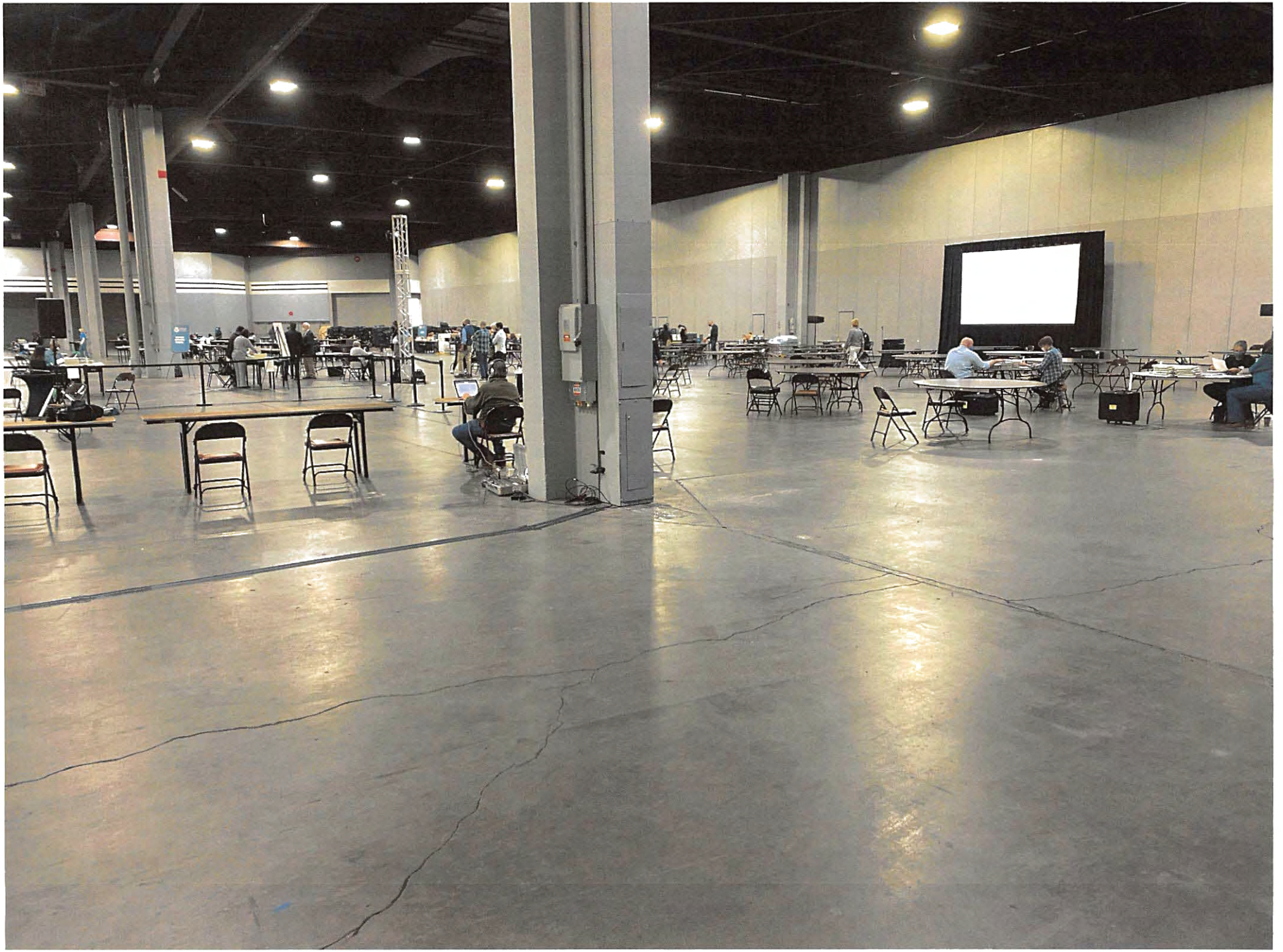
SCOTT GRAHAM HALL appeared before me, a Notary Public in and for the above jurisdiction, this 17 day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]

Notary Public

My Commission Expires AUGUST 17, 2024





Building B
Level 2 Concours

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
	)	
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

AFFIDAVIT OF ROBIN HALL IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

I, ROBIN HALL, declare under penalty of perjury that the following is true and correct:

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

2. I was at the World Congress Center on Saturday, November 14, 2020. I was certified as a Fulton County recount observer. I observed many boxes of absentee or mail in ballots being counted. Many of the boxes of ballots had voted for 100% for Biden and 0% for Trump. The ballots appeared to be perfectly filled out as if they were pre-printed with the presidential candidate selected. They did not look like a person had filled this out at home. All of them looked alike. Me and the other observers wrote down which batch headers and box number ranges were suspicious. I have created a spreadsheet with the list of batch headers.

[SIGNATURE AND OATH ON NEXT PAGE]

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

Robin Hall

Robin Hall

STATE OF Georgia

COUNTY OF Fulton

Robin Hall appeared before me, a Notary Public in and for the above jurisdiction, this 7th day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal]

BRITTANY R PARKS
NOTARY PUBLIC
COBB COUNTY, GEORGIA
MY COMMISSION EXPIRES AUGUST 17, 2024

Brittany R. Parks

Notary Public

My Commission Expires AUGUST 17, 2024


BRITTANY R PARKS
NOTARY
PUBLIC
COBB COUNTY, GEORGIA

All Questionable Ballots Looked machine stamped

95-100% Biden for most of them

Table 1

	BATCH HEADER	BOX RANGE	BOX RANGE	BOX RANGE	BOX RANGE	BOX RANGE
		1-8				292-298
	11	9-15				421-426
	18	12-25				465-471
	26	26-34				237-243
92 Biden 7 Trump	27	26-34				455-465
	28	26-34				271-280
	32	26-34				465-471
100% Biden	33					437-445
100% Biden	34					231-236
100% Biden	35					215-221
100% Biden	36					216-224
100% Biden	37					397-403
	38	35-46	35-42			446-453
	40	35-46	35-42			
	41	35-46	35-42			
	44	35-46				
	56	56-62	54-62	73-80		
	62	59-64	58-64			
	85	85-93	79-88	79-90		
	87	85-93	79-90			
	90	85-93	79-90			
	93	85-93	88-97	94-108	91-97	
	98		94-108		98-107	
	101	99-108	94-108	102-109	98-107	
	104	99-108	94-108	102-109	98-107	
	109	108-118	109-118	102-109		
	110	110-116	108-118			
	124	114-126	124-130			
	127	124-130				
	133	129-136	137-146			
	148	147-155				
	151	147-155				
	155	147-155				
	157					
	158	158-165				
	163	158-165				
	169	166-172				
	178	171-182	173-179			
	180	171-182				
	181					
	186		203-209			
	202	202-208				
hid yellow sheet	225	225-232				
	251	244-253	264-270	250-256		

	277	271-280	277-284			
	285	285-291				
96 Biden-4 Trump	286	285-291				
96 Biden-4 Trump	289	285-291				
	309					
	318	311-323	316-323			
	319	311-323	316-323			
	336	333-341				
	341	333-341				
	350					
	354					
	358	358-364				
	389	389-396				
	390	389-396				
	392	389-396				
	428					

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO. 1:20-cv-04651-SDG**
	)	
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, 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.	)	
	)	

AFFIDAVIT OF BARBARA HARTMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

I, BARBARA HARTMAN, declare under penalty of perjury that the following is true and correct:

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

2. I was an election official auditor at the Georgia World Congress Center on Saturday, November 14, 2020 and Sunday, November 15, 2020 for the hand count of ballots from the November 3, 2020 presidential election in Fulton County, Georgia.

3. I was given several stacks of absentee ballots to count. The absentee ballots looked as though they had just come from a fresh stack. I could not observe any creases in the ballots and did not seem like they were ever folded and put into envelopes or mailed out. The marked bubbles for each candidate was filled in black ink perfectly within the circle. They looked as if they were stamped.

4. The majority of the mail in ballots that I reviewed contained suspicious black perfectly bubbled markings for Biden.

[SIGNATURE AND OATH ON NEXT PAGE]

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

Barbara Hartman
BARBARA HARTMAN

STATE OF Georgia

COUNTY OF Fulton

BARBARA HARTMAN appeared before me, a Notary Public in and for the above jurisdiction, this ___ day of November 2020, and after being duly sworn, made this Declaration, under oath.

[Affix Seal] BRITTANY R PARKS NOTARY PUBLIC COBB COUNTY, GEORGIA MY COMMISSION EXPIRES AUGUST 17, 2024

Brittany R. Parks
Notary Public

My Commission Expires AUGUST 17, 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, *et al.*,	)	
	)	
Defendants.	)	
_____	)	

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

COMES NOW Plaintiff **L. Lin Wood, Jr.** ("Plaintiff"), by and through his undersigned counsel of record, and files this Supplement to Emergency Motion for Injunctive Relief and Memorandum of Law in Support Thereof (the "Motion") filed on November 18, 2020. Exhibit Q to the Motion was inadvertently omitted with the filing of the Motion. A true and correct copy of the Affidavit of Russell James Ramsland, Jr. is attached hereto as Exhibit Q.

[signature on following page]

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

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

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CERTIFICATE OF COMPLIANCE

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

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

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

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CERTIFICATE OF SERVICE

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

Secretary of State Brad Raffensperger
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This 18th day of November, 2020.

SMITH & LISS, LLC

/s/ *Ray S. Smith, III*
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Affidavit of Russell James Ramsland, Jr.

1. My name is Russell James Ramsland, Jr., and I am a resident of Dallas County, Texas.

2. I am part of the management team of Allied Security Operations Group, LLC, (ASOG). ASOG provides a range of security services, but has a particular emphasis on cyber security, OSINT and PEN testing of networks. We employ a wide variety of cyber and cyber forensic analysts. We have patents pending in a variety of applications from novel network security applications to SCADA protection and safe browsing solutions for the dark and deep web.

3. In November 2018, ASOG analyzed audit logs for the central tabulation server of the ES&S Election Management System (EMS) for the Dallas, Texas, General Election of 2018. Our team was surprised at the enormous number of error messages that should not have been there. They numbered in the thousands, and the operator ignored and overrode all of them. This lead to various legal challenges in that election, and we provided evidence and analysis in some of them.

4. As a result, ASOG initiated an 18-month study into the major EMS providers in the United States, among which is Dominion/Premier that provides EMS services in Michigan. We did thorough background research of the literature and discovered there is quite a history from both Democrat and Republican stakeholders in the vulnerability of Dominion. The State of Texas rejected Dominion/Premier's certification for use there due to vulnerabilities. Next, we began doing PEN testing into the vulnerabilities described in the literature and confirmed for ourselves that in many cases, vulnerabilities already identified were still left open to exploit. We also noticed a striking similarity between the approach to software and EMS systems of ES&S and Dominion/Premier. This was logical since they share a common ancestry in the Diebold voting system.

5. Over the past three decades, almost all of the states have shifted from a relatively low-technology format to a high-technology format that relies heavily on a handful of private services companies. These private companies supply the hardware and software, often handle voter registrations, hold the voter records, partially manage the elections, program counting the votes and report the outcomes. Michigan is one of those states.

6. These systems contain a large number of vulnerabilities to hacking and tampering, both at the front end where Americans cast their votes, and at the back end where the votes are stored, tabulated, and reported. These vulnerabilities are well known, and experts in the field have written extensively about them.

7. Dominion/Premier ("Dominion") is a privately held United States company that provides election technologies and services to government jurisdictions. Numerous counties across the state of Michigan use the Dominion/Premier Election

Management System. The Dominion/Premier system has both options to be an electronic, paperless voting system with no permanent record of the voter's choices, paper ballot based system or hybrid of those two.

8. The Dominion/Premier Election Management System's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an attacker the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events. When a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log.

9. My colleagues and I at ASOG have studied the information that is publicly available concerning the November 3, 2020, election results. Based on the significant anomalies and red flags that we have observed, we believe there is a significant probability that election results have been manipulated within the Dominion/Premier system in Michigan. Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has observed, with reference to Dominion Voting machines, "I figured out how to make a slightly different computer program that just before the polls were closed it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." Some of those red flags are listed below. Until a thorough analysis is conducted, it will be impossible to know for certain.

10. One red flag has been seen in Antium County, Michigan. In Michigan we have seen reports of 6,000 votes in Antium County that were switched from Donald Trump to Joe Biden and were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a glitch after an update, it was recanted and later attributed to "clerical error." This change is important because if it was not due to clerical error, but due to a "glitch" emanating from an update, the system would be required to be "re-certified" according to Dominion officials. This was not done. We are skeptical of these assurances as we know firsthand this has many other plausible explanations and a full investigation of this event needs to be conducted as there are a reported 47 other counties using essentially the same system in Michigan. It is our belief (based on the information we have at this point) that the problem most likely did occur due to a glitch where an update file didn't properly synchronize the ballot barcode generation and reading portions of the system. If that is indeed the case, there is no reason to assume this would be an isolated error. This glitch would cause entire ballot uploads to read as zero in the tabulation batch, which we also observed happening in the data (provisional ballots were accepted properly but in-person ballots were being rejected (zeroed out and/or changed (flipped)). Because of the highly vulnerable nature of these systems to error and exploits, it is quite possible that some, or all of these other counties may have the same problem.

11. Another statistical red flag is evident in the number of votes cast compared to the number of voters in some precincts. A preliminary analysis using data obtained

from the Michigan Secretary of State pinpoints a statistical anomaly so far outside of every statistical norm as to be virtually impossible. There are a stunning 3,276 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics ranges from 84% to 350%. **Normalizing the Turnout Percentage of this grouping to 80%, (still way above the national average for turnout percentage), reveals 431,954 excess ballots allegedly processed.** There were at least 19 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics exceeded 100%.

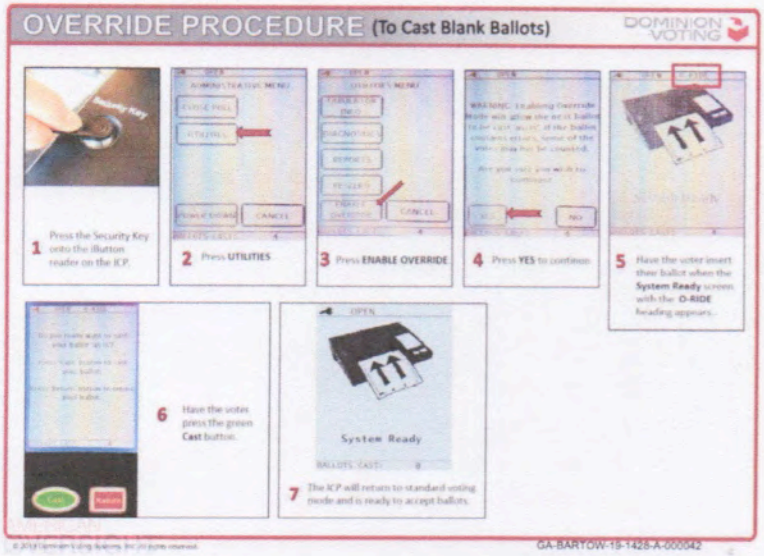
Precinct Township	Votes/SOS Est. Voters
BENVILLE TWP	350%
MONTICELLO P-1	144%
MONTICELLO P-2	138%
ALBERTVILLE P-2	138%
ALBERTVILLE P-1	136%
BRADFORD TWP.	104%
VELDT TWP.	104%
CHAMPION TWP	104%
KENT CITY	103%
WANGER TWP.	102%
KANDIYOHI TWP.	102%
LAKE LILLIAN TWP.	102%
HOKAH TWP.	102%
HOUSTON TWP.	101%
HILL RIVER TWP.	101%
SUNNYSIDE TWP.	101%
BROWNSVILLE TWP.	101%
OSLO	101%
EYOTA TWP.	101%

This pattern strongly suggests that the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as shown in the Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2. It reads in part, "**RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.**" For instance, blank ballots can be entered into the system and treated as "write-ins." Then the operator can enter an allocation of the write-ins among candidates as he wishes. The final result then awards the winner based on "points" the algorithm in the compute, not actual votes. The fact that we observed raw vote data that includes decimal places suggests strongly that this was, in fact, done. Otherwise, votes would be solely represented as whole numbers. Below is an excerpt from Dominion's direct feed to news outlets showing actual calculated votes with decimals.

state	timestamp	eevp	trump	biden	TV	BV
michigan	2020-11-04T06:54:48Z	64	0.534	0.448	1925865.66	1615707.52
michigan	2020-11-04T06:56:47Z	64	0.534	0.448	1930247.664	1619383.808
michigan	2020-11-04T06:58:47Z	64	0.534	0.448	1931413.386	1620361.792
michigan	2020-11-04T07:00:37Z	64	0.533	0.45	1941758.975	1639383.75
michigan	2020-11-04T07:01:46Z	64	0.533	0.45	1945297.562	1642371.3
michigan	2020-11-04T07:03:17Z	65	0.533	0.45	1948885.185	1645400.25

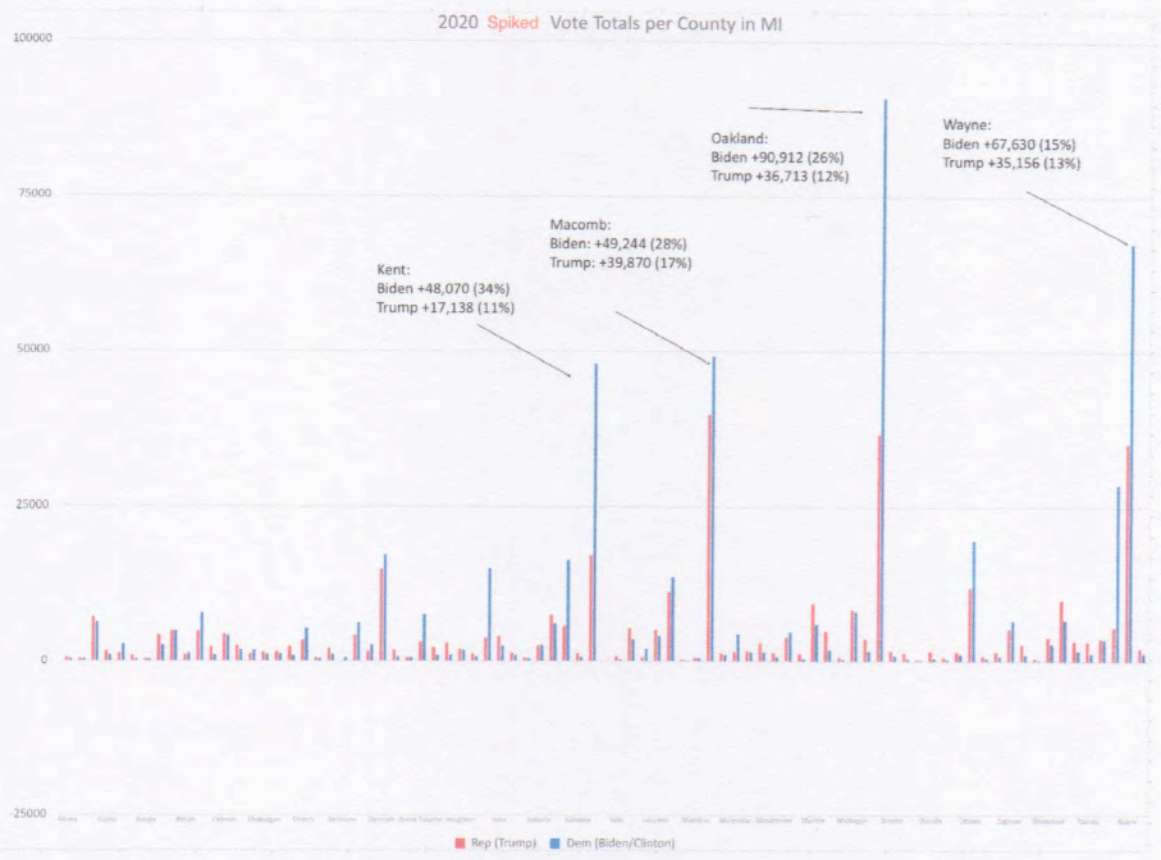
12. Yet another statistical red flag in Michigan concerns the dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased. A significant irregularity surfaces. Until the tabulated voter turnout reached approximately 83%, Trump was generally winning between 55% and 60% of every turnout point. Then, after the counting was closed at 2:00 am, the situation dramatically reversed itself, starting with a series of impossible spikes shortly after counting was supposed to have stopped. The several spikes cast solely for Biden could easily be produced in the Dominion system by pre-loading batches of blank ballots in files such as Write-Ins, then casting them all for Biden using the Override Procedure (to cast Write-In ballots) that is available to the operator of the system. A few batches of blank ballots could easily produce a reversal this extreme, a reversal that is almost as statistically difficult to explain as is the impossibility of the votes cast to number of voters described in Paragraph 11 above.

Dominion also has a "Blank Ballot Override" function. Essentially a save for later bucket that can be manually populated later.



13. The final red flag is perhaps the greatest. Something occurred in Michigan that is physically impossible, indicating the results were manipulated on election night within the EMS. The event as reflected in the data are the 4 spikes totaling 384,733

ballots allegedly processed in a combined interval of only 2 hour and 38 minutes. This is physically impossible given the equipment available at the 4 reference locations (precincts/townships) we looked at for processing ballots, and cross referencing that with both the time it took at each location and the performance specifications we obtained using the serial numbers of the scanning devices used. (Model DRM16011 - 60/min. without accounting for paper jams, replacement cover sheets or loading time, so we assume 2,000 ballots/hr. in field conditions which is probably generous). This calculation yields a sum of 94,867 ballots as the maximum number of ballots that could be processed. And while it should be noted that in the event of a jam and the counter is not reset, the ballots can be run through again and effectively duplicated, this would not alleviate the impossibility of this event because duplicated ballots still require processing time. The existence of the spike is strongly indicative of a manual adjustment either by the operator of the system (see paragraph 12 above) or an attack by outside actors. **In any event, there were 289,866 more ballots processed in the time available for processing in four precincts/townships, than there was capacity.** A look at the graph below makes clear the This is not surprising because the system is highly vulnerable to a manual change in the ballot totals as observed here.



14. At ASOG, we believe that these statistical anomalies and impossibilities together create a wholly unacceptable level of doubt as to the validity of the vote count in Michigan, and in Wayne County, in particular.

15. If ASOG, or any other team of experts with the equivalent qualifications and experience, could be permitted to analyze the raw data produced during the course of the election, as well as the audit logs that the Dominion system generates, we would likely be able to determine whether or not any fraudulent manipulation of the election results occurred within the Dominion Election Management System. These audit logs are in the possession of Dominion.

16. However, there are several deficiencies with the Dominion audit logs: (1) because the logs are "voluntary" logs, they do not enforce the logging of all actions; (2) the logs can be altered by the people who are operating the system; and (3) the logs are not synchronized. Because of these deficiencies, it is of critical importance that all of the daily full records of raw data produced during every step of the election process also be made available for analysis (in addition to the audit logs), so that gaps in the audit logs may be bridged to the best extent possible. This raw data, which is in Dominion's possession, should be individual and cumulative.

17. Wayne County uses Dominion Equipment, where 46 out of 47 precincts/townships display a highly unlikely 96%+ as the number of votes cast, using the Secretary of State's number of voters in the precinct/township; and 25 of those 47 precincts/townships show 100% turnout.

Precinct Township	Votes/SOS Est. Voters
SPRUCE GROVE TWP	100%
ATLANTA TWP	100%
RUNEBERG TWP	100%
WOLF LAKE TWP	100%
HEIGHT OF LAND TWP	100%
EAGLE VIEW TWP	100%
WOLF LAKE	100%
SHELL LAKE TWP	100%
SAVANNAH TWP	100%
CUBA TWP	100%
FOREST TWP	100%
RICEVILLE TWP	100%
WALWORTH TWP	100%
OGEMA	100%
BURLINGTON TWP	100%
RICHWOOD TWP	100%
AUDUBON	100%
LAKE EUNICE TWP	100%
OSAGE TWP	100%
DETROIT LAKES W2 P1	100%
CORMORANT TWP	100%
LAKE VIEW TWP	100%

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

18. In order to analyze the data and determine the cause of these anomalies, ASOG would need Administrator logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications. The following would be required from Premier:

XML and XSLT logs for the:

- Tabulators
- Result Pair Resolution
- Result Files
- Provisional Votes
- RTM Logs
- Ranked Profiles and entire change history Audit Trail logs
- Rejected Ballots Report by Reason Code

Identity of everyone accessing the domain name Admin.enr.dominionvoting.com and

- Windows software log,
- Windows event log and
- Windows security log of the server itself that is hosted at Admin.enr.dominionvoting.com.
- Access logs to their full extent and DNS logs.
- Internal admin.enr.dominionvoting.com logs
- Ranked Contests and entire change history Audit Trail logs

FTP Transfer Points Log

19. In order to evaluate the raw data of the election, the following records would be required from Dominion.

- Daily and Cumulative Voter Records for those who voted with sufficient definition to determine:
  - Voters name and Registered Voting address
  - Address to for correspondence
  - D.O.B.
  - Voter ID number
  - How Voted (mail, in-person early, in person Election Day)
  - Where Voted (if applicable)

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

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  - Voters name and Registered Voting address
  - Address to for correspondence
  - D.O.B.
  - Voter ID number
  - How Voted (mail, in-person early, in person Election Day)
  - Where Voted (if applicable)

Date voted (if applicable)
Party affiliation (if recorded)
Ballot by mail Request Date
Ballot by mail sent date
Ballot by mail voted date (if applicable)
Ballet cancelled date (if applicable)

- .RAW, HTML, XHTML and SVG files (Ballot Images)

20. Any removable media (such as thumbdrives, USB, memory cards, PCMIA cards, etc.) used to transfer ballots to central counting from voting locations.

21. Access or control of ALL routers, tabulators or combinations thereof (some routers are inside the tabulator case) in order to garner the system logs. At the same time, the public IP of the router should be obtained.

22. Any key, authorization key & yubikey

Further affiant sayeth naught.

Russell James Ramsland, Jr. 11/17/2020
Date

Sworn before me on _____

Notary public:

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

L. Lin Wood, Jr., Plaintiff, v. Brad Raffensperger, in his official capacity as Secretary of the State of Georgia, et al., Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04651-SDG

MOTION TO INTERVENE AND INCORPORATED BRIEF IN SUPPORT

COMES NOW THE DEMOCRATIC PARTY OF GEORGIA, INC., the DSCC, and the DCCC (collectively, the "Political Party Committees") by and through their undersigned counsel of record, and file this *Motion to Intervene and Incorporated Brief in Support* in the above-referenced matter. Intervention is appropriate under Federal Rule of Civil Procedure 24(a) and (b) for the following reasons:

I. INTRODUCTION

On September 15, 2020, local election officials began mailing absentee ballots for the November 3 general election. On October 12, Georgia voters began casting ballots in person for the same. As of November 3, nearly *five million*

Georgians had voted, including over one million by absentee ballot. To ensure the accuracy of the election, on November 11, 2020, Republican Secretary of State Brad Raffensperger ("the Secretary") ordered a "full by-hand recount in each county" of the presidential race.[1] Many counties, including Fulton County, have finished their recount through the tremendous efforts of hundreds of volunteers working multiple shifts.[2]

Plaintiff's Amended Complaint—filed thirteen days *after* the general election concluded—seeks to invalidate at least one million Georgians' votes, throw out the results of the recount statewide and order yet a third tallying of Georgia ballots, and implement by judicial fiat sweeping, illegal, one-party oversight of Georgia's statutory absentee voting process. Plaintiff asks the Court to do so under the guise of a constitutional challenge to the validity of a March 6, 2020, settlement agreement between the Secretary, the State Election Board (the "Board"), and the Political Party Committees (the "Settlement Agreement"), that was entered into in a separate

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[1] Quinn Scanlan, *Georgia's top election official announces there will be 'full by-hand recount in each county' for presidential race*, ABC News (November 11, 2020), https://abcnews.go.com/Politics/georgias-top-election-official-announces-full-hand-recount/story?id=74146620.

[2] Audrey Washington, *Fulton, DeKalb counties finish ballot recount, officials say*, WSB-TV 2 (November 15, 2020), https://www.wsbtv.com/news/politics/fulton-county-has-finished-ballot-recount-officials say/GQ4QUCZDEVEBPMUUFDFEIYOXHI/.

federal case in this district, *Democratic Party of Georgia v. Raffensperger*, Civil Action File No. 1:19-cv-5028-WMR ("*DPG v. Raffensperger*"), which was then pending before Judge William M. Ray, II, as well as unsupported allegations that Republican monitors were excluded from observing the recount in Fulton County. None of this relief is even remotely warranted.

First, the Settlement Agreement was not a radical revision of Georgia's elections laws as Plaintiff insinuates. In fact, it did not change the law in Georgia at all. Rather, it clarified the standards for signature matching and cure on absentee ballots and memorialized the parties' agreement that rules and regulations should be adopted to give local authorities clear and uniform guidance across the state. And, in any event, the Settlement Agreement in *DPG v. Raffensperger* was entered into on March 6, more than eight full months ago. Following that agreement, the Board went through a public notice and comment period that resulted in a new notice and rule, and the Secretary promulgated new guidance for signature matching pursuant to his authority under Georgia law, both of which were firmly in place months before the first absentee ballot was cast in the general election.

Yet, Plaintiff inexcusably waited—until after the election, which was administered in accordance with the guidance resulting from the Settlement Agreement; until Georgia's voters cast their ballots and had their ballots counted;

and until the results of the election were clear—before launching this collateral attack. And though Plaintiff takes issue with every absentee ballot cast in the State, he fails to identify even a *single* absentee ballot he claims was wrongly counted. Plaintiff's lawsuit is as meritless as it is late.

Second, there is no basis for Plaintiff's request that the results of the recount statewide be disregarded and a new recount ordered based on allegations that two Republican election monitors—neither of whom are parties to this case—were not able to adequately observe the recount in Fulton County on a particular hour of a particular day. Instead, the whole effort appears to be little more than a transparent effort to delay the certification of the election.

The Political Party Committees—who were parties to the underlying lawsuit, signatories to the Settlement Agreement, and whose candidates will be impacted if the election is not certified or the results are discarded—have an undeniable interest in this litigation and should be granted intervention.

II. BACKGROUND

On November 6, 2019, the Political Party Committees sued the Secretary and members of the Board, challenging Georgia's signature matching laws under the First and Fourteenth Amendments to the U.S. Constitution. The Political Party Committees asserted that Georgia's arbitrary and unreliable procedures for

comparing absentee ballot signatures and rejecting absentee ballots unconstitutionally deprived Georgians of their right to vote. *DPG v. Raffensperger*, No. 1:19-cv-5028 (N.D. Ga.) (ECF Nos. 1, 30) (complaint and amended complaint). After several weeks of arms-length negotiations, the parties entered into the Settlement Agreement on March 6, 2020, which was publicly filed with the court that day.

Throughout the negotiations, as memorialized in the Settlement Agreement, both the Secretary and Board maintained that Georgia's laws and processes were constitutional. They did not agree to any modification of Georgia's elections statutes. Rather, they agreed to initiate rulemaking and issue guidance to help ensure uniform and fair treatment of voters *within* the existing statutory framework. Thus, the Secretary agreed to issue official guidance intended to increase uniformity in processing absentee ballot signatures, and the Board agreed to promulgate and enforce a more robust voter notification and cure process. Neither step was unusual: The Secretary routinely offers such guidance and one of the functions of the Board is to promulgate and enforce rules regulating the conduct of Georgia elections. The Office of the Georgia Attorney General and private counsel (who regularly represents both the Georgia Republican Party and prominent Republican leaders)

represented the Secretary and the other Board members during the negotiations and personally signed the Settlement Agreement.

For its part, the Board implemented the Settlement Agreement by promulgating State Election Board Rule 183-1-14-.13 (the "Notice Rule"). *See* O.C.G.A. § 50-13-4. Under the Notice Rule, counties contact voters about rejected mail ballots within three business days after receipt of the absentee ballot and within one business day for ballots received within eleven days of election day. Notably, under Georgia law, the Board could only implement and enforce this type of rule after an official rulemaking. And that is precisely what occurred: over the course of several months, beginning in December 2019 (before the Settlement Agreement was finalized), and in accordance with the Georgia Administrative Procedures Act, the Board gave notice about the intended rulemaking, accepted comments from the public, and, only after that process was complete, implemented the new Notice Rule.[3] The Notice Rule was initially adopted on February 28, 2020, and went into effect on March 23. The rule was subsequently amended subject to a *second* round

[3] *See* Georgia State Elections Board, *Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing* (Dec. 19, 2019) (scheduling public hearing for January 22, 2020).

of public rulemaking.[4] In fact, the rule that was finally adopted after the amendment differed slightly from the rule in the Settlement Agreement, confirming that the rulemaking process was far from a rubberstamp of the Settlement Agreement. *See* Ga. Comp. R. & Regs. 183-1-14-.13 (Amended March 22, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (May 21, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (Aug. 31, 2020).[5]

The Secretary in turn issued the procedures for the signature matching process at issue here—i.e., review of allegedly-mismatched signatures by two additional registrars, deputy registrars, and absentee ballots clerk—on May 1. These procedures were issued by the Secretary via an Official Election Bulletin ("OEB"). OEBs are election guidance documents that provide technical guidance to local election administrators regarding new rules, court orders, and other binding law to ensure consistency in the administration of elections statewide. The OEB in question accords with O.C.G.A. §§ 21-2-31 and 21-2-300(a), which empower the Board and

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[4] Georgia State Elections Board, *Notice of Intent to Post a Rule of the State Elections Board, Chapter 183-1-14 and Notice of Public Hearing* (Mar. 5, 2020), https://sos.ga.gov/admin/files/SEB%20Rule%20183.1.14.13%20Reposted%20Rules%20RE%20SEB%202.28.2020.pdf (scheduling public hearing for April 15, 2020).

[5] The amended Notice Rule effective August 31, 2020, corrected a scrivener's error in the amended Notice Rule effective May 21, 2020, that altered the event triggering the obligation of the board of registrars or absentee ballot clerk to notify the elector whose timely-submitted absentee ballot was rejected.

the Secretary in his role as the chief elections official and Chair of the Board, to obtain uniformity in the practices and proceedings of local elections officials such as superintendents and registrars in administering Georgia's Election Code. *See also* O.C.G.A. § 21-2-50(a), (b); *Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011).

The OEB required counties to continue to verify absentee voters' identities by comparing signatures as required by Georgia law. Chris Harvey, Official Election Bulletin (May 1, 2020). All of these statewide changes—the Settlement Agreement, rulemaking, the Notice Rule, and process changes—were widely publicized. *See supra* at n.2-4. All were in place for the June 9 primary election, August 11 primary runoff Election, and November 3 general election. Georgia rejected absentee ballots due to purported signature mismatches across those elections.

On November 3, following nearly a month and a half of absentee early voting, the general election took place. Votes were tallied across the state over the following week, and on November 11 the Secretary announced that a statewide, hand recount of the presidential election would take place. Many counties began the recount the next day, and all counties were instructed to begin by 9:00 a.m. November 13. To date, 144 counties have completed their recount. Plaintiff's Amended Complaint alleges that members of the public—who are not parties to this suit—were unable to watch the State's hand recount in Fulton County on particular days and times.

Plaintiff does not argue that *he* was designated as a monitor or that he attempted to observe any counting, nor does he argue that other Republican observers were unable to observe the State's hand recount in Fulton County at any time.

Plaintiff filed his Complaint on November 13 challenging the Settlement Agreement, more than *eight months* after the Agreement was finalized, and amended the Complaint 13 days after nearly five million Georgians cast their votes in the general election and the results of the election became clear for all offices, 5 days after the hand recount began, and 32 days after election officials started separating the absentee envelopes subject to the signature matching procedures from the enclosed ballots. Indeed, the signature matching process for over one million absentee ballots cast in Georgia for the 2020 general election has long since concluded and cannot be recreated. Georgia's statutory signature matching process happens *before* ballots are separated from their container envelopes containing the voter's signature and, to protect the secrecy of those ballots, once the signature is accepted and local election officials otherwise deem the ballot valid, the envelopes and ballots are separated and cannot be subsequently re-married. *See* O.C.G.A. § 21-2-386(a)(2)-(3); Ga. Comp. R. & Regs. 183-1-14-0.9-.15(1), (4) (emergency rule authorizing county election superintendents "to open the outer envelope of accepted absentee ballots, [and to] remove the contents including the absentee ballot" "in a

manner that ensures that the contents of the envelope cannot be matched back to the outer envelope" "[b]eginning at 8:00 a.m. on the third Monday prior to Election Day").

Plaintiff is clearly aware of this reality and thus suggests that, instead of discarding only "defective ballots," the remedy should be to discard either *every single* ballot cast in Georgia or at least *every single absentee* ballot cast statewide, to throw out the results of the recount statewide and order a new recount, and to wholly rewrite Georgia's absentee voting laws. Such relief is unwarranted, unprecedented, and would disenfranchise millions of lawful voters. Plaintiff filed an Amended Complaint on November 16 to include a claim that the hand recount should be redone and to seek specific remedies on the part of the Republican Party, which is *not* a party to this lawsuit.

The Political Party Committees would have a legally protectable interest in intervening to prevent that outcome and protect their Democratic voters and candidates even if they were not parties to the Settlement Agreement that forms the purported basis of Plaintiff's challenge here. But they were also parties to the underlying *DPG v. Raffensperger* litigation and Settlement Agreement. Accordingly, they respectfully move this Court for an Order allowing them to intervene as of right or, in the alternative, permissively.

III. ARGUMENT

A. This Court should grant the motion to intervene as of right.

The Political Party Committees qualify for intervention as of right. Intervention as of right must be granted when (1) the motion to intervene is timely; (2) the proposed intervenors possess an interest in the subject matter of the action; (3) denial of the motion to intervene would affect or impair the proposed intervenors' ability to protect their interests; and (4) the proposed intervenor's interests are not adequately represented by the existing parties to the lawsuit. Fed. R. Civ. P. 24(a)(2); *Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d 1242, 1250 (11th Cir. 2002). The Political Party Committees satisfy each of these factors.

1. The motion to intervene is timely.

The Political Party Committees' motion is timely. Plaintiff filed the Complaint on November 13, 2020, and the Amended Complaint on November 16. *See* Compl.; *see also* Am. Compl. This motion follows two business days after the filing of the Amended Complaint, before any significant action has occurred in the case. *See* Am. Compl. As there has been no delay, there is no risk of prejudice. *See Chiles v. Thornburgh,* 865 F.2d 1197, 1213 (11th Cir. 1989).

Additionally, as discussed below, the Political Party Committees were signatories to the Settlement Agreement that Plaintiff's challenge. As such, they will

suffer prejudice if their request to intervene is denied because they will be unable to protect their own interests in the Settlement Agreement or that of their constituents or candidates. *Id*. (analyzing whether a motion to intervene is timely and considering "the extent of prejudice to the [proposed intervenors] if their motion is denied"). They will also suffer severe prejudice if, as Plaintiff requests, Republican monitors are allowed to engage in signature matching and to specifically observe signature verification on absentee ballots, processes that are reserved for trained county officials and do not, and should not, involve any political party. *See* Am. Compl. at Prayer for Relief ¶¶ (d)(1)-(6).

2. The Political Party Committees have a strong interest in this litigation.

The Political Party Committees have significant and cognizable interests in intervening in this case.

As to the Settlement Agreement claims, the Political Party Committees are quintessential "real parties in interest in the transaction which is the subject of the proceeding," *Chiles*, 865 F.2d at 1214. A declaration that the Settlement Agreement is unconstitutional will indisputably impede the ability of the Political Party Committees to realize their interest in that agreement. *See Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081-82 (8th Cir. 1999) (finding interest requirement "easily satisfie[d]" where "[t]he disposition of the lawsuit . . . may

require resolution of legal and factual issues bearing on the validity of [] agreements" in which proposed intervenor had interests); *see also Georgia v. U.S. Army Corps of Eng'rs*, 302 F.3d at 1258 (granting intervention where proposed intervenor had a contractual interest in the dispute and "[b]ecause a final ruling in this case may adversely impact [proposed intervenor's] ongoing lawsuit against" defendant); *In re Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1246 (11th Cir. 2006) (intervention is proper where proposed intervenor "anchor[s] its request in the dispute giving rise to the pending lawsuit ... [and] demonstrate[s] 'an interest relating to the property or transaction which is the subject of the action.'" (citation and emphasis omitted)).

The Political Party Committees also have a clear interest in ensuring that eligible Democratic voters are not disenfranchised as the result of Plaintiff's meritless and untimely attack on the results of the election and that their candidates' results are not disturbed. Plaintiff asks this Court to prevent Defendants from certifying the results of the 2020 general election to the detriment of *all* Georgia voters or, in the alternative, to disenfranchise at least the one million primarily Democratic Georgia voters who cast their ballots by mail. Am. Compl. at 37-39. Putting aside the fact that Plaintiff does not identify a *single* absentee ballot he claims was wrongly counted as a result of the Settlement Agreement, should Plaintiff be

granted his requested relief, the Political Party Committees' supported candidates would lose lawfully cast votes and their members would be disenfranchised.

"The right to vote includes the right to have the ballot counted," *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964), and courts have repeatedly held that where proposed relief carries with it the prospect of disenfranchising a political party's members, the party has a legally cognizable interest at stake. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd*., 553 U.S. 181, 189 n.7 (2008) (agreeing with the unanimous view of the Seventh Circuit that the Indiana Democratic Party had standing to challenge a voter identification law that risked disenfranchising its members); *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012) (Ohio Democratic Party allowed to intervene in case where challenged practice would lead to disenfranchisement of its voters); *Stoddard v. Winfrey*, No. 20-014604-cz (Mich. Cir. Ct. Nov. 6, 2020) (granting intervention to Democratic National Committee in a lawsuit seeking to stop counting ballots in Detroit); Order, *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-cv-2078 (M.D. Pa. Nov. 12, 2020), ECF No. 72 (granting intervention to Democratic National Committee in lawsuit seeking to invalidate ballots in Pennsylvania); Order, *Constantino v. City of*

Detroit, No. 20-014789-AW (Mich. Cir. Ct. Nov. 13, 2020) (granting Michigan Democratic Party's motion to intervene). [6]

Moreover, the Political Party Committees have an obvious interest in a case where Plaintiff seeks individualized, special, and unprecedent treatment for *Republican* monitors and observers only. On its face, Plaintiff's Amended Complaint seeks *only* Republican monitors for an audit or recount that he claims

[6] While standing is not a separate consideration on a motion to intervene, courts have consistently recognized that political party committees have standing to advance claims to avoid the disenfranchisement of their members, thus recognizing their legitimate and cognizable interest in such claims. *See e.g.*, *Democratic Party of Georgia, Inc. v. Crittenden*, 347 F. Supp. 3d 1324, 1337 (N.D. Ga. 2018) (holding Democratic Party of Georgia had standing to sue on behalf of its members to challenge the state's rejection of absentee ballots); *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573-74 (6th Cir. 2004) (holding Ohio Democratic Party, among other local party organizations, had standing to sue on behalf of members who would vote in the upcoming election and whose provisional ballots may be rejected); *Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073, 1079 (N.D. Fla. 2004) (holding Florida Democratic Party "has standing to assert, at least, the rights of its members who will vote in the November 2004 election"); *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1254 (N.D. Fla. 2016) (holding Florida Democratic Party had standing to assert the rights of voters "who intended to register as Democrats and will be barred from voting" given the state's closure of voter registration); *Texas Democratic Party et al. v. Hughs*, No. SA-20-CV-08-OG, 2020 WL 4218227, at *4-5 (W.D. Tex. July 22, 2020) (at the motion to dismiss stage, holding Texas Democratic Party, DCCC, and DSCC had adequately alleged associational standing on behalf of their members who will be registering to vote); *DSCC and DCCC v. Simon*, No. 62-CV-20-585, Dkt. 83 at *18 (Minn. Dist. Ct. July 28, 2020) (at motion to dismiss stage, holding DSCC and DCCC had adequately pled associational standing on behalf of their "members, constituents, canvassers, and volunteers" who wished to engage in voter assistance).

should start over entirely, and perhaps that such monitors actually be involved in the counting. *See* Am. Compl. at Prayer for Relief ¶¶ (d)(1)-(6). Plaintiff also asks that for future elections only Republican monitors be involved in signature matching and verification, *including doing it themselves*. *Id* ¶¶ (d)(6). Such a process would be a breathtaking insertion of partisanship in a process not only reserved for county officials but intended to be done in a way to preserve the secrecy of votes and would seriously risk the disenfranchisement of the members and constituents of Political Party Committees.

While these interests are sufficient for intervention, the Political Party Committees have a strong interest in addressing Plaintiff's claim that the audit—which is nearly complete—restart entirely because of threadbare allegations speculating that Republican monitors were excluded from the process in one county on a particular day and time. Such a result would likely put timely certification of the election at risk, and Political Party Committees whose candidate is the projected winner in Georgia have an interest in ensuring further delay of that certification does not occur. *See Texas Democratic Party v. Benkiser*, 459 F.3d 582, 588 (5th Cir. 2006) ("[A]fter the primary election, a candidate steps into the shoes of his party, and their interests are identical.").

Accordingly, the Political Party Committees clearly have an interest in intervening in this matter.

3. Disposition of this matter would impair the Political Party Committees' ability to protect their interests as a practical matter.

The Political Party Committees' legally-cognizable interests will also be impaired by the disposition of this lawsuit if intervention is not granted.

First, as noted above, Plaintiff's relief would overturn an agreement to which Political Party Committees are parties, impairing their ability to realize their interest in that agreement. *See supra* at 12-13.

Second, the Political Party Committees have an interest in preventing the infringement of millions of their members' constitutional right to vote as well as harm to their supported candidates. Plaintiff also seeks to halt the certification process, which threatens the right to vote of the Political Party Committees' members. "[T]o refuse to count and return the vote as cast [is] as much an infringement of that personal right as to exclude the voter from the polling place." *United States v. Saylor*, 322 U.S. 385, 387-88 (1944).

The disruptive and disenfranchising effects of Plaintiffs' action, including a demand to restart the *hand counting of over five million ballots* or to simply cast out these ballots altogether, would also require the Political Party Committees to divert resources to work several times harder to achieve their mission. In particular, the

hand counting of each ballot has already required enormous resources from the Political Party Committees, especially DPG, to recruit, train, organize, and deploy both monitors and public observers in all of Georgia's 159 counties. Doing it again would continue to require significant resources that could be focused elsewhere. *See, e.g.*, *Ne. Ohio Coal. for Homeless v. Husted*, 837 F.3d 612, 624 (6th Cir. 2016) (finding concrete, particularized harm where organization had to "redirect its focus" and divert its "limited resources" due to election laws); *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007) (concluding that electoral change "injure[d] the Democratic Party by compelling the party to devote resources" that it would not have needed to devote absent new law), *aff'd*, 553 U.S. 181 (2008); *Democratic Nat'l Comm. v. Reagan*, 329 F. Supp. 3d 824, 841 (D. Ariz. 2018) (finding standing where law "require[d] Democratic organizations … to retool their [get-out-the-vote] strategies and divert [] resources"), *rev'd on other grounds sub nom. Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989 (9th Cir. 2020) (en banc); *see also Issa v. Newsom*, No. 20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (June 10, 2020) (granting intervention and citing this protected interest). Moreover, the Political Party Committees have spent millions of dollars getting out the vote and supporting their candidates in the 2020 general election; upending the results of that

election by baselessly discarding all or at least 20% of all votes cast will undermine and undo all of that work and investment.

Finally, Plaintiff's expansive requested relief—from halting certification of the election to inserting Republican monitors (and only Republican monitors) into signature verification and matching—would threaten the Political Party Committees' candidates' electoral prospects. In circumstances where political parties have faced similar risks of harm to their electoral prospects and mission, courts have routinely granted intervention. *E.g.*, Order, *Democratic Party of Ga., Inc. v. Crittenden*, No. 18-cv-5181 (N.D. Ga. Nov. 14, 2018), ECF No. 40 (granting intervention to political party in voting rights lawsuit); Order, *Parnell v. Allegheny Bd. of Elections*, No. 20-cv-01570 (W.D. Pa. Oct. 22, 2020), ECF No. 34 (granting intervention to DCCC in lawsuit regarding processing of ballots); Order, *Paher v. Cegavske*, No. 20-cv-00243-MMD-WGC, 2020 WL 2042365, at *4 (D. Nev. Apr. 28, 2020), ECF No. 39 (granting DNC intervention in election case brought by conservative interest group); *Donald J. Trump for President, Inc. v. Murphy*, No. 20-cv-10753 (MAS) (ZNQ), 2020 WL 5229209, at *1 (D. N.J. Sept. 01, 2020) (granting DCCC intervention in lawsuit by Republican candidate and party entities); *Cook Cnty. Republican Party v. Pritzker*, No. 20-cv-4676 (N.D. Ill. Aug. 28, 2020), ECF No. 37 (granting DCCC intervention in lawsuit by Republican party entity);

Issa, 2020 WL 3074351, at *3 (granting DCCC and California Democratic Party intervention in lawsuit by Republican congressional candidate); Order, *Donald J. Trump for President v. Bullock*, No. 20-cv-66 (D. Mont. Sept. 08, 2020), ECF No. 35 (granting DCCC, DSCC, and Montana Democratic Party intervention in lawsuit by four Republican party entities); *cf. DCCC v. Ziriax*, No. 20-CV-211-JED-JFJ, 2020 WL 5569576, at *2 (N.D. Okla. Sept. 17, 2020) ("DCCC and the Democratic candidates it supports . . . have an interest in ensuring that Democratic voters in Oklahoma have an opportunity to express their will regarding Democratic Party candidates running for elections."); *Owen v. Mulligan*, 640 F.2d 1130, 1132 (9th Cir. 1981) (holding "the potential loss of an election" is sufficient injury to confer Article III standing).

Here, the requested remedy and harm is extreme—Plaintiff seeks relief that would not just burden the Political Party Committees' voters but would completely disenfranchise them.

4. The Political Party Committees' interests are not adequately represented by the existing parties.

The Political Party Committees' interests are not adequately represented by the Defendants. First and perhaps most importantly, Defendants were the Political Party Committees' adversaries in the Settlement Agreement. The Settlement Agreement was the product of a lawsuit brought by Political Party Committees

against the Secretary, State Elections Board members, and others and it was the result of arms-length negotiations and a balancing of the parties' distinct interests. Where a "case is disposed of by settlement rather than by litigation, what the state perceives as being in its interest may diverge substantially from" the interests of proposed intervenors. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 1001 (8th Cir. 1993). As one court recently explained while granting intervention under similar circumstances:

> Although Defendants and the Proposed Intervenors fall on the same side of the [present] dispute, Defendants' interests in the implementation of the [challenged law] differ from those of the Proposed Intervenors. While Defendants' arguments turn on their inherent authority as state executives and their responsibility to properly administer election laws, the Proposed Intervenors are concerned with ensuring their party members and the voters they represent have the opportunity to vote in the upcoming federal election … and allocating their limited resources to inform voters about the election procedures. As a result, the parties' interests are neither "identical" nor "the same."

Issa, 2020 WL 3074351, at *3 (citation omitted). Such is the case here.

Second, while the Secretary has an undeniable interest in defending his inherent powers as a state executive, the Political Party Committees have different focuses: ensuring that they and their members' fundamental rights are protected, and that their members' eligible and legally cast votes are counted. *See Paher*, 2020 WL

2042365, at *3 (concluding that "Proposed Intervenors … have demonstrated entitlement to intervene as a matter of right" where they "may present arguments about the need to safeguard [the] right to vote that are distinct from Defendants' arguments").

Although a would-be intervenor has some burden to establish that its interest is not adequately protected by the existing parties to the action, "the burden of making that showing should be treated as minimal"; it is sufficient "if the applicant shows that representation of his interest 'may be' inadequate." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n. 10 (1972) (citing 3B J. Moore, Federal Practice 24.09—1 (4) (1969)); *Chiles*, 865 F.2d at 1214. Especially where one of the parties to the suit is a government entity whose "views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," courts have found that "the burden [of establishing inadequacy of representation] is comparatively light." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New Eng., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992), and *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)); *see also Meek v. Metro. Dade Cnty., Fla.,* 985 F.2d 1471, 1478 (11th Cir. 1993), *abrogated on other grounds by Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324 (11th Cir. 2007) ("Any doubt concerning

the propriety of allowing intervention should be resolved in favor of the proposed intervenors because it allows the court to resolve all related disputes in a single action.").

Because the Political Party Committees cannot rely on the Secretary or anyone else in the litigation to protect these distinct, parochial interests, they have met their minimal burden here and satisfied the fourth requirement and are entitled to intervention as of right under Rule 24(a)(2). *See Paher*, 2020 WL 2042365, at *3; *Issa*, 2020 WL 3074351, at *4.

B. Proposed Intervenors are also entitled to permissive intervention.

If the Court does not grant intervention as a matter of right, the Political Party Committees respectfully request that the Court exercise its discretion to allow it to intervene under Rule 24(b). The Court has broad discretion to grant a motion for permissive intervention when it determines that: (1) the proposed intervenor's claim or defense and the main action have a question of law or fact in common, and (2) the intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See* Fed. R. Civ. P. 24(b)(1)(B) and (b)(3); *Chiles*, 865 F.2d at 1213; *Ga. Aquarium, Inc. v. Pritzker*, 309 F.R.D. 680, 690 (N.D. Ga. 2014). Even where courts find intervention as of right may be denied, permissive intervention may nonetheless be proper or warranted. Moreover, "the claim or defense clause of Rule

24(b)(2) is generally given a liberal construction." *Id*. The Political Party Committees easily meet these requirements.

First, the Political Party Committees' claims and defenses will inevitably raise common questions of law and fact because they seek to uphold the very Settlement Agreement that Plaintiff seeks to overturn, defend the constitutional right to vote of all the eligible voters who cast valid ballots in the November 3 general election, and ensure that any future signature verification or matching process does not become a partisan process or threaten the secrecy of the vote. *Wise v. N. Carolina State Bd. Elections*, No. 20-cv-912 (M.D.N.C. Oct 8, 2020) (ECF No. 67) (finding permissive intervention must be granted when proposed intervenors were parties to the agreement at issue); *see also Franconia Minerals (US) LLC v. United States*, 319 F.R.D. 261, 268 (D. Minn. 2017) ("Thus, applicant['s] claims and the main action obviously share many common questions of law and perhaps of fact."); *see also supra* at 12-13.

Second, for the reasons set forth above, the motion to intervene is timely, and given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. The Political Party Committees are prepared to proceed in accordance with the schedule this Court determines, and

intervention will only serve to contribute to the complete development of the factual and legal issues before the Court.

IV. CONCLUSION

For these reasons, the Political Party Committees respectfully request that the Court grant its motion to intervene as of right and, in the alternative, as permissive intervention.

Dated: November 18, 2020.

Respectfully submitted,

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**Pro Hac Vice Application Pending*

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

L. Lin Wood, Jr., Plaintiff, v. Brad Raffensperger, in his official capacity as Secretary of the State of Georgia, et al., Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04651-SDG

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: November 18, 2020.

Adam M. Sparks
Counsel for Proposed Intervenor-Defendants

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

L. Lin Wood, Jr., Plaintiff, v. Brad Raffensperger, in his official capacity as Secretary of the State of Georgia, et al., Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04651-SDG

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. Counsel will also send a copy by email to counsel of record for Defendants.

Dated: November 18, 2020.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
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L. Lin Wood, Jr., Plaintiff, v. Brad Raffensperger, in his official capacity as Secretary of the State of Georgia, et al., Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04651-SDG

PROPOSED INTERVENORS' PROPOSED MOTION TO DISMISS

COME NOW THE DEMOCRATIC PARTY OF GEORGIA, INC., the DSCC, and the DCCC (collectively, the "Political Party Committees"), by and through their attorneys, and file this Proposed Motion to Dismiss pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6).

The basis for the motion is more fully set forth in the Political Party Committees' accompanying Brief in Support of Proposed Motion to Dismiss.

[**signature block on following page**]

Dated: November 18, 2020.

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PROPOSED INTERVENORS' BRIEF IN SUPPORT OF PROPOSED MOTION TO DISMISS

I. INTRODUCTION

On September 15, 2020, election officials began mailing absentee ballots for the November 3 general election, and by election day, nearly *five million* Georgians had voted. To ensure the accuracy of the election, on November 11, 2020, Secretary of State Brad Raffensperger ("the Secretary") ordered a "full by-hand recount in each county" of the presidential race.[1] Many counties, including Fulton County, have finished their recount through the tremendous efforts of hundreds of volunteers

[1] Quinn Scanlan, *Georgia's top election official announces there will be 'full by-hand recount in each county' for presidential race*, ABC News (November 11, 2020), https://abcnews.go.com/Politics/georgias-top-election-official-announces-full-hand-recount/story?id=74146620.

working multiple shifts.[2] Nonetheless, Plaintiff's Amended Complaint—filed thirteen days *after* the general election concluded—invites the Court to invalidate at least one million Georgians' votes, throw out the results of the recount statewide and order yet a third tallying of Georgia's ballots, and implement by judicial fiat sweeping, unconstitutional, one-party oversight of Georgia's statutory absentee voting process. This Court should decline that invitation.

Under the guise of Equal Protection, Elections, and Electors Clause claims, Plaintiff challenges the legal validity of a March 6, 2020, settlement agreement ("Settlement Agreement") between the Secretary, the State Election Board (the "Board"), and the Democratic Party of Georgia, DSCC, and DCCC (collectively, the "Political Party Committees"), which set forth uniform, statewide procedures for matching signatures on absentee ballot envelopes and curing deficiencies on the same. Plaintiff's curious Due Process claim appears to allege that two Republican election monitors could not adequately observe the recount in Fulton County, and for some reason, Plaintiff believes *he* is permitted to assert this claim on their behalf.

[2] Audrey Washington, *Fulton, DeKalb counties finish ballot recount, officials say*, WSB-TV 2 (November 15, 2020), https://www.wsbtv.com/news/politics/fulton-county-has-finished-ballot-recount-officials say/GQ4QUCZDEVEBPMUUFDFEIYOXHI/.

Plaintiff's lawsuit is as meritless as it is late. Plaintiff lacks standing to assert his claims for several reasons, not the least of which is that he has not alleged a particularized injury-in-fact, much less suffered one. Plaintiff's unconscionable delay in waiting eight months to challenge the Settlement Agreement means that laches should bar this suit even if Plaintiff had standing. And in any event, Plaintiff has failed to plead cognizable claims, and his Amended Complaint should be dismissed under Federal Rule of Civil Procedure 12(b)(6).

II. BACKGROUND

On November 6, 2019, the Political Party Committees sued the Secretary, Board, and others challenging Georgia's signature matching laws and cure procedure under the First and Fourteenth Amendments to the U.S. Constitution. The Political Party Committees asserted that Georgia's arbitrary and unreliable procedures for comparing absentee ballot signatures and rejecting absentee ballots unconstitutionally deprived Georgians of their right to vote. *Democratic Party of Georgia, Inc., et al. v. Raffensperger, et al.*, No. 1:19-cv-5028 (ECF Nos. 1, 30) (complaint and amended complaint). After weeks of arms-length negotiations, on March 6, 2020, the parties entered into the Settlement Agreement, which was publicly docketed that same day.

Throughout the negotiations, as memorialized in the Settlement Agreement, the Secretary and Board maintained that Georgia's laws and processes were constitutional. ECF No. 5-1, at *1-2. They did not agree to modification of Georgia's elections statutes. *See id*. Rather, they agreed to initiate rulemaking and issue guidance to help ensure uniform and fair treatment of voters within the existing statutory framework. Thus, pursuant to the Settlement Agreement, the Secretary published an Official Election Bulletin ("OEB") providing statewide guidance on the signature matching procedures designed to increase uniformity in signature match determinations, and the Board promulgated and enforced a more robust voter notification and cure process. Both the Office of the Georgia Attorney General and private counsel (who regularly represents the Georgia Republican Party and prominent Republican leaders) represented the Secretary and Board during the negotiations and personally signed the Agreement. ECF No. 5-1, at *6.

The Board implemented its revised absentee ballot cure process by way of State Election Board ("S.E.B.") Rule 183-1-14-.13. *See* O.C.G.A. § 50-13-4. Under this rule, which was adopted after multiple rounds of formal rulemaking and public comment, counties are to contact voters about rejected mail ballots within three business days after receipt of the absentee ballot and within one business day for any ballots rejected within eleven days of election day. *See* Ga. Comp. R. & Regs. 183-

1-14-.13 (Amended March 22, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (May 21, 2020); Ga. Comp. R. & Regs. 183-1-14-.13 (Aug. 31, 2020).

On May 1, the Secretary issued an OEB addressing the signature matching procedures, providing that after an election official makes an initial determination that the signature on the absentee ballot envelope does not match the signature on file for the voter pursuant to O.C.G.A. §21-2-386(a)(1)(B) and (C), two additional registrars, deputy registrars, or absentee ballot clerks should also review the envelope. ECF No. 5-1, at *3. When two officials agree the signature does not match, the ballot is rejected. *Id.* These changes were widely publicized and in place for several subsequent elections, including the June 9 primary, the August 11 primary runoff, and the November 3 general elections. *See infra* at n.6.

On September 15, Georgia voters began casting absentee ballots for the general election. Election officials began reviewing signatures on absentee ballot envelopes as soon as the first absentee ballots were returned and concluded on November 6, when the deadline to cure absentee ballots passed. For envelopes where elections officials successfully matched signatures, they separated envelopes and ballots for counting to protect the secrecy of those ballots. *See* O.C.G.A. § 21-2-386(a)(2)-(3); *see also* S.E.B. Rule 183-1-14-0.9-15(4) (requiring absentee ballot envelopes to be processed "in a manner that ensures that the contents of the envelope

cannot be matched back to the outer envelope"). This separation began on October 19 and continued throughout the initial counting period.[3] Once a ballot is separated from its envelope, it is impossible to trace an absentee ballot to a specific voter, and any attempt would violate state law. *See* S.E.B. Rule 183-1-14-0.9-15(4). On November 11, the Secretary announced that a statewide hand recount of the presidential election would take place. *See* Am. Compl. ¶¶ 55-56. Virtually all of Georgia 159 counties, including Fulton County, have now finished this recount.

Plaintiff filed an Amended Complaint on November 16, more than *eight months* after the Settlement Agreement was finalized, 32 days after elections officials started separating absentee envelopes from ballots, and 13 days after the general election. Plaintiff challenges the signature verification procedures in the Settlement Agreement, arguing, in essence, that those signature matching procedures violate the U.S. Constitution because they are contrary to state law. He predicates his individual due process claim on allegations that two Republican election monitors—not Plaintiff—were unable to adequately observe the recount in Fulton County. Against the backdrop of this inexplicable delay, and on the slimmest of legal

[3] Mark Niesse, *Absentee ballots can begin to be opened, but not counted, in Georgia*, THE ATLANTA JOURNAL-CONSTITUTION (October 19, 2020), https://www.ajc.com/politics/absentee-ballots-can-begin-to-be-opened-but-not-counted-in-georgia/BRBLHVUJOFHB5OEHAMZV34HPDA/.

reeds, Plaintiff asks the Court to enjoin certification of the election (or alternatively, certification of any election tallies including absentee ballots), throw out the results of the recount statewide and order a new recount, and wholly rewrite Georgia's election laws by judicial fiat. *Id.* ¶¶ 68-70; ¶¶ 80-82. Both Plaintiff's claims and his requested relief are entirely meritless and should be dismissed.

III. LEGAL ARGUMENT

A. Plaintiff lacks Article III standing.

Plaintiffs' Amended Complaint fails at the very threshold. Plaintiff lacks standing, as he has neither pleaded nor suffered a cognizable injury-in-fact, asserting only generalized grievances about Defendants' supposed defiance of state law. Plaintiff also lacks prudential standing. He cannot step into the Georgia General Assembly's shoes to prosecute the Elections and Electors Clause claims, nor can he maintain a recount-related "due process" claim on behalf of the Georgia Republican Party or the monitors identified in the Amended Complaint.

1. Legal Standard

"The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance. This inquiry involves 'both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.'" *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498

(1975)). To have Article III standing, a party must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Muransky v. Godiva Chocolatier, Inc.*, No. 16-16486, 16-16783, 2020 WL 6305084, at *4 (11th Cir. Oct. 28, 2020). Prudential considerations require "that a party '[]must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" *Kowalski*, 543 U.S. at 129 (quoting *Warth*, 422 U.S. at 499).

2. Plaintiff lacks Article III standing because he has not suffered an injury in fact.

Plaintiff has not established that he has or will suffer an injury in fact. To establish injury in fact, "[a] plaintiff needs to plead (and later support) an injury that is concrete, particularized, and actual or imminent, rather than conjectural or hypothetical." *Muransky,* 2020 WL 6305084 at *5. In the voting context, the Supreme Court has made clear that "a person's right to vote is individual and personal in nature," "voters who allege facts showing disadvantage to themselves as individuals have standing to sue." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). But when the injury alleged "is that the law . . . has not been followed[,]" this is "the kind of undifferentiated, generalized grievance about the conduct of government" that is not an injury for standing purposes. *Dillard v. Chilton Cty. Comm'n*, 495 F.3d 1324, 1332-33 (11th Cir. 2007) (citing *Lance v. Coffman*, 549 U.S. 437 (2007).

This is precisely the case here. Plaintiff asserts that "[a]s a qualified elector and registered voter, [he] has Article III standing to bring this action." *See* Am. Compl. ¶ 8 (relying on *Meek v. Metro. Dade Cty. Fla.*, 985 F.2d 1471, 1480 (11th Cir. 1993)). But he provides no allegations demonstrating how he is harmed in those roles. Rather, his recurring grievance is that Defendants allegedly did not follow the law regarding absentee ballot signature verification protocols. *See, e.g.*, Am. Compl. ¶ 28 (alleging Settlement Agreement changed handling of absentee ballots "in a manner that was not consistent with the laws promulgated by the Georgia Legislature"); *id.* ¶ 34 (same). "This injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to countenance in the past." *Lance*, 549 U.S. at 442; *see also Lujan,* 504 U.S. 555, 573–74 (1992) ("[R]aising only a generally available grievance about government . . . does not state an Article III case or controversy.").

The Eleventh Circuit has expressly rejected *Meek*, the principal standing case upon which Plaintiff relies, explaining that a plaintiff "who merely seek[s] to protect an asserted interest in being free of an allegedly illegal electoral system" does not have a cognizable injury for standing purposes. *See Dillard,* 495 F.3d at 1333; *see also id.* at 1331-32 ("We can no longer [uphold *Meek*'s reasoning] in light of the Supreme Court's most recent pronouncement on voter standing in *Lance*[.]"). Other

courts have followed *Dillard*'s lead, rejecting these types of generalized grievances in the voting context. *See Bognet v. Sec'y Commonwealth of Pennsylvania*, No. 20-3214, 2020 WL 6686120, at *14 (3d Cir. Nov. 13, 2020) (rejecting the "logical conclusion of the Voter Plaintiffs' theory [] that whenever an elections board counts any ballot that deviates in some way from the requirements of a state's legislatively enacted election code, there is a *particularized* injury in fact sufficient to confer Article III standing"); *Martel v. Condos*, No. 5:20-cv-131, 2020 WL 5755289, at *4 (D. Vt. Sept. 16, 2020) ("If every voter suffers the same incremental dilution of the franchise caused by some third-party's fraudulent vote, then these voters have experienced a generalized injury.").[4]

[4] This is particularly true in the Elections and Electors Clause context. As the Third Circuit recently explained, a plaintiff lacks standing when the only harm he claims is to his interest in proper application of the Elections Clause because "[t]heir relief would have no more directly benefitted them than the public at large." *Bognet*, 2020 WL 6686120, at *6. This is even more compelling here because "[Georgia's] 'election officials *support* the challenged [Settlement Agreement].'" *Id.* (quoting *Republican Nat'l Comm. v. Common Cause R.I.*, No. 20A28, 2020 WL 4680151 (Mem.), at *1 (Aug. 13, 2020) (quoting *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018))). Given the functionally identical roles that the Elections and Electors Clauses serve, with the former setting the terms for congressional elections and the latter implicating presidential elections, *see Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting) (noting that Electors Clause is "a constitutional provision with considerable similarity to the Elections Clause"), this same logic applies equally to the Electors Clause.

Moreover, Plaintiff's allegation that he donated to Republican candidates and his "interests are aligned with those of the Georgia Republican Party," *see* Am. Compl. ¶ 8, does not help him. Plaintiff has not been personally injured and merely purports to represent the interests of the Georgia Republican Party and, presumably, the two monitors referenced in the Amended Complaint. Standing requires plaintiffs to "allege and show that they *personally* have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent." *Warth*, 422 U.S. at 502. As for his political donations, there is no authority, and Plaintiff cites none, for the proposition that donations to political candidates bestow Article III standing on the donor to assert legal claims on behalf of such candidates or the party as a whole.

3. Plaintiff lacks prudential standing.

Plaintiff also lacks prudential standing to bring his Elections, Electors, and Due Process Clause claims. "Even if an injury in fact is demonstrated, [] a party may assert only a violation of its own rights." *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392 (1988). But Plaintiff's claims "rest . . . on the legal rights or interests of third parties.'" *See Kowalski*, 543 U.S. at 129 (quoting *Warth*, 422 U.S. at 499).

Plaintiff predicates his Electors and Elections Clause claims solely on *the Georgia General Assembly's* purported rights. He alleges that the Settlement

Agreement "is not consistent with the laws of the State of Georgia" and therefore violates Art. II, § 1 and Art. I, § 4, which vests authority in the state legislature to modify the manner and time of elections and electors. *See* Am. Compl. ¶¶ 73–78. The Amended Complaint is replete with references to the alleged usurpation of the General Assembly's authority. *See, e.g.*, Am. Compl. ¶ 28; ¶ 34; ¶ 50; ¶¶ 73-74, ¶¶ 90-91. Accordingly, "the Elections Clause claims asserted in the . . . verified complaint belong, if they belong to anyone, only to the [Georgia] General Assembly." *See Corman v. Torres,* 287 F. Supp. 3d 558, 573 (M.D. Pa. 2018), *appeal dismissed sub nom. Corman v. Sec'y Commonwealth of Penn.*, 751 F. App'x 157 (3d Cir. 2018). Of course, Plaintiff cannot assert the Georgia General Assembly's rights. He neither has a close relationship with the General Assembly nor has he identified a "'hindrance' to the [General Assembly's] ability to protect [its] own interests." *See Kowalski*, 543 U.S. at 130 (quoting *Powers v. Ohio*, 499 U.S. 400, 411 (1991)).

The same is true of Plaintiff's Due Process claim, which appears to assert the rights of the Georgia Republican Party or the monitors mentioned in the Amended Complaint, not Plaintiff's own rights. "Absent a hindrance to the third-party's ability to defend its own rights, this prudential limitation on standing cannot be excused." *Corman*, 287 F.Supp.3d at 572 (quotations omitted). Such is the case here.

B. Plaintiffs' claims are barred by laches.

Even if Plaintiff had standing, his extraordinary delay in filing suit is inexcusable and bars his claims. Laches bars a claim when "(1) there was a delay in asserting a right or a claim, (2) the delay was not excusable, and (3) the delay caused [the defendant] undue prejudice." *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005). Federal courts routinely apply laches to bar untimely claims for injunctive relief in election cases.[5] "[T]he law imposes the duty on parties having grievances based on discriminatory practices to bring the grievances forward for pre-election adjudication." *Toney v. White*, 488 F.2d 310, 314 (5th Cir. 1973). This is because a failure to promptly bring a claim until after the election "may permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action." *Id.* (quotations omitted).

This is precisely what Plaintiff seeks here. More than eight months after the Settlement Agreement was finalized, long after absentee ballots had been separated

[5] *See, e.g.*, *Sanders v. Dooly Cty.*, *GA*, 245 F.3d 1289, 1291 (11th Cir. 2001) (affirming finding that inexcusable delay prejudiced defendants and citizens); *Detroit Unity Fund v. Whitmer*, 819 F. App'x 421, 421-22 (6th Cir. 2020) (upholding district court's dismissal of a challenge to election procedures based on laches); *Perry v. Judd*, 471 F. App'x 219, 224 (4th Cir. 2012) (affirming holding of inexcusable delay for candidates who waited until after petition deadline to bring constitutional challenge).

from their envelopes, and after the general election had been completed and results were announced, Plaintiff brought this suit seeking the extraordinary remedy of an injunction to prevent the certification of all of Georgia's election results, or at least of results including all absentee ballots cast by more than one million voters. But this type of injunctive "[i]nterference with an election after voting has begun is unprecedented." *Short v. Brown*, No. 218CV00421TLNKJN, 2018 WL 1941762, at *8 (E.D. Cal. Apr. 25, 2018), *aff'd*, 893 F.3d 671 (9th Cir. 2018) (citations omitted). All of these voters relied upon the procedures that the Secretary and the Board duly promulgated, and Plaintiff has not provided even the barest of facts to undermine the validity of their votes.

Plaintiff can provide no credible excuse for his delay. The Settlement Agreement was finalized more than eight months ago, was well-publicized, and has been implemented in at least three elections since that time.[6] *See* ECF No. 5-1. The mailed ballots on which Plaintiff's allegations focus have been separated from their envelopes and mixed together with other ballots for weeks. And Plaintiff's Amended Complaint takes issue with clear provisions in this settlement, a far cry from "a gray

[6] *See, e.g.*, Mark Niesse, *Lawsuit settled, giving Georgia voters time to fix rejected ballots*, THE ATLANTA JOURNAL-CONSTITUTION (Mar. 7, 2020), https://www.ajc.com/news/state--regional-govt--politics/lawsuit-settled-giving-georgia-voters-time-fix-rejected-ballots/oJcZ4eCXf8J197AEdGfsSM/.

area [where] even if known before the election, was discovered at a late hour." *See Toney*, 488 F.2d at 314. The doctrine of laches bars Plaintiff's claims.

C. Plaintiff has failed to state a claim for which relief can be granted.

Though the procedural hurdles discussed above are more than enough to dismiss Plaintiff's claims, dismissal is also appropriate under Federal Rule of Civil Procedure 12(b)(6), as Plaintiff has failed to set forth any facts that support even the inference of a cognizable claim.

1. Legal Standard

When deciding a motion to dismiss, courts "accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff." *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1210 (11th Cir. 2020) (internal citations omitted). However, "a complaint must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Allegations "must be enough to raise a right to relief above the speculative level." *Crowder v. Delta Air Lines, Inc.*, 963 F.3d 1197, 1202 (11th Cir. 2020) (quoting *Twombly*, 550 U.S. at 555).

2. Plaintiff fails to state an Equal Protection claim.

To allege an Equal Protection violation a plaintiff must necessarily allege that similarly situated voters are treated differently. *See, e.g.*, *Obama for Am. v. Husted*,

697 F.3d 423, 428 (6th Cir. 2012) (Equal Protection Clause applies when state classifies voters in disparate ways). But that is not what Plaintiff asserts. Instead, he alleges precisely the *opposite* as he takes issue with the admittedly uniform *statewide* guidance issued by the Secretary, wholly defeating even the inference that a viable Equal Protection claim exists. *See* Am. Compl. ¶ 25 (the Settlement Agreement has the effect of "setting forth different standards to be followed by the clerks and registrars in processing absentee ballots *in the State of Georgia*" as a whole, not across different counties) (emphasis added).

Plaintiff does not allege that he or any other voter in Georgia is being treated differently from similarly situated voters because of the Settlement Agreement. Rather, he alleges that the disparate treatment is in processing absentee ballots *differently than the Election Code allegedly requires. See* Am. Compl. ¶¶ 74-75 ("By entering the Litigation Settlement and altering the process for handling defective absentee ballots in Georgia, Defendants unilaterally, and without authority, altered the Georgia Election Code. 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.") But this is *not* an Equal Protection violation, nor could it be given Plaintiff's explicit recognition that this guidance was

issued uniformly statewide, *see* Am. Compl. ¶ 25. As the Third Circuit recently concluded under similar circumstances:

> Plaintiffs advance an Equal Protection Clause argument based solely on state officials' alleged violation of state law that does not cause unequal treatment. And if dilution of lawfully cast ballots by the "unlawful" counting of invalidly cast ballots were a true equal-protection problem, then it would transform every violation of state election law (and, actually, every violation of every law) into a potential federal equal-protection claim requiring scrutiny of the government's 'interest' in failing to do more to stop the illegal activity. *That is not how the Equal Protection Clause works.*

Bognet, 2020 WL 6686120, at *11 (internal citations and quotations omitted; emphasis added). The same reasoning applies here.

To the extent that Plaintiff bases his Equal Protection claim on the conclusory assertion that defective absentee ballots were not identified (which is not at all clear), *see* Am. Compl. ¶ 36, it also fails. The Complaint is devoid of any facts that would support even the inference that defective absentee ballots were counted. And, as noted in *Bognet*, even if it could support such an inference, "[t]hat is not how the Equal Protection Clause works."[7] *Bognet*, 2020 WL 6686120, at *11.

[7] In paragraph 76 of his Amended Complaint, Plaintiff also appears to assert that he has an Equal Protection claim because a "single political party" wrote the rules for reviewing signatures. But the Settlement Agreement, which is incorporated into the Amended Complaint, negates such a claim as it makes clear that the Secretary and Board were also party to the agreement, and with respect to paragraph 4 specifically, that the Secretary was merely to "consider in good faith" guidance provided by the Political Party Committees' expert in the underlying case.

D. Plaintiff fails to state Elections and Electors Clause claims.

Plaintiff's Elections and Electors Clause claims are similarly unavailing. The Elections and Electors Clause vest authority in "the Legislature" of each state to regulate "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives", U.S. Const. art. I, § 4, cl. 1., and to direct the selection of presidential electors, U.S. Const. art. II, § 1, cl. 2, respectively. The Supreme Court has held, however, that state legislatures can delegate this authority—including to state officials like the Secretary. *See, e.g.*, *Ariz. State Legislature*, 576 U.S. at 807 (noting that Elections Clause does not preclude "the State's choice to include" state officials in lawmaking functions so long as such involvement is "in accordance with the method which the State has prescribed for legislative enactments") (quoting *Smiley v. Holm*, 285 U.S. 355, 367 (1932)); *Corman*, 287 F.Supp.3d at 573 ("The Supreme Court interprets the words 'the Legislature thereof,' as used in that clause, to mean the lawmaking processes of a state.") (quoting *Ariz. State Legislature*, 576 U.S. at 816).[8] Accordingly, the actions of the Secretary could only constitute plausible violations of the Elections and Electors Clauses if such actions exceeded the authority granted to him by the Georgia General Assembly. They plainly did not.

[8] As discussed *supra*, the Electors and Election Clauses are textually and legally analogous.

Pursuant to Georgia law, the Secretary is the chief election official for the State, O.C.G.A § 21-2-50(b), and the General Assembly has granted him the power and authority to manage Georgia's election system, including the absentee voting system. *See Fair Fight Action, Inc. v. Raffensperger*, 413 F.Supp.3d 1251 (N.D. Ga. 2019); Ga. Op. Att'y Gen. No. 2005-3 (Apr. 15, 2005) (recognizing the Secretary's authority to manage Georgia's election system). Additionally, the Secretary is the Chair of the Board, which is the governmental body responsible for uniform election practice in Georgia. O.C.G.A. § 21-2-31; *see also Curling v. Raffensperger*, 403 F. Supp. 3d 1311, 1345 (N.D. Ga. 2019) ("[T]he [] Board is charged with enforcing Georgia's election code under state law."). In both roles, the Secretary has significant statutory authority to train local election superintendents and registrars and to set election standards. *See New Georgia Project v. Raffensperger*, No. 1:20-CV-01986-ELR, 2020 WL 5200930, at *8 (N.D. Ga. Aug. 31, 2020), *appeal filed* (Sept. 4, 2020), *stay granted*, 976 F.3d 1278 (2020). The Secretary was well within that authority in entering into the Settlement Agreement and ensuring the signature verification protocols were uniform across Georgia.

Specifically, on May 1, 2020, the Secretary issued an OEB outlining the procedures for the signature matching process.[9] OEBs are election guidance documents that provide technical guidance to local election administrators regarding new rules, court orders, and other binding law. The OEB in question accords with O.C.G.A. §§ 21-2-31 and 21-2-300(a), which empower the Secretary—as the chief elections official and Board Chair—to obtain uniformity in the practices of local elections officials in administering Georgia's Election Code and election equipment usage respectively. *See* O.C.G.A. § 21-2-50(a), (b); *see also Grizzle v. Kemp*, 634 F.3d 1314, 1319 (11th Cir. 2011). The OEB expressly required counties to continue to verify absentee voter identity by comparing signatures as Georgia law requires. ECF No. 5-1, at *3. The Secretary thus appropriately exercised the authority the

[9] Plaintiff's Elections and Electors Clause claims only reference the Secretary's actions regarding signature verification procedures. *See* Am. Compl. ¶¶ 87-92. They do not appear to engage the changes to Georgia's notice procedures for curing ballots. To the extent they are challenged, however, as discussed *supra*, they were implemented via S.E.B. Rule 183-1-14-.13, which was entered after completing the statutorily proscribed rulemaking proceedings that involved both public notice and comment. *See* O.C.G.A. § 50-13-4; *see also* Section II *supra*. The Board promulgated these standardized cure provisions to resolve and prevent inconsistent interpretations of the timing of the notice requirement. Issuing an administrative rule is part of the Board's statutory duty "to promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections," O.C.G.A. § 21-2-31(1), and it is well within their delegated authority.

General Assembly granted to him to ensure uniformity in elections practices—here, in the processes for handling absentee ballots and comparing signatures—and did so while upholding Georgia's statutory signature match requirement. His issuance of the OEB was entirely congruent with his delegated authority and does not violate either the Elections or Electors Clauses.

3. Plaintiff fails to state a Due Process claim.

Finally, Plaintiff has failed to plead anything even approaching an adequate substantive or procedural Due Process claim. Plaintiff relies on two third-party affidavits from Republican volunteers who attended Fulton County's recount for approximately one hour on Sunday—one of whom arrived too late to participate as a credentialed observer, and one who fully participated and observed the recount—to make the bold claim that the electoral process was unfair statewide because Defendants denied the Trump Campaign access to the recount. This cannot possibly pass the plausibility threshold to state a claim. And in any event, this claim clearly fails under any iteration of the Due Process Clause.

As an initial matter, Plaintiff has failed to state a procedural due process claim. Courts engage in a three-step inquiry to analyze procedural due process claims, considering (1) "the nature of the interest that will be affected by the official action, and in particular, to the 'degree of potential deprivation that may be created,'"

(2) the "fairness and reliability" of the existing procedures and the "probable value, if any, of additional procedural safeguards," and (3) the public interest, which "includes the administrative burden and other societal costs that would be associated with" additional or substitute procedures. *Mathews v. Eldridge*, 424 U.S. 319, 334-47 (1976). Plaintiff ignores this framework and pleads no facts that would support its application.

Though Plaintiff alleges that he has a "vested interest in being present and having meaningful access to observe and monitor the electoral process," *see* Am. Compl. ¶ 101, he fails to plead—and this cannot be stated enough—that he even tried to observe the recount and that his interest, to the extent it is a recognizable one, was deprived. In fact, the facts pleaded on the face of the Amended Complaint indicate *just the opposite*: they establish that the Secretary allowed political monitors, press, and public observers (including, presumably, Plaintiff had he attempted to do so) to observe the recount process. *See* Am. Compl. ⁋ 56. Indeed, Ms. Coleman admits that she was unable to be admitted as a monitor (not a public observer) because she arrived too late and there were already *too many other volunteers present and monitoring on the floor*. ECF No. 5-2 ¶¶ 2-4, 7. Ms. Diedrich was able to walk the counting floor, observe the count, and even complain to the elections superintendent about ostensible problems. ECF No. 5-3 ¶¶ 7, 8, 11. She

does not contend her access was any different or worse than that afforded to Democratic observers such that one cannot infer that it was unfair. *See generally id.* Accordingly, nothing in Plaintiff's Amended Complaint supports even the *inference* of a procedural Due Process claim.

Similarly, Plaintiff also fails to plead a substantive due process claim. It is well-settled that "[f]ederal courts should not 'involve themselves in garden variety election disputes.'" *Serpentfoot v. Rome City Comm'n*, No. 4:09-CV-0187-HLM, 2010 WL 11507239, at *16 (N.D. Ga. Mar. 3, 2010) (quoting *Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986) (noting "[o]nly in extraordinary circumstances will a challenge to a state election rise to the level of a constitutional deprivation"). For the substantive Due Process Clause to be implicated, the situation "*must go well beyond the ordinary dispute over the counting and marking of ballots*." *Curry*, 802 F.2d at 1315 (emphasis added). To the extent that they set forth any dispute, Plaintiff's allegations describe at most only an "ordinary dispute over the counting and marking of ballots" that does not demonstrate any fundamental unfairness in the election as a whole or the recount process specifically, failing to give rise to a Due Process claim.[10]

[10] To support his Due Process claims, Plaintiff relies on *Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978), which directly undermines his position. While *Griffin*

D. Plaintiff is not entitled to the relief he seeks.

While the lack of credible allegations supporting Plaintiff's Amended Complaint are astounding, it is Plaintiff's disproportionate, implausible, and unconstitutional requested relief that truly shocks the conscience. It is not tailored to the alleged violations in the Amended Complaint because instead of *remedying* a constitutional violation, it would in fact *violate* millions of Georgians' constitutional rights. *See Bognet*, 2020 WL 6686120, at *1, *8 ("[it is] indisputable in our democratic process: that the lawfully cast vote of every citizen must count"); *Stein v. Cortés*¸ 223 F.Supp.3d 423, 442 (E.D. Pa 2016) (granting relief that "could well ensure that no Pennsylvania vote counts . . . would be both outrageous and completely unnecessary"). Only the most egregious elections misconduct could even conceivably justify the mass disenfranchisement Plaintiff seeks. *See McMichael v.*

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recognizes that there may be a Due Process violation if "the election process itself reaches the point of patent and fundamental unfairness," *id.* at 1077, it characterized this situation as "exceptional" and appropriate only if "broad-gauged unfairness permeates an election." *See id.* at 1077-79. This is manifestly not the case here. Moreover, the *Griffin* court only found such a violation because a state court, after the election, *entered the precise relief that Plaintiff seeks*: the exclusion of absentee votes when the losing candidate waits until after losing the election to challenge the secretary of state's statutory authority to issue and process absentee ballots. *Id.* at 1078-79. The *Griffin* court refused to disenfranchise the "[a]lmost ten percent of the qualified and voting electorate" who voted "in reliance on absentee . . . ballot procedures announced by state officials[,]" *id.* at 1068, 1079, because doing so was a due process violation. *Id.* at 1078.

Napa Cty., 709 F.2d 1268, 1273–74 (9th Cir. 1983) (Kennedy, J., concurring) (invalidation of election results "has been reserved for instances of willful or severe violations of established constitutional norms"). This is particularly so in Georgia where the Georgia Supreme Court has held that disenfranchisement is inappropriate to remedy statutory violations where voters themselves acted in good faith. *See, e.g.*, *Holton v. Hollingsworth*, 270 Ga. 591, 514 S.E.2d 6, 8-9 (1999); *Malone v. Tison*, 248 Ga. 209, 282 S.E.2d 84, 89 (1981).

Plaintiff's requested relief with respect to the recount fares no better, as it seeks statewide recourse for purported infringements in only one county and, most egregiously, Republican-only surveillance of every step of Georgia's processing of individual votes in a manner violating multiple provisions of state law both backward looking and in future elections. *See* Am. Compl. ¶¶ 106-107. No provision of Georgia law contemplates the type of court interference in the orderly elections process that Plaintiff's broad-sweeping relief boldly requests. Such relief is unprecedented in scope and plainly impermissible.

CONCLUSION

The Political Party Committees respectfully request that the Court dismiss Plaintiff's Amended Complaint in its entirety and with prejudice.

Dated: November 18, 2020.

Respectfully submitted,

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**Pro Hac Vice Application Pending*

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

L. Lin Wood, Jr., Plaintiff, v. Brad Raffensperger, in his official capacity as Secretary of the State of Georgia, et al., Defendants.	CIVIL ACTION FILE NO. 1:20-cv-04651-SDG

PROPOSED INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Proposed Intervenor-Defendants, the Democratic Party of Georgia, Inc. ("DPG"), the DSCC, and the DCCC (collectively, the "Political Party Committees") by and through their attorneys, answer Plaintiff's Amended Complaint for declaratory and injunctive relief (hereafter, "Plaintiff's Complaint") as set forth below. Unless expressly admitted, each allegation in the complaint is denied, and the Political Party Committees demand strict proof thereof.

INTRODUCTION

1. Paragraph 1 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 1 of Plaintiff's Complaint, the Political Party Committees admit that the citizens of Georgia deserve fair elections and deny any implication that Georgia's election has been tainted.

2. Paragraph 2 of Plaintiff's Complaint states:

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

Answer: Denied.

3. Paragraph 3 of Plaintiff's Complaint states:

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

Answer: Denied.

4. Paragraph 4 of Plaintiff's Complaint states:

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

Answer: Denied.

JURISDICTION AND VENUE

5. Paragraph 5 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 5 of Plaintiff's Complaint, the Political Party Committees admit that Plaintiff is asserting claims under 42 U.S.C. § 1983, Articles I and II of the United States Constitution, and the First and Fourteenth Amendments to the United States Constitution. The Political Party Committees deny that Plaintiff has established a cognizable claim under any of these provisions.

6. Paragraph 6 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 6 of Plaintiff's Complaint, the Political Party Committees deny that this Court has subject-matter jurisdiction. The Political Party Committees further admit that Plaintiff has quoted *Bush v. Gore* and deny each other or different allegation.

7. Paragraph 7 of Plaintiff's Complaint states:

> Venue is proper under 28 U.S.C. § 1391(a) because a substantial part of the events giving rise to the claim occurred or will occur in this

District. Alternatively, venue is proper under 28 U.S.C. § 1391(b) because at least one Defendant to this action resides in this District and all Defendants reside in this State.

Answer: Denied because the Court lacks subject matter jurisdiction.

PARTIES

8. Paragraph 8 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 8 of Plaintiff's Complaint, the Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff L. Lin Wood, Jr.'s residence, citizenship, qualifications to vote, financial support of Republican candidates, and alignment with the Republican Party for purposes of this lawsuit. These allegations are therefore denied. The Political Party Committees further deny that Plaintiff Wood has Article III standing to bring this action.

9. Paragraph 9 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 9 of Plaintiff's Complaint, the Political Party Committees admit that Brad Raffensperger is the Secretary of State of Georgia with certain responsibilities as described by law. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases and statutory provisions, the Political Party Committees deny the allegations. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

10. Paragraph 10 of Plaintiff's Complaint states:

> Defendants Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le (hereinafter the "State Election Board") are members of the State Election Board in Georgia, responsible for "formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. § 21-2-31(2). Further, the State

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

Answer: In response to Paragraph 10 of Plaintiff's Complaint, the Political Party Committees admit that Rebecca N. Sullivan, David J. Worley, Matthew Mashburn, and Anh Le are members of the State Election Board in Georgia with certain responsibilities as defined by law. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited statutory provisions, the Political Party Committees deny the allegations. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

FACTS

11. Paragraph 11 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 11 of Plaintiff's Complaint, the Political Party Committees admit that the citizens of Georgia deserve free, fair, and

transparent elections. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

12. Paragraph 12 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees admit that the quoted language is from U.S. Const. Art., § 4, cl. 1, and deny each other or different allegation.

13. Paragraph 13 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees admit that the quoted language is from *Smiley*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

14. Paragraph 14 of Plaintiff's Complaint states:

> In Georgia, the "legislature" is the General Assembly. See Ga. Const. Art. III, § I, Para. 1.

Answer: The Political Party Committees admit that the General Assembly is granted "legislative power" by Ga. Const. Art. I, § I, Para. 1, and deny each other or different allegation.

15. Paragraph 15 of Plaintiff's Complaint states:

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

Answer: Paragraph 15 of Plaintiff's complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny the same.

16. Paragraph 16 of Plaintiff's Complaint states:

> Nor can the authority to ignore existing legislation be delegated to an executive officer. While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," *Ariz. State Legislature,* 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush,* 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

Answer: Paragraph 16 of Plaintiff's Complaint contains legal contentions, characterizations, and opinions to which no response is required. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

17. Paragraph 17 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees admit that the quoted language is from O.C.G.A. § 21-2-380(b) and deny each other or different allegation.

18. Paragraph 18 of Plaintiff's Complaint states:

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

Answer: Paragraph 18 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny the same.

19. Paragraph 19 of Plaintiff's Complaint states:

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

Answer: Paragraph 19 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions, the Political Party Committees deny the allegations.

20. Paragraph 20 of Plaintiff's Complaint states:

> The Georgia Election Code instructs those who handle absentee ballots to follow a clear procedure:
>
> Upon receipt of each [absentee] ballot, a registrar or clerk ***shall*** write the day and hour of the receipt of the ballot on its envelope. The registrar or clerk ***shall*** then compare the identifying information on the oath with the information on file in his or her office, ***shall*** compare the signature or make on the oath with the signature or mark on the absentee elector's voter card or the most recent update to such absentee elector's voter registration card and application for absentee ballot or a facsimile of said signature or maker taken from said card or application, and ***shall***, if the information and signature appear to be valid and other identifying information appears to be correct, so certify by signing or initialing his or her name below the voter's oath. Each elector's name so certified shall be listed by the registrar or clerk on the numbered list of absentee voters prepared for his or her precinct.
>
> O.C.G.A. § 21-2-386(a)(l)(B) (emphasis added).

Answer: The Political Party Committees admit that the quoted language is from O.C.G.A. § 21-2-386(a)(1)(B) and deny each other or different allegation.

21. Paragraph 21 of Plaintiff's Complaint states:

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

Answer: Paragraph 21 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny the same.

22. Paragraph 22 of Plaintiff's Complaint states:

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

Answer: Paragraph 22 of Plaintiff's complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny the same.

23. Paragraph 23 of Plaintiff's Complaint states:

> The Georgia Legislature also provided for the steps to be followed by County Officials with respect to defective absentee ballots:
>
> ***If the elector has failed to sign the oath, or if the signature does not appear to be valid,*** or if the elector has failed to furnish required information ***or information so furnished does not conform with that on file in the registrar's or clerk's office,*** or if the elector is otherwise found disqualified to vote, the registrar or clerk ***shall*** write across the face of the envelope "Rejected," giving the reason therefor. The board of registrars or absentee ballot clerk ***shall*** promptly ***notify the elector of such rejection,*** a copy of which notification ***shall*** be retained in the files of the board of registrars or absentee ballot clerk for at least one year.
>
> O.C.G.A. § 21-2-386(a)(1)(C) (emphasis added).

Answer: The Political Party Committees admit that the quoted language is from O.C.G.A. § 21-2-386(a)(1)(C) and deny each other or different allegation.

24. Paragraph 24 of Plaintiff's Complaint states:

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

Answer: Paragraph 24 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny the same.

25. Paragraph 25 of Plaintiff's Complaint states:

> Notwithstanding the clarity of the applicable statutes and the constitutional authority for the Georgia Legislature's actions, on March 6, 2020, the Secretary of State of the State of Georgia, Secretary Raffensperger, and the State Election Board, who administer the state elections (the "Administrators") entered into a "Compromise and Settlement Agreement and Release" (the "Litigation Settlement") with the Democratic Party of Georgia, Inc., the Democrat Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee (collectively, the "Democrat Party Agencies"), setting forth different standards to be followed by the clerks and registrars in processing absentee ballots in the State of Georgia.[1] A true and correct copy of the Litigation Settlement is attached hereto and incorporated herein as Exhibit A.

Answer: In response to Paragraph 25 of Plaintiff's Complaint, the Political Party Committees admit that a Compromise Settlement Agreement was reached between the Political Party Committees and Brad Raffensperger, Rebecca N. Sullivan, David J. Worley, Seth Harp, and Anh Le on March 6, 2020, referred to in the Complaint as the "Litigation Settlement." The Political Party Committees deny each other or different allegation.

26. Paragraph 26 of Plaintiff's Complaint states:

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

Answer: Denied.

[1] *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.

27. Paragraph 27 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees admit that the quoted language is from O.C.G.A. § 21-2-31(2) and deny each other or different allegation to the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

28. Paragraph 28 of Plaintiff's Complaint states:

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

Answer: Denied.

29. Paragraph 29 of Plaintiff's Complaint states:

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

Answer: Denied.

30. Paragraph 30 of Plaintiff's Complaint states:

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

Answer: Denied.

31. Paragraph 31 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 31 of Plaintiff's Complaint, the Political Party Committees admit that the COVID-19 pandemic caused an increase in absentee voting in Georgia, which protected the health and safety of voters across the state. The Political Party Committees deny each other or different allegation.

32. Paragraph 32 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 32 of Plaintiff's Complaint, the Political Party Committees lack sufficient information to admit or deny the allegations in Paragraph 32 of Plaintiff's Complaint and on that basis deny the same.

33. Paragraph 33 of Plaintiff's Complaint states:

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

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

Answer: Denied.

34. Paragraph 34 of Plaintiff's Complaint states:

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

Answer: Denied.

35. Paragraph 35 of Plaintiff's Complaint states:

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

Answer: Denied.

36. Paragraph 36 of Plaintiff's Complaint states:

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.

Answer: Denied.

37. Paragraph 37 of Plaintiff's Complaint states:

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

Answer: Denied.

38. Paragraph 38 of Plaintiff's Complaint states:

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

> clerk's office, such person shall show one of the forms of identification listed in Code Section 21-2-417...").

Answer: The Political Party Committees admit that the quoted language is from O.C.G.A. § 21-2-381(b)(1). To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions, the Political Party Committees deny the allegations. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

39. Paragraph 39 of Plaintiff's Complaint states:

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

Answer: Paragraph 39 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions, the Political Party Committees deny the allegations. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

40. Paragraph 40 of Plaintiff's Complaint states:

> The system for identifying absentee ballots was carefully constructed by the Georgia Legislature to ensure that electors were identified by acceptable identification (O.C.G.A. § 21-2-417 even permits the use of

> an expired driver's license), but at some point in the process, the Georgia Legislature mandated the system whereby the elector be identified for each absentee ballot.

Answer: Paragraph 40 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions, the Political Party Committees deny the allegations. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

41. Paragraph 41 of Plaintiff's Complaint states:

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

Answer: Denied.

42. Paragraph 42 of Plaintiff's Complaint states:

> 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.

Answer: Paragraph 42 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response

is required. To the extent a response is required, the Political Party Committees deny each other or different allegation.

43. Paragraph 43 of Plaintiff's Complaint states:

> In the primary preceding the November 3, 2020 election, news stories recorded that many absentee ballots did not reach voters until after the polls were closed. *See, e.g.,* F. Bajak and C. Cassidy, "Vote-by-mail worries: A 'leaky pipeline' in many states," Associated Press Aug. 8, 2020, https://apnews.com/article/u-s-news-ap-top-news-election-2020-technology-politics-52e87011f4d04e41bfffccd64fc878e7, retrieved Nov. 11, 2020).

Answer: Admitted.

44. Paragraph 44 of Plaintiff's Complaint states:

> In response and to encourage confidence m absentee voting during the COVID-19 crisis, the Secretary of State launched Ballot Trax to track absentee ballots, permitting electors to track the progress of absentee ballots as they were processed.

Answer: In response to Paragraph 44, the Political Party Committees admit that the Secretary of State launched BallotTrax so that Georgians could be confident that their "vote will be counted." Ga. Secretary of State's Office, Press Release, *Secretary of State Brad Raffensperger Launches Quick and Convenient Absentee Ballot Tracking System*, https://sos.ga.gov/index.php/elections/secretary_of_state_brad_raffensperger_launches_quick_and_convenient_absentee_ballot_tracking_system. The Political Party Committees deny each other or different allegation.

45. Paragraph 45 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees lack sufficient information to admit or deny the allegations in Paragraph 45 of Plaintiff's Complaint and on that basis deny the same.

46. Paragraph 46 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees lack sufficient information to admit or deny the allegations in Paragraph 46 of Plaintiff's Complaint and on that basis deny the same.

47. Paragraph 47 of Plaintiff's Complaint states:

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

Answer: Denied.

48. Paragraph 48 of Plaintiff's Complaint states:

> 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.

Answer: Paragraph 48 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny that a single political party wrote such rules and deny each other or different allegation.

49. Paragraph 49 of Plaintiff's Complaint states:

> 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.

Answer: Denied.

50. Paragraph 50 of Plaintiff's Complaint states:

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

Answer: Denied.

51. Paragraph 51 of Plaintiff's Complaint states:

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

Answer: Admitted.

52. Paragraph 52 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 52 of Plaintiff's complaint, the Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegation that Secretary Raffensperger reported these vote totals and on what date. To the extent a response is required, the Political Party Committees deny the allegations.

53. Paragraph 53 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 53 of Plaintiff's complaint, the Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegation that Secretary Raffensperger reported these vote totals and on what date. The Political Party Committees admit that the referenced run-off election will take place on January 5, 2021. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

54. Paragraph 54 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 54 of Plaintiff's complaint, the Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegation that Secretary Raffensperger reported these vote totals and on what date. The Political Party Committees admit that the referenced run-off election will take place on January 5, 2021. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

55. Paragraph 55 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 55, the Political Party Committees admit that Secretary Raffensperger directed that the counties conduct a risk-limiting audit, which involves a full hand recount, to be completed by Wednesday, November 18, 2020.

56. Paragraph 56 of Plaintiff's Complaint states:

> Secretary Raffensperger declared that for the Hand Recount,
>
> Per the instructions given to counties as they conduct their audit triggered full hand recounts, designated monitors will be given complete access to observe the process from the beginning. While the audit triggered recount must be open to the public and media, designated monitors will be able to observe more closely. The general public and the press will be restricted to a public viewing area. Designated monitors will be able to watch the recount while standing close to the elections workers conducting the recount.
>
> Political parties are allowed to designate a minimum of two monitors per county at a ratio of one monitor per party for every ten audit boards in a county... Beyond being able to watch to ensure the recount is conducted fairly and securely, the two-person audit boards conducting the hand recount call out the votes as they are recounted, providing monitors and the public an additional way to keep tabs on the process.
>
> *Id.*

Answer: In response to Paragraph 56 of Plaintiff's complaint, the Political Party Committees admit that the cited text is from a statement of Secretary Raffensperger. The Political Party Committees deny each other or different allegation.

57. Paragraph 57 of Plaintiff's Complaint states:

> Non-parties Amanda Coleman and Maria Diedrich are two individuals who volunteered to serve as designated monitors for the Donald J. Trump Presidential Campaign, Inc. (the "Trump Campaign") on behalf of the Georgia Republican Party (the "Republican Pa1iy") at the Hand Recount. Attached hereto and incorporated herein as Exhibits B and C, respectively, are true and correct copies of (1) the Affidavit of Amanda Coleman in Support of Plaintiffs' Motion for Temporary Restraining

> Order (the "Coleman Affidavit"), and (2) the Affidavit of Maria Diedrich in Support of Plaintiffs' Motion for Temporary Restraining Order (the "Diedrich Affidavit") (collectively the "Affidavits"). (*See* Ex. B, Coleman Aff., ¶ Ex. C, Diedrich Aff., ¶ 2.)

Answer: The Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and they are therefore denied.

58. Paragraph 58 of Plaintiff's Complaint states:

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

Answer: Denied.

59. Paragraph 59 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and they are therefore denied.

60. Paragraph 60 of Plaintiff's Complaint states:

> Ms. Diedrich arrived at the Hand Recount at 8:00 a.m. on November 15, 2020. (*See* Ex. C, Diedrich Aff., ¶ 4.) Ms. Diedrich reports that, "By

> 9:15 a.m., officials announced that voting was complete and sent everyone home... The officials announced that they had counted all the absentee [ballots] on November 14 at night and they were already boxed up." (*See* id., ¶¶ 4-5.)

Answer: The Political Party Committees lack knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and they are therefore denied.

61. Paragraph 61 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 61 of Plaintiff's complaint, the Political Party Committees admit Ms. Diedrich declared as much, but deny the accuracy of the statement. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

62. Paragraph 62 of Plaintiff's Complaint states:

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

Answer: In response to Paragraph 61 of Plaintiff's complaint, the Political Party Committees admit Ms. Coleman declared as much, but deny the

accuracy of the statement. To the extent a response is otherwise required, the Political Party Committees deny the allegations.

63. Paragraph 63 of Plaintiff's Complaint states:

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

Answer: Denied.

COUNT I

64. Paragraph 64 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees incorporate the responses to the foregoing paragraphs as if fully set forth herein.

65. Paragraph 65 of Plaintiff's Complaint states:

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

Answer: Admitted.

66. Paragraph 66 of Plaintiff's Complaint states:

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

Answer: Paragraph 66 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent the characterization of the law is inaccurate or intended to apply to the claims here, Political Party Committees deny the same.

67. Paragraph 67 of Plaintiff's Complaint states:

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

Answer: Paragraph 67 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent the characterization of the law is inaccurate or intended to apply to the claims here, Political Party Committees deny the same.

68. Paragraph 68 of Plaintiff's Complaint states:

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

Answer: Political Party Committees admit from the quoted language is from *Charfauros v. Bd of Election*s. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

69. Paragraph 69 of Plaintiff's Complaint states:

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

Answer: Political Party Committees admit the quoted language is from *Dunn v. Bloomstein*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

70. Paragraph 70 of Plaintiff's Complaint states:

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

Answer: Political Party Committees admit the quoted language is from *Bush v. Gore*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

71. Paragraph 71 of Plaintiff's Complaint states:

> "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).

Answer: Political Party Committees admit the quoted language is from *Pierce v. Allegheny County Bd. of Elections*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

72. Paragraph 72 of Plaintiff's Complaint states:

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

Answer: Political Party Committees admit the quoted language is from *Charfauros v. Bd of Election*s and *Bush v. Gore*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

73. Paragraph 73 of Plaintiff's Complaint states:

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

Answer: Paragraph 73 of Plaintiff's Complaint contains legal contentions, characterizations, and opinions to which no response is required. To the

extent a response is required, the Political Party Committees admit the Defendants are not part of the Georgia Legislature but deny each other or different allegation.

74. Paragraph 74 of Plaintiff's Complaint states:

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

Answer: Denied.

75. Paragraph 75 of Plaintiff's Complaint states:

> 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.

Answer: Denied.

76. Paragraph 76 of Plaintiff's Complaint states:

> 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. § 2 1 -2-31.

Answer: Paragraph 76 of Plaintiff's Complaint contains characterizations, legal contentions, conclusions, and opinions to which no response is required. To the extent a response is required, the Political Party Committees deny that a single political party wrote such rules and deny each other or different allegation.

77. Paragraph 77 of Plaintiff's Complaint states:

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

Answer: Denied.

78. Paragraph 78 of Plaintiff's Complaint states:

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.

Answer: Denied.

79. Paragraph 79 of Plaintiff's Complaint states:

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

Answer: Denied.

80. Paragraph 80 of Plaintiff's Complaint states:

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

Answer: Denied.

81. Paragraph 81 of Plaintiff's Complaint states:

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

Answer: Denied.

82. Paragraph 82 of Plaintiff's Complaint states:

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

Answer: Denied.

83. Paragraph 83 of Plaintiff's Complaint states:

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

Answer: Denied.

84. Paragraph 84 of Plaintiff's Complaint states:

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

Answer: Denied.

COUNT II

85. Paragraph 85 of Plaintiff's Complaint states:

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

Answer: The Political Party Committees incorporate the responses to the foregoing paragraphs as if fully set forth herein.

86. Paragraph 86 of Plaintiff's Complaint states:

> The Electors Clause states that "[e]ach State shall appoint, in such Manner as ***the Legislature*** thereof may direct, a Number of Electors" for President. U.S. Const. art. II, § 1, cl. 2 (emphasis added). Likewise, the Elections Clause of the United States Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by ***the Legislature*** thereof." U.S. Const. art. I, § 4, cl. 1 (emphasis added).

Answer: Political Party Committees admit the quoted language is from the Electors Clause of the United States Constitution. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions, the Political Party Committees deny the allegations.

87. Paragraph 74 of Plaintiff's Complaint states:

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

Answer: Paragraph 87 of Plaintiff's Complaint contains legal contentions, characterizations, and opinions to which no response is required. To the extent a response is otherwise required, the Political Party Committees admit that the Secretary is not a member of the Georgia Legislature and otherwise deny all remaining allegations in Paragraph 87.

88. Paragraph 88 of Plaintiff's Complaint states:

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

Answer: Paragraph 75 of Plaintiff's Complaint contains legal contentions, characterizations, and opinions to which no response is required. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited provisions, the Political Party Committees deny the allegation.

89. Paragraph 89 of Plaintiff's Complaint states:

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

Answer: Denied.

90. Paragraph 90 of Plaintiff's Complaint states:

> The procedure set forth in the Litigation Settlement for the handling of defective absentee ballots is not consistent with the laws of the State of Georgia, and thus, Defendants' actions under the Litigation Settlement exceed their authority. *See* O.C.G.A. § 21-2-31(2).

Answer: Denied.

91. Paragraph 91 of Plaintiff's Complaint states:

> Defendants are not the Georgia Legislature, and their unilateral decision to implement rules and procedures regarding absentee ballots that are contrary to the Georgia Election Code constitutes a violation of the Electors and Elections Clauses of the United States Constitution.

Answer: Denied.

92. Paragraph 92 of Plaintiff's Complaint states:

The foregoing violations occurred as a consequence of Defendants acting under color of state law. Accordingly, Plaintiff is entitled to declaratory and injunctive relief against Defendants pursuant to 42 U.S.C. § 1983.

Answer: Denied.

93. Paragraph 93 of Plaintiff's Complaint states:

As a result of Defendants' unauthorized actions and disparate treatment of defective absentee ballots, this Court should enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the 2020 general election in Georgia on a statewide basis.

Answer: Denied.

94. Paragraph 94 of Plaintiff's Complaint states:

Alternatively, this Court should enter an order, declaration, and/or injunction prohibiting Defendants from certifying the results of the General Elections which include the tabulation of defective absentee ballots, regardless of whether said ballots were cured.

Answer: Denied.

95. Paragraph 95 of Plaintiff's Complaint states:

Alternatively, this Court should enter an order, declaration, and/or injunction that the results of the 2020 general election in Georgia are defective as a result of the above-described constitutional violations, and that Defendants are required to cure said deficiencies in a manner consistent with federal and Georgia law, and without the taint of the procedures described in the Litigation Settlement.

Answer: Denied.

96. Paragraph 96 of Plaintiff's Complaint states:

> Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm unless the relief requested herein is granted.

Answer: Denied.

COUNT III

97. Paragraph 97 of Plaintiff's Complaint states:

> Plaintiff incorporates by reference and realleges all prior paragraphs of this Complaint and the paragraphs in the counts below as though set forth full herein.

Answer: The Political Party Committees incorporate the responses to the foregoing paragraphs as if fully set forth herein.

98. Paragraph 98 of Plaintiff's Complaint states:

> Voting is a fundamental right protected by the Fourteenth Amendment to the United States Constitution.

Answer: Admitted.

99. Paragraph 99 of Plaintiff's Complaint states:

> The Fourteenth Amendment protects the right to vote from conduct by state officials which seriously undermines the fundamental fairness of the electoral process. *See Marks v. Stinson*, 19 F.3d 873, 889 (3d Cir. 1994); *Griffin v. Burns*, 570 F.2d 1065, 1077-78 (1st Cir. 1978). "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05. Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment to voters." *Id.* at 106-07.

Answer: Political Party Committees admit the quoted language is from *Bush v. Gore*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations.

100. Paragraph 100 of Plaintiff's Complaint states:

> "[T]reating voters differently" thus "violate(s] the Equal Protection Clause" when the disparate treatment is the result of arbitrary, ad hoc processes. *Charfauros*, 249 F.3d at 954. Indeed, a "minimum requirement for non-arbitrary treatment of voters [is] necessary to secure the fundamental right [to vote]." *Bush*, 531 U.S. at 105.

Answer: Political Party Committees admit the quoted language is from *Charfauros* and *Bush*. To the extent Plaintiff's characterization and interpretation of the cited law differs from the text of the cited cases, the Political Party Committees deny the allegations

101. Paragraph 101 of Plaintiff's Complaint states:

> In statewide and federal elections conducted in the State of Georgia, including, without limitation, the November 3, 2020 general election, the Hand Recount, and the upcoming January 5, 2021 run-off election, all candidates, political parties, and voters, including, without limitation, Plaintiff, have a vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered in every election district and that is otherwise free, fair, and transparent.

Answer: Denied.

102. Paragraph 102 of Plaintiff's Complaint states:

Defendants have a duty to guard against deprivation of the right to vote and to ensure that all candidates and political parties have meaningful access to observe and monitor the electoral process, including, without limitation, the November 3, 2020 general election, the Hand Recount, and the upcoming January 5, 2021 run-off election, in order to ensure that the electoral process is properly administered in every election district and is otherwise free, fair, and transparent.

Answer: Denied.

103. Paragraph 103 of Plaintiff's Complaint states:

Rather than heeding these mandates and duties, Defendants arbitrarily and capriciously denied, or allowed County Officials to deny, the Trump Campaign meaningful access to observe and monitor the electoral process, as is further set forth in the Affidavits.

Answer: Denied.

104. Paragraph 104 of Plaintiff's Complaint states:

Defendants intentionally and/or arbitrarily and capriciously denied Plaintiff and the Trump Campaign access to and/or obstructed actual observation and monitoring of the absentee ballots being processed by Defendants and County Officials, both in the November 3, 2020 general election and the Hand Recount.

Answer: Denied.

105. Paragraph 105 of Plaintiff's Complaint states:

Defendants have acted and will continue to act under color of state law to violate the right to vote and due process as secured by the Fourteenth Amendment to the United States Constitution.

Answer: Denied as it applies the allegations in this Complaint.

106. Paragraph 106 of Plaintiff's Complaint states:

As a result of Defendants' improper actions described herein, this Court should enter an order, declaration, and/or injunction requiring as follows:

a. That any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, be reperformed consistent with this Court's declaration;
b. That monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity , from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the upcoming January 5, 2021 run-off election;
c. That Plaintiff and the Republican Party be given at least 24 hours notice prior to any and all election activity;
d. That all ballots cast in Georgia be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-designated monitors;
e. That the Republican Party immediately receive certified copies of all ballot envelopes and requests for absentee ballots received by Defendants, and further, that the Republican Party has the right to compare voter or application signatures on ballot envelopes and requests for absentee ballots with eNet; and
f. That, for the upcoming January 5, 2021 run-off election, the Republican Party has the right to have absentee ballot watchers/monitors present at all signature verification processes, from the receipt of the request for an absentee ballot to the opening of the absentee ballot and processing of the same.

Answer: The Political Party Committees deny that this Court should grant any of the requested orders, declarations, and/or injunctions requested by Plaintiff in paragraph 106.

107. Paragraph 107 of Plaintiff's Complaint states:

Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted.

Answer: Denied.

PRAYER FOR RELIEF

Plaintiff's complaint requests the following relief:

(a) That, as a result of Defendants' violations of the United States Constitution and violations of other federal and state election laws, this Court should enter an order, declaration, and/or injunction that prohibits Defendants from certifying the results of the 2020 general election in Georgia on a statewide basis;

(b) Alternatively, that, as a result of Defendants' violations of the United States Constitution and violations of other federal and state election laws, this Court should enter an order, declaration, and/or injunction prohibiting Defendants from certifyingce1iifying the results of the General Elections which include the tabulation of defective absentee ballots, regardless of whether said ballots were cured;

(c) Alternatively, that, as a result of Defendants' violations of the United States Constitution and violations of other federal and state election laws, this Court should enter an order, declaration, and/or injunction that the results of the 2020 general election in Georgia are defective as a result of the above-described constitutional violations, and that Defendants are required to cure said deficiencies in a manner consistent with federal and Georgia law, and without the taint of the procedures described in the Litigation Settlement;

(d) That this Court should enter an order, declaration, and/or injunction requiring as follows:

1. That any recount of the November 3, 2020 elections, including but not limited to the Hand Recount, be reperformed consistent with this Court's declaration;

2. That monitors designated by the Republican Party have the right to be present to meaningfully observe all election activity, from the receipt of a ballot to the entry or tabulation of the resulting vote, as to the Hand Recount, any reconducting of the Hand Recount, and the upcoming January 5, 2021 run-off election;
3. That Plaintiff and the Republican Party be given at least 24 hours notice prior to any and all election activity;
4. That all ballots cast in Georgia be read by two persons employed by the County Officials, with said readings being overseen by Republican Party-designated monitors;
5. That the Republican Party immediately receive certified copies of all ballot envelopes and requests for absentee ballots received by Defendants, and further, that the Republican Party has the right to compare voter or application signatures on ballot envelopes and requests for absentee ballots with the eNet; and
6. That, for the upcoming January 5, 2021 run-off election, the Republican Party has the right to have absentee ballot watchers / monitors present at all signature verification processes, from the receipt of the request for an absentee ballot to the opening of the absentee ballot and processing of the same; and

(e) And any other such further relief that this Court or the Finder of Fact deems equitable and just:

Answer:

(a) The Political Party Committees deny that Defendants violated the Constitution or federal or state election laws. The Political Party Committees further deny that Plaintiff's requested declaratory and injunctive relief is proper. The Political Party Committees further deny that Plaintiff is entitled to an injunction barring certification of the results of the 2020 election.

(b) The Political Party Committees deny that Defendants violated the Constitution or federal or state election laws. The Political Party Committees further deny that Plaintiff's requested declaratory and injunctive relief is proper. The Political Party Committees further deny that Plaintiff is entitled to an injunction because he has not identified a single "defective" ballot.

(c) The Political Party Committees deny that Defendants violated the Constitution or federal or state election laws. The Political Party Committees further deny that Plaintiff's requested declaratory and injunctive relief is proper. The Political Party Committees further deny that Plaintiff is entitled to an injunction compelling any further action by Defendants.

(d) The Political Party Committees deny that the Plaintiff is entitled to any of the referenced orders, declarations, and/or injunctions.

(e) The Political Party Committees deny that Plaintiff is entitled to any further relief.

AFFIRMATIVE DEFENSES

The Political Party Committees assert the following affirmative defenses without accepting any burdens regarding them:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because this Court lacks jurisdiction to adjudicate Plaintiff's claims.

SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert his claims.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

The Political Party Committees reserve the right to assert any further defenses that may become evident during the pendency of this matter.

PROPOSED INTERVENORS' REQUEST FOR RELIEF

Having answered Plaintiff's complaint, the Political Party Committees request that the Court:

1. Deny Plaintiff is entitled to any relief;

2. Dismiss Plaintiff's Complaint with prejudice;

3. Award the Political Party Committees their costs and attorneys' fees incurred in defending against Plaintiff's claims in accordance with 42 U.S.C. § 1988; and

4. Grant such other and further relief as this Court deems just and proper.

Dated: November 18, 2020.

Respectfully submitted,

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**Pro Hac Vice Application Pending*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,	)	
	)	
Plaintiff,	)	**CIVIL ACTION FILE NO.**
	)	**1:20-cv-04651-SDG**
v.	)	
	)	
BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, *et al.*,	)	
	)	
Defendants.	)	
_____	)	

PLAINTIFF'S AMENDED SUPPLEMENT TO EMERGENCY MOTION FOR INJUNCTIVE RELIEF AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW Plaintiff **L. Lin Wood, Jr.** ("Plaintiff"), by and through his undersigned counsel of record, and files this Supplement to Emergency Motion for Injunctive Relief and Memorandum of Law in Support Thereof (the "Motion") filed on November 18, 2020. Exhibit Q to the Motion was mistakenly submitted with the incorrect signature page. A true and correct copy of the Affidavit of Russell James Ramsland, Jr. executed and notarized is attached hereto as Exhibit Q.

[signature on following page]

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

/s/ *Ray S. Smith, III*
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

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Suite 2600
Atlanta, Georgia 30328
(404) 760-6000
rsmith@smithliss.com

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1 (B).

Respectfully submitted this 18th day of November, 2020.

SMITH & LISS, LLC

/s/ *Ray S. Smith, III*
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

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Atlanta, Georgia 30328
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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing and all exhibits and attachments thereto in the above-captioned matter to be filed with the United States District Court for the Northern District of Georgia, Atlanta Division, via the Court's CM-ECF system. I also hereby certify that I caused the foregoing and all exhibits and attachments thereto in the above captioned matter to be served, via email, upon:

Secretary of State Brad Raffensperger
214 State Capitol
Atlanta, Georgia 30334
brad@sos.ga.gov
soscontact@sos.ga.gov

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This 18th day of November, 2020.

SMITH & LISS, LLC

/s/ *Ray S. Smith, III*
Ray S. Smith, III
Georgia Bar No. 662555
Counsel for Plaintiff

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Affidavit of Russell James Ramsland, Jr.

1. My name is Russell James Ramsland, Jr., and I am a resident of Dallas County, Texas.

2. I am part of the management team of Allied Security Operations Group, LLC, (ASOG). ASOG provides a range of security services, but has a particular emphasis on cyber security, OSINT and PEN testing of networks. We employ a wide variety of cyber and cyber forensic analysts. We have patents pending in a variety of applications from novel network security applications to SCADA protection and safe browsing solutions for the dark and deep web.

3. In November 2018, ASOG analyzed audit logs for the central tabulation server of the ES&S Election Management System (EMS) for the Dallas, Texas, General Election of 2018. Our team was surprised at the enormous number of error messages that should not have been there. They numbered in the thousands, and the operator ignored and overrode all of them. This lead to various legal challenges in that election, and we provided evidence and analysis in some of them.

4. As a result, ASOG initiated an 18-month study into the major EMS providers in the United States, among which is Dominion/Premier that provides EMS services in Michigan. We did thorough background research of the literature and discovered there is quite a history from both Democrat and Republican stakeholders in the vulnerability of Dominion. The State of Texas rejected Dominion/Premier's certification for use there due to vulnerabilities. Next, we began doing PEN testing into the vulnerabilities described in the literature and confirmed for ourselves that in many cases, vulnerabilities already identified were still left open to exploit. We also noticed a striking similarity between the approach to software and EMS systems of ES&S and Dominion/Premier. This was logical since they share a common ancestry in the Diebold voting system.

5. Over the past three decades, almost all of the states have shifted from a relatively low-technology format to a high-technology format that relies heavily on a handful of private services companies. These private companies supply the hardware and software, often handle voter registrations, hold the voter records, partially manage the elections, program counting the votes and report the outcomes. Michigan is one of those states.

6. These systems contain a large number of vulnerabilities to hacking and tampering, both at the front end where Americans cast their votes, and at the back end where the votes are stored, tabulated, and reported. These vulnerabilities are well known, and experts in the field have written extensively about them.

7. Dominion/Premier ("Dominion") is a privately held United States company that provides election technologies and services to government jurisdictions. Numerous counties across the state of Michigan use the Dominion/Premier Election

Management System. The Dominion/Premier system has both options to be an electronic, paperless voting system with no permanent record of the voter's choices, paper ballot based system or hybrid of those two.

8. The Dominion/Premier Election Management System's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an attacker the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events. When a log is unprotected, and can be altered, it can no longer serve the purpose of an audit log.

9. My colleagues and I at ASOG have studied the information that is publicly available concerning the November 3, 2020, election results. Based on the significant anomalies and red flags that we have observed, we believe there is a significant probability that election results have been manipulated within the Dominion/Premier system in Michigan. Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has observed, with reference to Dominion Voting machines, "I figured out how to make a slightly different computer program that just before the polls were closed it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." Some of those red flags are listed below. Until a thorough analysis is conducted, it will be impossible to know for certain.

10. One red flag has been seen in Antium County, Michigan. In Michigan we have seen reports of 6,000 votes in Antium County that were switched from Donald Trump to Joe Biden and were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a glitch after an update, it was recanted and later attributed to "clerical error." This change is important because if it was not due to clerical error, but due to a "glitch" emanating from an update, the system would be required to be "re-certified" according to Dominion officials. This was not done. We are skeptical of these assurances as we know firsthand this has many other plausible explanations and a full investigation of this event needs to be conducted as there are a reported 47 other counties using essentially the same system in Michigan. It is our belief (based on the information we have at this point) that the problem most likely did occur due to a glitch where an update file didn't properly synchronize the ballot barcode generation and reading portions of the system. If that is indeed the case, there is no reason to assume this would be an isolated error. This glitch would cause entire ballot uploads to read as zero in the tabulation batch, which we also observed happening in the data (provisional ballots were accepted properly but in-person ballots were being rejected (zeroed out and/or changed (flipped)). Because of the highly vulnerable nature of these systems to error and exploits, it is quite possible that some, or all of these other counties may have the same problem.

11. Another statistical red flag is evident in the number of votes cast compared to the number of voters in some precincts. A preliminary analysis using data obtained

from the Michigan Secretary of State pinpoints a statistical anomaly so far outside of every statistical norm as to be virtually impossible. There are a stunning 3,276 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics ranges from 84% to 350%. **Normalizing the Turnout Percentage of this grouping to 80%, (still way above the national average for turnout percentage), reveals 431,954 excess ballots allegedly processed.** There were at least 19 precincts where the Presidential Votes Cast compared to the Estimated Voters based on Reported Statistics exceeded 100%.

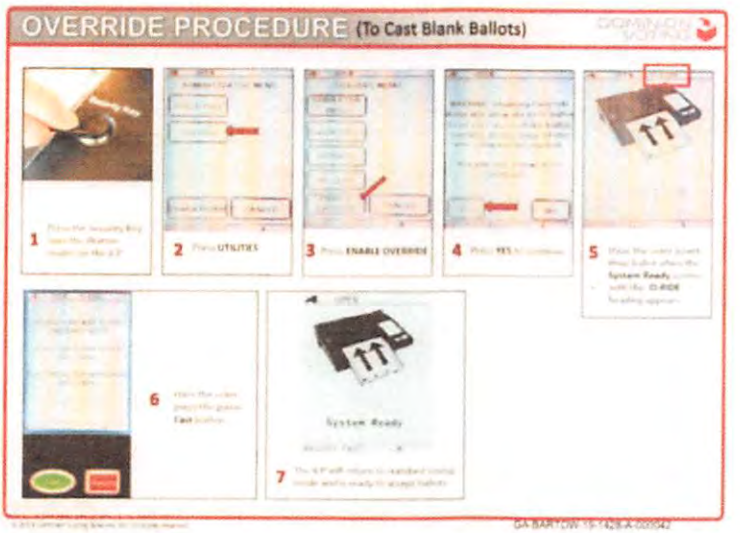
Precinct Township	Votes/SOS Est. Voters
BENVILLE TWP	350%
MONTICELLO P-1	144%
MONTICELLO P-2	138%
ALBERTVILLE P-2	138%
ALBERTVILLE P-1	136%
BRADFORD TWP.	104%
VELDT TWP.	104%
CHAMPION TWP	104%
KENT CITY	103%
WANGER TWP.	102%
KANDIYOHI TWP.	102%
LAKE LILLIAN TWP.	102%
HOKAH TWP.	102%
HOUSTON TWP.	101%
HILL RIVER TWP.	101%
SUNNYSIDE TWP.	101%
BROWNSVILLE TWP.	101%
OSLO	101%
EYOTA TWP.	101%

This pattern strongly suggests that the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as shown in the Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2. It reads in part, "**RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.**" For instance, blank ballots can be entered into the system and treated as "write-ins." Then the operator can enter an allocation of the write-ins among candidates as he wishes. The final result then awards the winner based on "points" the algorithm in the compute, not actual votes. The fact that we observed raw vote data that includes decimal places suggests strongly that this was, in fact, done. Otherwise, votes would be solely represented as whole numbers. Below is an excerpt from Dominion's direct feed to news outlets showing actual calculated votes with decimals.

state	timestamp	eevp	trump	biden	TV	BV
michigan	2020-11-04T06:54:48Z	64	0.534	0.448	1925865.66	1615707.52
michigan	2020-11-04T06:56:47Z	64	0.534	0.448	1930247.664	1619383.808
michigan	2020-11-04T06:58:47Z	64	0.534	0.448	1931413.386	1620361.792
michigan	2020-11-04T07:00:37Z	64	0.533	0.45	1941758.975	1639383.75
michigan	2020-11-04T07:01:46Z	64	0.533	0.45	1945297.562	1642371.3
michigan	2020-11-04T07:03:17Z	65	0.533	0.45	1948885.185	1645400.25

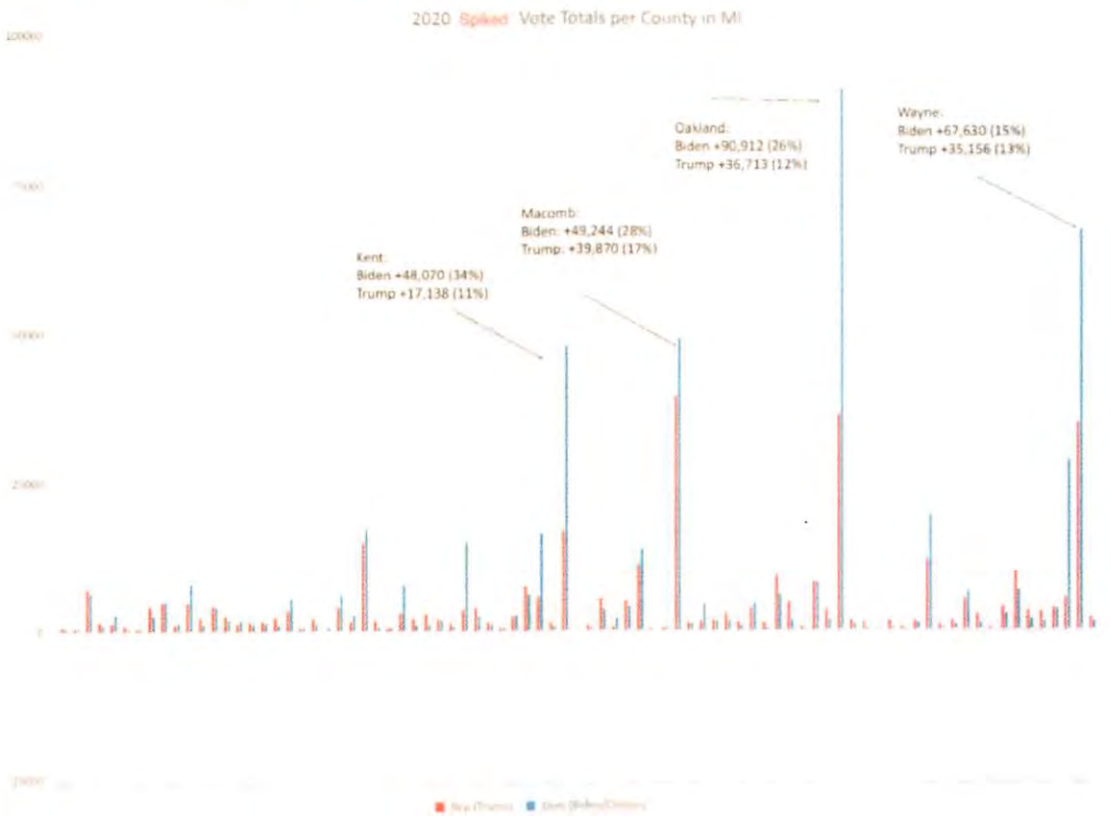
12. Yet another statistical red flag in Michigan concerns the dramatic shift in votes between the two major party candidates as the tabulation of the turnout increased. A significant irregularity surfaces. Until the tabulated voter turnout reached approximately 83%, Trump was generally winning between 55% and 60% of every turnout point. Then, after the counting was closed at 2:00 am, the situation dramatically reversed itself, starting with a series of impossible spikes shortly after counting was supposed to have stopped. The several spikes cast solely for Biden could easily be produced in the Dominion system by pre-loading batches of blank ballots in files such as Write-Ins, then casting them all for Biden using the Override Procedure (to cast Write-In ballots) that is available to the operator of the system. A few batches of blank ballots could easily produce a reversal this extreme, a reversal that is almost as statistically difficult to explain as is the impossibility of the votes cast to number of voters described in Paragraph 11 above.

Dominion also has a "Blank Ballot Override" function. Essentially a save for later bucket that can be manually populated later.



13. The final red flag is perhaps the greatest. Something occurred in Michigan that is physically impossible, indicating the results were manipulated on election night within the EMS. The event as reflected in the data are the 4 spikes totaling 384,733

ballots allegedly processed in a combined interval of only 2 hour and 38 minutes. This is physically impossible given the equipment available at the 4 reference locations (precincts/townships) we looked at for processing ballots, and cross referencing that with both the time it took at each location and the performance specifications we obtained using the serial numbers of the scanning devices used. (Model DRM16011 - 60/min. without accounting for paper jams, replacement cover sheets or loading time, so we assume 2,000 ballots/hr. in field conditions which is probably generous). This calculation yields a sum of 94,867 ballots as the maximum number of ballots that could be processed. And while it should be noted that in the event of a jam and the counter is not reset, the ballots can be run through again and effectively duplicated, this would not alleviate the impossibility of this event because duplicated ballots still require processing time. The existence of the spike is strongly indicative of a manual adjustment either by the operator of the system (see paragraph 12 above) or an attack by outside actors. **In any event, there were 289,866 more ballots processed in the time available for processing in four precincts/townships, than there was capacity.** A look at the graph below makes clear the This is not surprising because the system is highly vulnerable to a manual change in the ballot totals as observed here.



14. At ASOG, we believe that these statistical anomalies and impossibilities together create a wholly unacceptable level of doubt as to the validity of the vote count in Michigan, and in Wayne County, in particular.

15. If ASOG, or any other team of experts with the equivalent qualifications and experience, could be permitted to analyze the raw data produced during the course of the election, as well as the audit logs that the Dominion system generates, we would likely be able to determine whether or not any fraudulent manipulation of the election results occurred within the Dominion Election Management System. These audit logs are in the possession of Dominion.

16. However, there are several deficiencies with the Dominion audit logs: (1) because the logs are "voluntary" logs, they do not enforce the logging of all actions; (2) the logs can be altered by the people who are operating the system; and (3) the logs are not synchronized. Because of these deficiencies, it is of critical importance that all of the daily full records of raw data produced during every step of the election process also be made available for analysis (in addition to the audit logs), so that gaps in the audit logs may be bridged to the best extent possible. This raw data, which is in Dominion's possession, should be individual and cumulative.

17. Wayne County uses Dominion Equipment, where 46 out of 47 precincts/townships display a highly unlikely 96%+ as the number of votes cast, using the Secretary of State's number of voters in the precinct/township; and 25 of those 47 precincts/townships show 100% turnout.

Precinct Township	Votes/SOS Est. Voters
SPRUCE GROVE TWP	100%
ATLANTA TWP	100%
RUNEBERG TWP	100%
WOLF LAKE TWP	100%
HEIGHT OF LAND TWP	100%
EAGLE VIEW TWP	100%
WOLF LAKE	100%
SHELL LAKE TWP	100%
SAVANNAH TWP	100%
CUBA TWP	100%
FOREST TWP	100%
RICEVILLE TWP	100%
WALWORTH TWP	100%
OGEMA	100%
BURLINGTON TWP	100%
RICHWOOD TWP	100%
AUDUBON	100%
LAKE EUNICE TWP	100%
OSAGE TWP	100%
DETROIT LAKES W2 P1	100%
CORMORANT TWP	100%
LAKE VIEW TWP	100%

AUDUBON TWP	100%
DETROIT LAKES W3 P1	100%
FRAZEE	100%

This pattern strongly suggests both the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as discussed in paragraph 11 above, as well as batch processing of blank votes, as outlined in Paragraphs 12 and 13 above, where 74,119 more ballots were cast than the capacity to cast them during the spike.

18. In order to analyze the data and determine the cause of these anomalies, ASOG would need Administrator logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications. The following would be required from Premier:

XML and XSLT logs for the:

- Tabulators
- Result Pair Resolution
- Result Files
- Provisional Votes
- RTM Logs
- Ranked Profiles and entire change history Audit Trail logs
- Rejected Ballots Report by Reason Code

Identity of everyone accessing the domain name Admin.enr.dominionvoting.com and

- Windows software log,
- Windows event log and
- Windows security log of the server itself that is hosted at Admin.enr.dominionvoting.com.
- Access logs to their full extent and DNS logs.
- Internal admin.enr.dominionvoting.com logs
- Ranked Contests and entire change history Audit Trail logs

FTP Transfer Points Log

19. In order to evaluate the raw data of the election, the following records would be required from Dominion.

- Daily and Cumulative Voter Records for those who voted with sufficient definition to determine:
  - Voters name and Registered Voting address
  - Address to for correspondence
  - D.O.B.
  - Voter ID number
  - How Voted (mail, in-person early, in person Election Day)
  - Where Voted (if applicable)

Date voted (if applicable)
Party affiliation (if recorded)
Ballot by mail Request Date
Ballot by mail sent date
Ballot by mail voted date (if applicable)
Ballet cancelled date (if applicable)

- .RAW, HTML, XHTML and SVG files (Ballot Images)

20. Any removable media (such as thumbdrives, USB, memory cards, PCMIA cards, etc.) used to transfer ballots to central counting from voting locations.

21. Access or control of ALL routers, tabulators or combinations thereof (some routers are inside the tabulator case) in order to garner the system logs. At the same time, the public IP of the router should be obtained.

22. Any key, authorization key & yubikey

Further affiant sayeth naught.

Russell James Ramsland, Jr. 11/17/2020
Date

Sworn before me on NOVEMBER 17, 2020

Notary public

BRITTANY R PARKS NOTARY PUBLIC COBB COUNTY, GEORGIA MY COMMISSION EXPIRES AUGUST 17, 2024

Brittany R. Parks

MY COMMISSION EXPIRES ON AUGUST 17, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

L. LIN WOOD, JR.,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, *et al.*,

Defendants.

Civil Action No.
1:20-cv-04651-SDG

NOTICE SETTING HEARING

A hearing is scheduled on Plaintiff's Emergency Motion for Injunctive Relief [ECF 6] for **Thursday, November 19, 2020 at 3:00 p.m.** before the Honorable Steven D. Grimberg. Due to the current public health emergency, the hearing will be conducted via remote audio and video means. The dial in instructions are as follows: https://ganduscourts.zoomgov.com/j/1609807754; Meeting ID: 160 980 7754; Passcode: 841353.

Plaintiff is **DIRECTED** to serve a copy of this notice on Defendants and Intervenor Defendants or their counsel **no later than the close of business on November 18, 2020**. If any party intends to call witnesses during the hearing, they must advise the Court by 12:00 pm on Thursday, November 19, 2020. If any party

intends to tender exhibits during the hearing, they must provide electronic copies to the Court by 12:00 pm on Thursday, November 19, 2020.

Signed this the 18th day of November 2020.

Steven D. Grimberg
United States District Court Judge